

The Novels of Justinian

A Complete Annotated English Translation

The novels comprise a series of laws issued in the sixth century by the famous Emperor Justinian (r. 527–565), along with a number of measures issued by his immediate successors on the throne of Constantinople. They reveal the evolution of Roman law at the end of Antiquity and how imperial law was transmitted to both the Byzantine East and Latin West in the early Middle Ages. Crucially, the texts cast fascinating light on how litigants of all social backgrounds sought to appropriate the law and turn it to their advantage, as well as on topics ranging from the changing status of women to the persecution of homosexuals, and from the spread of heresy to the economic impact of the first known outbreak of bubonic plague. This work represents the first English translation of the novels based on the original Greek, and comes with an extensive historical and legal commentary.

David J.D. Miller was educated in Classics and Theology and taught Latin and Greek at Bristol Grammar School (where he was Head of Classics for twenty-one years) and at the University of Bristol. His previously published translations include the first-ever English versions of Eusebius' *Gospel Problems and Solutions* (2011) and (with Richard Goodrich) of Jerome's *Commentary on Ecclesiastes* (2012).

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Papyrus with *prōtokollon*: see Novel 44

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DAVID J.D. MILLER

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CAMBRIDGE
UNIVERSITY PRESS

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University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107000926

DOI: 10.1017/9780511733208

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First published 2018

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Miller, David, 1935 November 11–, translator. | Sarris, Peter, writer of introduction, commentary and bibliography.

Title: The novels of Justinian : a complete annotated English translation /
by David Miller and Peter Sarris.

Other titles: Novellae constitutiones. English

Description: Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press, 2018. | Includes bibliographical references.

Identifiers: LCCN 2017033080 | ISBN 9781107000926

Subjects: LCSH: Roman law – Sources. | Law, Byzantine – Sources. | LCGFT: Statutes and codes.

Classification: LCC KJA1216 .E5 2018 | DDC 340.5/4–dc23

LC record available at <https://lcn.loc.gov/2017033080>

ISBN – 2 Volume Set 978-1-107-00092-6 Hardback

ISBN – Volume 1 978-1-108-48319-3 Hardback

ISBN – Volume 2 HB: 978-1-108-48320-9 Hardback

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Translator's Preface

David J.D. Miller

These *novellae constitutiones*, or 'new laws', were collected and published, at Mommsen's instigation, as *Corpus Iuris Civilis* (abbreviated as *C.I.C.*) Vol. III, by R. Schoell and W. Kroll (abbreviated as S/K in this volume). Their collection comprises 168 listed as Novels, 13 as Edicts, and an Appendix of nine. Most of them were first written in Greek. These are usually accompanied by a near-contemporary Latin version, collectively known as the *Authenticum* (sometimes abbreviated as 'Auth.');

a small minority survives in Latin only. Those extant in only one of the languages are so marked in the heading.

W.S. Thurman's edition of *The Thirteen Edicts of Justinian* contains his own translations of that part; for the rest, this is the first translation into English to have been made directly from the Greek text of *C.I.C.* III.

After the first draft of a novel, reference has often been made, as a way of helping to detect oversights in the draft, to Blume's version, which was made mainly from the Latin translation provided by S/K; grateful thanks are due to Timothy Kearley, custodian of the Blume archive at the University of Wyoming, for editing Blume's typescript and making it publicly available at www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/novels/index.html. In the so-called 'Thirteen Edicts', such reference has also been made to Thurman's edition. In addition to the standard dictionaries, constant reference has been made to two lexicographical monographs by I. Avotins: *On the Greek of the Code of Justinian* and *On the Greek of the Novels of Justinian*.

The text translated is that printed in S/K, except where it has been found necessary to supplement or emend it, in order to make coherent sense; such places are marked with an asterisked note immediately below that paragraph. Many of these emendations were suggested already in S/K's *apparatus criticus* ('app. crit.' in those notes), but some contribute to a new understanding of the text. Pointed brackets < . . . > in this translation, if not asterisked, indicate an addition merely for the sake of clarity. Minor changes that do not affect the sense, such as the very few misprints, are unmarked. Where S/K used pointed brackets to enclose their own conjectural supplements in the italic headings and datelines, these supplements have mainly

been omitted, on the supposition that the original draughtsmen were by no means always consistent in their wording; but where S/K used such brackets to supply words evidently missing in the text itself, these words are included in the translation, bracketlessly. Similarly, where they used square brackets [. . .] to enclose words wrongly included in the text, these words and brackets have been silently omitted. S/K's headings PREAMBLE and CONCLUSION were all absent from the original text. The use of capital initials for titles indicates that they denote specific ranks: thus, in rising order of status, Most Distinguished represents λαμπρότατος or *clarissimus*, with Admirable for περιβλεπτός or *spectabilis* and Most Illustrious for ἐνδοξότατος, *illustis* or *illustrissimus*.

The translation aims to convey as much as possible of the old-fashioned and mainly formal, but sometimes strikingly personal, style of the original, even at the cost of retaining all its verbosity and as much as was thought tolerable of its sentence-structure, which is very elaborate,* and at times syntactically inconsistent. As part of that aim, the word with the literal meaning 'divine' is left as such, despite its understood purport as 'imperial', in order to maintain the emperor's identification of himself and his government as chosen to represent God on earth. Other words with imperial connotations include 'Sovereign' for the literal 'king', 'sovereign' for 'royal', 'sovereignty' for 'royalty', and 'Sovereignty' for what amounts to 'The Imperial Government'.

The italicised dating at the foot of each Novel was always written in Latin, and so, sometimes, were sums of money such as *triginta librae auri*, embedded in the Greek text; these have been translated into English without comment, except where a note indicates their use for a particular reason. Otherwise, Latin words used in the Greek text itself (whether written in Latin letters or Greek ones, or a mixture) are almost always left as Latin in the translation, in italics; every such word is explained in the Commentary, at least once in each Novel. Exceptions to that are the few, such as *praetor*, which slither elusively between being Latin words in a Greek text ('*praetor*²') and words commonly naturalised as English ('praetor').

Most grateful thanks are due, first of all, to Peter Sarris, for his expert help over the technical terms of Roman law and Byzantine institutions, without which it would have been impossible even to contemplate undertaking this translation. In addition, the following Professors have been generous with information on particular passages: Robert Fowler, on a Greek phrase; Simon Goldhill, on synagogue practice; Doug Lee, on

* For an example, compare the two versions printed of Novel 37, Preamble paragraph 1.xx

armaments; John Melville-Jones, on coinage; Peter Parsons, on papyri; and John Wilkes, on geography. Their help is gratefully acknowledged, as is that of Professors Em. Gillian Clark, who had suggested the project originally and who helped it on its way, and Jane Gardner, who read the whole translation with critical care and made numerous valuable suggestions; of Michael Sharp of Cambridge University Press and Damien McManus of Bristol University Library, who both did everything possible to smooth the path; and of Rodney Morant and Caroline McClelland, who generously undertook to read the proofs. Thanks are also due to the friends on whose knowledge I have made many calls: Julian Chapman, Julian Cooke and Rodney Morant, on terms of English law, and Christopher Francis, on ecclesiastical matters. Nobly, my wife Ida not only tolerated my years of abstraction, but read the translation through twice, in successive drafts, helping to get rid of numerous misprints, infelicities, and obscurities.

Despite the help of all those I have named, work spread over eight years must still contain inconsistencies and slips; I would be glad to be notified of them.

Introduction:

The Novels of the Emperor Justinian

Peter Sarris

The ‘Novels’ consist of a series of laws issued in the sixth century by the Emperor Justinian in the wake of his codification of the Roman law, along with a number of laws issued by his immediate successors on the throne of Constantinople, Justin II and Tiberius II, supplemented with a handful of associated texts. This introduction places the novels in their historical and legal context, and traces their transmission from late antiquity.¹

i) Justinian, the Empire and the Law

On 16 November 529 AD, in the imperial capital of Constantinople, the East Roman (or ‘Byzantine’) Emperor Justinian (527–565) formally promulgated the second recension of the ‘Justinianic Code’ (*Codex Iustinianus*), a work which sought to harmonise, unite and give renewed focus to all laws of general effect or significance issued by Roman emperors since the reign of Hadrian (117–138 AD). This second version of the *Codex* replaced an earlier one that had been issued in April 529, and represented the final stage in a wider programme of legal reform that had also seen Justinian’s law commissioners produce a condensed and reworked compendium of the writings of the classical legal scholars or ‘jurisconsults’ (the *Digest*, or *Pandects*, published and promulgated in fifty volumes on 16 December 529), together with a clear and accessible textbook for those beginning the study of law with a view to entering government service (the *Institutes*, issued in November 529, which likewise reworked and reformed

¹ This project has been greatly assisted by the British Academy (which awarded me a Mid-Career Fellowship for the year 2014 in order to undertake it) and the Trustees of the Dumbarton Oaks Research Library, Washington, DC (who awarded me a Summer Fellowship to conduct research on the novels in the same year). I am also grateful to the staff of the Codrington Library in Oxford for permitting me a long-term loan of the Library’s copy of Vol. III of the *Corpus Iuris Civilis* (which I first read there in 1994), and Mr Turlough Stone of the Inner Temple (as well as Dr Reuben Stanley and Dr Theodoros Simitis) for discussion of various points of Legal History and Comparative Law. Above all, I would like to thank David Miller for inviting me to join him on this fascinating project, and for his constant (but always thoughtful) philological rigour across the several years this task has taken.

the inherited instructional literature).² The committee responsible for the first version of the *Codex* had been chaired by the empire's chief civil servant, the Praetorian Prefect of the East, John the Cappadocian.³ The committees responsible for the second version of the *Codex*, as well as the *Digest* and *Institutes*, had been presided over by the empire's former (and future) chief legal officer, or *Quaestor*, the jurist Tribonian, who at that point held the office of *Magister Officiorum*.⁴

This concerted programme of legal codification and reform represented an effort on the part of the emperor and his commissioners to resolve a problem that had bedevilled Roman legislators and legal practitioners for centuries: namely, that it was often very difficult to establish in the course of legal proceedings what the current state of law on a given subject actually was. Traditionally, laws of general effect issued by emperors, *ad hoc* judgments issued by the imperial authorities and communicated in the form of official letters to provincial administrators, litigants and petitioners, and the writings of legal scholars had all had legal standing and could be cited in court. This inevitably led to confusion as to which text or authority was to be given preference. Under the Emperor Diocletian (284–305) two attempts had been made by legal scholars to collect and codify the laws issued by emperors (known as 'constitutions', after the Latin verb *constituere* 'to decide' or 'to establish'), leading to the publication of the *Codex Gregorianus* and *Codex Hermogenianus*. Similarly, in the early fifth century, the imperial authorities in Constantinople under the Emperor Theodosius II (408–450) had attempted to remedy the situation by compiling and promulgating the *Codex Theodosianus* – notionally an official codification of all laws issued by Christian emperors since Constantine which were deemed to be of general application or which established important legal points applicable in similar or related contexts. At the same time, a 'law of citations' had been established, officially defining which juriconsults had canonical standing and which did not. Even those juriconsults who made it through the Theodosian pruning,

² For a clear and concise introduction to this legal programme, see Birks and McLeod (1987), pp. 8–12. A.M. Honoré, *Tribonian* (Honoré (1978)) provides a masterly account of both the reform programme and one of its driving figures. After the first version of the *Codex*, Justinian had issued a work entitled the 'Fifty Decisions' (*Quinquaginta Decisiones*) to resolve outstanding differences in the writings of the classical jurists. Perhaps inspired by Tribonian, this modest work was set aside for the far more ambitious project of the *Digest*. See also Corcoran (2016) 1, pp. xcvi–clxiv.

³ *PLREIIIA*, pp. 627–35 (Fl. Ioannes 11).

⁴ Honoré (1978). On the composition of the *Digest*, see also idem. (2010). See *PLREIIIB*, pp. 1335–9 (Tribonianus 1).

however, had still bequeathed to posterity some 1,500 books of opinions, and the number of imperial constitutions and responses to petitions (or ‘rescripts’) had continued to proliferate.⁵

The nature of the intellectual achievement that underlay Justinian’s programme of legal codification can be misconstrued. The scale of the project, for example, was evidently perfectly manageable if properly organised and carefully delegated.⁶ Thus it has been estimated that those legal scholars commissioned to produce the *Digest* probably had to read no more than forty pages of Latin text per day and decide which twentieth part of the text read merited inclusion in the new compilation; and as a formidable teacher of Roman law, the late Tony Weir, opined, ‘even a law student can read forty pages in a day and highlight the 5% he thinks important’.⁷ Rather, the achievement of the *Digest* lay in the fact that beneath a classicising veneer (to which we shall return), Justinian’s legal officers managed both to edit and to fundamentally re-cast the inherited Roman law tradition in order to express a single opinion and will, represented as being that of the Emperor Justinian. The codification and reform of the ‘civil law’ (as Roman law was known) thus served an important ideological as well as legal function: not only were the laws reworked to serve contemporary needs but also the emperor was established, for the first time in Roman legal tradition, as the one and only legitimate source of law. The person of the Emperor was, Justinian declared, ‘the law animate’ (in Greek, *nomos empsychos*).⁸ The reformed law issued in the emperor’s name was not to be altered, amended or corrupted in copying and circulation.⁹ It is striking that law students in their second year of study were to be called *Iustiniani* (‘the Justinians’): they were to be the crack troops at the forefront of the emperor’s struggle to restore imperial order. As Justinian declared to the ‘young enthusiasts for law’ to whom the promulgation of the *Institutes* was dedicated:

Imperial Majesty should not only be graced with arms but also armed with laws, so that good government may prevail in time of war and peace alike. The head of the Roman state can then stand victorious not only over enemies in war, but also over trouble-makers at home . . . Study our law. Do your best and apply yourself keenly to it. Show that you have

⁵ See Corcoran (1996), Honoré (1998), Matthews (2000) and Sirks (2007).

⁶ For the nature of the delegation involved in the composition of the *Digest*, see Honoré (2010).

⁷ Weir (2006), p. 40.

⁸ *J. Nov.* 105.2.4.

⁹ *C. Tanta* 21: discussed by Scheltema (1977).

mastered it. You can then cherish a noble ambition; for when your course of law is finished you will be able to perform whatever duty is entrusted to you in the governance of our state.¹⁰

Justinian's emphasis on the need to combat enemies both at home and abroad is telling, for the emperor's programme of legal reform also sought to respond to contemporary political realities and, in particular, a number of specific challenges to the authority of the imperial office and the writ of imperial law that were becoming increasingly pressing in the early sixth century.¹¹ The first such challenge related to enemies abroad. In the fourth century, the Roman Empire had come to be divided into two parts, each (for the most part) with a separate ruler: the Eastern Empire (comprising Greece, Asia Minor and Anatolia, Syria, Palestine and Egypt) and the Western Empire (consisting of Italy, Gaul, Britain, the Iberian peninsula and Africa), with the dividing line between the two parts running through Illyricum in the Balkans (see Map 1). In the early fifth century, however, the Empire as a whole came under sustained military pressure from the Huns and various Germanic peoples from beyond the Rhine and Danube. This pressure was especially pronounced with respect to the Empire's western provinces, which bore the brunt of barbarian invasion and were progressively lost to central imperial control, such that by the early 470s the Western Empire barely extended beyond Italy. In 476, the last western Roman Emperor, Romulus Augustulus ('the little Augustus'), was deposed by the Gothic general Odoacer, who wrote to Constantinople informing the imperial authorities that there was no longer any need for an emperor in the West.¹²

In place of a unifying trans-Mediterranean Roman hegemony, therefore, by the end of the fifth century, autonomous kingdoms had emerged in Italy, Spain, Gaul and Africa under Gothic, Frankish, Burgundian and Vandal overlordship. Even Rome was lost to Roman control. Whilst the leaders of some of these regimes (such as the Burgundians in Savoy) continued to pay lip service to the concept of some sort of over-arching imperial suzerainty emanating from the seat of the remaining Roman Emperor in Constantinople others, such as the Vandals, openly defied the imperial court, and pointedly contested the emperor's claims to universal authority at the same time as adopting an increasingly imperial style

¹⁰ *C. Imperatoriam Maiestatem*.

¹¹ For more detailed discussion of the context to Justinian's reign, see Maas (2005) and Sarris (2006) and *idem.* (2011a).

¹² On this and what follows, see Sarris (2011a), pp. 41–125.

of rule at their own courts. In Spain and southern Gaul, for example, the Gothic regime (assisted by Roman courtiers) began to revise and update Roman law with respect to property and other sensitive issues, thereby infringing upon what was deemed to be an imperial prerogative. To add insult to injury, the Goths and Vandals also publicly rejected what had become the imperially sanctioned definition of the Christian faith, preferring to follow the teachings of the fourth-century heretic Arius, during whose period of ascendancy they had first been evangelised, and whose doctrinal stance allowed them to distance themselves further from Constantinople.¹³

The demise of Roman power in the west and the emergence there of the post-Roman successor kingdoms thus constituted a direct challenge to the authority of the remaining Roman Emperor in Constantinople, who claimed to be the sole heir to Augustus, with rightful jurisdiction over all territories that had once been Roman. This fact was not lost on political circles in Constantinople in the early sixth century, where the disparity between the emperor's theoretical claims to universal authority and his evident powerlessness over much former Roman territory helped to generate an outpouring of political speculation as to the nature of the imperial office.¹⁴ Such debate demanded an imperial response. In particular, the legal initiative had to be wrested back from the hands of the barbarian heretics, and the currency of the imperial office restored.

At the same time, political tensions in Constantinople in the early sixth century are likely to have been heightened by a number of other threats and issues that loomed on the horizon.¹⁵ Militarily, the early sixth century had seen the revival of warfare between the Eastern Roman Empire and its great super-power rival in the form of the Sasanian Empire of Persia. In 502, the Persians had launched what was perceived from Constantinople to be an entirely unprovoked assault on Roman Syria. Whilst the Persians had eventually been persuaded to withdraw their forces in return for the payment of tribute, warfare had been costly and can only have served to excite a deep sense of insecurity on the part of many of the inhabitants of the empire's eastern provinces and those who owned land there, including high-ranking members of the Senate in Constantinople. Through this senatorial connection, perceived military weakness on the fringes of Syria began to have an impact on political conditions in the imperial capital.

¹³ *Ibid.*, p. 91.

¹⁴ See Bell (2009).

¹⁵ For what follows, see Sarris (2011a), pp. 125–68.



Map 1 The Roman Empire in the Late Fourth Century AD

Source: Cameron and Garnsey (1998): 18.



Map 1 (cont.)

The revival of warfare with Persia, which Justinian had inherited, also carried with it other, more far-reaching implications. For it meant that emperors had no choice but to upgrade the empire's military capacity and defensive infrastructure. Each of these required money, and money meant taxation (it has been estimated, for example, that the army received somewhere in the region of one-half to two-thirds of all tax revenues collected by the Roman state).¹⁶ Yet effective taxation was something that, since the mid fourth century, Roman emperors had found it increasingly difficult to achieve. The fourth century had witnessed the emergence across the Roman world of a new imperial aristocracy of service, whose members had come to dominate both the highest offices of the state (such as the Senate of Constantinople and provincial governorships) and also, increasingly, local landed society.¹⁷ From a fiscal perspective, this would prove to be a highly ominous development. Late Roman taxation was primarily levied on the land and those who worked it, and the ascendancy of this new aristocracy meant that a growing share of the land was passing into the ownership of individuals who, by virtue of the governmental positions and connections that they enjoyed, were especially well placed to evade the taxes to which their estates were liable (and which they were often charged with collecting). From the late fourth century, tax evasion on the part of such landowners can be seen to have become a growing cause for concern on the part of emperors, who also expressed mounting anxiety at the willingness and ability of such landowners to flout other aspects of imperial law by, for example, suborning imperial troops to serve as private armed retainers on their estates, or illicitly building prisons on their properties with which to intimidate and cajole their workforce.¹⁸ The revival of warfare with Persia in the early sixth century served to increase the pressure on the imperial government to address this situation by seeking to strengthen the writ of the emperor and his law in the provinces.

When, therefore, in 533, Justinian alluded to an enemy within, it was probably such landowners, especially within the Senate of Constantinople, that he primarily had in mind. Indeed, in 532 (amid the so-called 'Nika Riots') the Emperor had narrowly survived an attempt to depose him orchestrated by members of the Senate who had already found his approach disconcertingly confrontational, and who dreamed of an emperor more blue-blooded than Justinian who, it was claimed, had been

¹⁶ Wickham (2005), p. 73.

¹⁷ Banaji (2007).

¹⁸ For detailed discussion, see Sarris (2006), pp. 149–99.

born an Illyrian peasant, before migrating to the capital and advancing through the ranks of the palace guard along with his uncle, the Emperor Justin I (518–527).¹⁹ The latter, it was claimed, had seized the throne by sleight of hand and arranged for his nephew's succession.²⁰ The presence at Justinian's side of his consort Theodora (alleged to have been an actress of especially ill repute) had only served to intensify aristocratic hostility.

Importantly, there were also other enemies towards whom the Emperor's suspicions were directed. Foremost amongst these were the various groups of religious dissidents within the Empire, whose activities and beliefs were understood to constitute both a cause of divine displeasure and also a direct and public rejection of imperial law. The world of Justinian was one in which the Christian Church was growing in power and cultural dominance. The Emperor himself was a devout Christian, who held the authority of his office to be derived from God (a claim which emperors had been making since the conversion to Christianity of the Emperor Constantine in the early fourth century). Indeed, Justinian had confirmed the promulgation of the *Digest* 'In the Name of Our Lord God Jesus Christ', thereby symbolically baptising the intellectual inheritance of the non-Christian classical jurists.²¹ This growing influence and power of the Church could be a cause for division, however, not least on the part of the empire's many Jewish and (in Palestine) Samaritan subjects, who found themselves progressively alienated from an increasingly Christian state.²² Likewise, amongst members of the governing classes, there continued to exist coterie of pagans and others of a traditional mindset, who were evidently ill at ease with the Christianisation of their inherited culture.²³

At the same time, whilst the gravitational pull of Christianity within the empire was constantly strengthening, the Church itself was proving itself to be increasingly fissile theologically. In particular, in 451 at the Ecumenical Council of Chalcedon, the imperial Church had agreed a definition of the nature of the relationship between the human and divine in the person of Christ that the leaders of the Church in Egypt, Syria and elsewhere had publicly denounced and which they continued to resist.²⁴ The decrees of such councils (which were presided over by the emperor

¹⁹ Greatrex (1997).

²⁰ Sarris (2006), pp. 204–5.

²¹ C. Tanta; Humfress, in Maas (2005), pp. 161–84, 168.

²² De Lange, in Maas (2005), pp. 401–26.

²³ Sarris (2011a), pp. 220–6.

²⁴ Price and Gaddis (2005).

or his representative) were deemed to carry the status of imperial law.²⁵ On going resistance to the theological formula established at Chalcedon was thus interpreted in Constantinople as an act of lawlessness and a further affront to imperial dignity. It, too, invited not only a theological but also a legal response.

Each of the challenges facing the imperial office in the early sixth century would elicit a concerted reaction from the Emperor Justinian in the first years of his reign. From the start, for example, he adopted a highly belligerent stance with respect to the Persians, investing heavily in the defensive infrastructure of the eastern provinces in order to render them less prone to Sasanian attack.²⁶ To the West, as early as 533, he took advantage of a succession dispute in the Vandal kingdom of Africa to launch a successful Roman re-conquest of the territory. He would go on to repeat the feat in 535 and the 550s, when he sent expeditionary forces to initiate the re-conquest of Italy and southern Spain respectively (see Map 2).²⁷ At the same time, Justinian embarked upon his legal project, which sought to restore the majesty of the imperial office and the writ of imperial law when both were perceived to be increasingly under attack.

ii) The Codification and Justinian's 'Novels'

In his project of codification, Justinian claimed to be legislating for eternity: of the *Digest* and *Institutes* he declared 'these our laws . . . are to be valid for all time and have effect with our constitutions [i.e. the *Codex*], demonstrating their efficacy in all cases'.²⁸ Likewise, of the first recension of the *Codex*, he trumpeted, 'We have taken care that this Code, to last forever, should come to your knowledge, so that all litigants and lawyers may know that they will not be permitted in lawsuits to cite the constitutions of the three ancient Codes . . . but it is only necessary to cite the constitutions in this our New Code.'²⁹ In reality, of course, the first version of the *Codex* lasted for little more than five years before it was replaced by the updated edition produced by Tribonian. During that time, however, it was circulated to the provinces and seemingly put into effect.³⁰ Indeed, it

²⁵ See, with respect to Nicene Trinitarian doctrine, *Codex Theodosianus* 16.1.2. Justinian would make it clear that the same was true with respect to the Council of Chalcedon in *J. Nov.* 131.

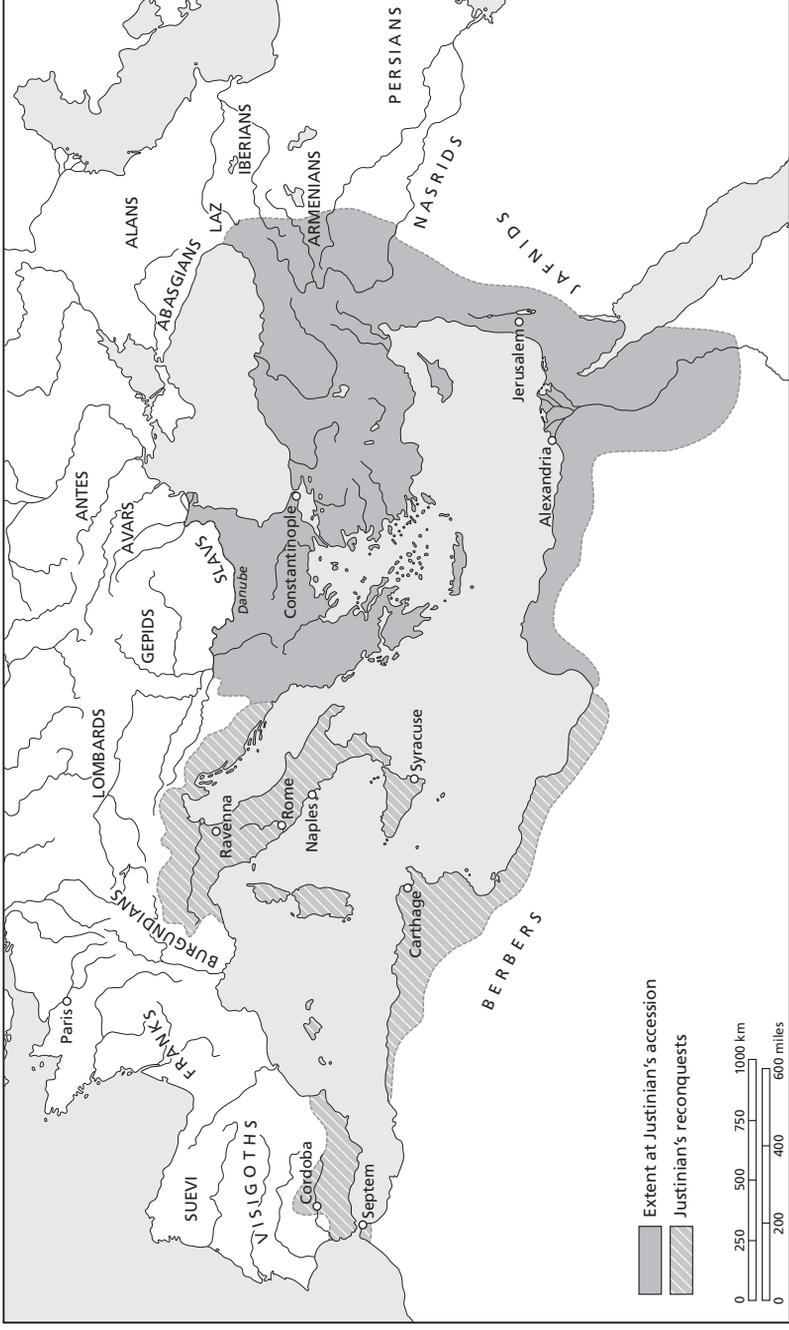
²⁶ Sarris (2011a), pp. 134–53.

²⁷ *Ibid.*, pp. 89–96, 115–20, 189–92.

²⁸ *C. Tanta* 23.

²⁹ *C. Summa* 3.

³⁰ Corcoran (2008).



Map 2 Justinian's Empire in 565

Source: Shepard (2008): 110 (emended).

was deficiencies that emerged when the first version of the *Codex* was put into practice that obliged Justinian to revise and update it. As the emperor admitted, ‘when our new decisions and constitutions, which were made after the completion of our Code, were found outside of the collection thereof, our care and consideration seemed to be demanded anew, especially since some of the laws, by reason of facts arising later, and after fuller deliberation, required some change and correction’.³¹ Nevertheless, he expressed the hope to the Senate that the revised version would ‘be effective for all time’.³²

Justinian aspired to stability within the body of the law, and his codification undoubtedly achieved that aim. The legal uncertainties generated by the voluminous writings of the jurists were ended.³³ Likewise, Justinian successfully determined in what form or to what effect laws that originated with his predecessors could be cited. But he never denied that future legislation would be necessary, or that further deficiencies in his codified law might emerge, requiring correction. For practical purposes, however, such new laws (*novellae constitutiones* – known in English as ‘novels’) would have to exist outside of and in addition to the *Codex*. As the emperor put it in 534: ‘the *Code* alone . . . shall be consulted in all courts . . . and no constitution shall be read outside of the *Code* unless changing conditions should hereafter create new requirements, demanding our sanction. For if, of course, anything better is found in the future, which should be put in a constitution, such a constitution will be issued and will be assigned to a different assemblage designated by the name of *novels*’.³⁴

It was never Justinian’s intention, therefore, that imperial legislation should cease in 534, and both he and his legal officers evidently took it for granted that new constitutions (hereafter ‘novels’) would be forthcoming. Whilst justice and truth, like God, were immutable, human affairs were in a constant state of flux, and the resultant tensions between the demands of justice and changing circumstances could only be resolved, and order restored, through imperial intervention.³⁵ This was a theme of Platonic origin that would be reiterated in the prefaces to many of Justinian’s post-codificatory novels, especially (but not uniquely) those associated with the scholarly *Quaestor* Tribonian, but which also conveyed a highly pragmatic view of the emperor’s responsibility to legislate as new issues and

³¹ *C. Cordi* 2.

³² *C. Cordi* 6.

³³ On legal education and culture, see Scheltema (1970).

³⁴ *C. Cordi* 4, understood as set out by Noailles (1912), pp. 34–8.

³⁵ For the relationship between the *Codex* and novels, see Puliatti (2011), pp. 25–58.

problems arose.³⁶ One encounters a similar pragmatism with respect to the emperor's willingness to acknowledge that his own legislation (including his novels) was likely to prove to be imperfect, and would require subsequent correction.³⁷ Like a doctor, he confesses (in an aside that casts interesting light on sixth-century medicine), that he was capable of getting the remedy wrong and making the patient worse, thereby inviting a second attempt with something new.³⁸

It is Justinian's second attempts and his new laws that are published here as the emperor's novels.³⁹ That, however, is perhaps to understate both the scale and scope of the laws concerned. As will become apparent shortly, it is quite clear that a major wave of reforming legislation was already envisaged even before the project of codification had drawn to a close, and certain of Justinian's post-codificatory laws sought to fundamentally re-cast key Roman social institutions, such as marriage, or served to transform Roman law's position with respect to issues as sensitive as intestate succession.⁴⁰

It should be noted, however, that although emperors in the fifth century had produced collections of their own novels as a sort of appendix to the *Codex Theodosianus*, it is unclear whether Justinian ever proposed to collect his novels together in a published supplement to the *Code*: all the emperor stated in 534 was that any further legislation 'should be assigned to a different assemblage (*aliam congregationem*) designated by the name of *novels*'.⁴¹ As the great French legal scholar Pierre Noailles argued over a century ago, Justinian may here have simply been referring to a legal archive for new legislation of general effect or significance maintained in Constantinople.⁴² There are clear indications that such an archive existed: when, for example, in the 420s, a law commission was set up in Constantinople to codify imperial constitutions in the form of the *Codex Theodosianus*, it appears to have been decided that, with respect to laws issued after 398, the imperial archive in Constantinople could be relied

³⁶ See Honoré (1978), pp. 124–38 and Lanata (1984a) *passim*. For examples, note the prefaces to *J. Novs.* 2, 7, 39, 49 and 98.

³⁷ Discussed in Puliatti (2011): see esp. *J. Novs.* 2, 22, 36, 110, 111 and 117.

³⁸ *J. Nov.* 111. The use of such medical metaphors and terminology is discussed further in Lanata (1984a).

³⁹ On the history of which see Biener (1824), Noailles (1912), and the extremely useful Kearley (2010), pp. 377–97.

⁴⁰ *J. Nov.* 22; *J. Nov.* 118.

⁴¹ *C. Cordi* 4.

⁴² Noailles (1912). For alternative views, see Schiller (1978), p. 39 and Wenger (1953), p. 668.

upon. Only for laws issued before that date was significant use made of the archives of provincial governors.⁴³

Nor, as has sometimes been argued, can it be safely asserted that Justinian ever proposed to send a formally collated version of his novels to Italy to be promulgated by the imperial and Papal authorities in the newly re-conquered territories. Rather, he simply declared that whilst the *Codex* was to be valid in Italy, so too were his novels, which were to be publicly advertised by imperial proclamation there (as they were elsewhere in the empire).⁴⁴ Whereas it would appear that Justinian intended all his novels up until that date (554) to be proclaimed in Italy, he would not appear to have intended to publish an official appendix to the codification to achieve that result. The fifth-century novel collections had been the product of a world in which there had existed simultaneous emperors to West and East, who 'gifted' their novels to each other so as to keep their fellow emperor informed of their respective legal activities (as well as to engage in a measure of legislative competition).⁴⁵ Justinian did not share power. As a result, it might be suggested, he is unlikely to have been willing to bestow by way of gift what he had issued by way of order. It is true that later generations of lawyers and emperors would assume that Justinian had intended to codify the novels, but it was clearly acknowledged (within the Byzantine tradition at least) that he had failed to do so.⁴⁶

iii) Justinian's Novels: Transmission and Text

The novels of the Emperor Justinian in the form we have them today were thus not the result of an official act of codification or collection. This fact is evident from the appearance and format of the novels themselves, in that whereas imperial constitutions that were included in the *Codex Iustinianus* were shorn of the introductory prefaces setting out the circumstances that had necessitated their promulgation, or seeking to justify them (typically in highly rhetorical terms), in the case of the novels, these prefaces survive.⁴⁷ Moreover, whilst in the *Codex* and the official novel collections of the fifth century, laws were grouped together under thematic 'titles', Justinian's

⁴³ Honoré (1998), p. 128.

⁴⁴ *J. Nov. Appendix 7.11 eas, quas postea promulgavimus constitutiones, iubemus sub edictali propositione vulgari, et ex eo tempore, quo sub edictali programme vulgatae fuerint, etiam per partes Italiae obtinere.*

⁴⁵ Humfress (2005), p. 164.

⁴⁶ See, for example, *Nov. Leo. 1*, in Noailles and Dain (1944), pp. 10–13.

⁴⁷ See discussion in Maas (1986), pp. 17–31.

novels lack any such subject-driven organising principle. Another key difference between the laws contained in the *Codex* and the Justinianic novels is that whilst the former were, for the most part, promulgated in the traditional legal language of Latin (as were the entirety of the *Digest* and *Institutes*), the latter were overwhelmingly issued in Greek, described by Justinian as ‘the common tongue’, so that they ‘may be known to all’.⁴⁸ The exceptions to this rule generally consisted of novels concerning primarily Latin-speaking territories (such as Illyricum, Africa and Italy) or those addressed to certain high-ranking officials in Constantinople such as the *Quaestor* or members of the Senate, for whom Latin was deemed more appropriate.⁴⁹

Where laws were issued in both languages, it would appear that the Greek text was composed first: in a constitution of 538, for example, we are informed that an earlier piece of legislation on the *Lex Falcidia* had been written first in Greek (‘as being appropriate for the majority’) and then a month later in a Latin version (‘which by the constitution of our state is the definitive one’).⁵⁰ The law was not, however, put into effect until both drafts had been completed.⁵¹ The shift from Latin to Greek as the main language of the imperial chancery can be dated to c. 535, and was blamed by conservative critics on Justinian’s Praetorian Prefect of the East, John the Cappadocian, who may simply have been extending to the imperial government as a whole a practice that had long been standard within the offices of the prefecture.⁵² The novels of Justinian reveal, however, that even those laws issued in Greek continued to bear an introductory address (or ‘inscription’) and a formal signing off and dating (‘subscription’), which were typically composed in Latin, or in Greek written in the Latin alphabet.⁵³ The laws themselves also abound in (typically technical) Latin loan words, or Greek words again written in Latin script.⁵⁴ This practice was clearly meant to enhance the prestige of the written law as it was presented to the emperor’s subjects, as is clear from the fact that it is also a feature of public inscriptions advertising the emperor’s will.⁵⁵

⁴⁸ *J. Nov.* 7.1.

⁴⁹ See, for example, *J. Novs.* 9, 11, 36, 37, 62, 75, 114, *J. Nov. Appendix* 7.

⁵⁰ *J. Nov.* 66 c. 2.

⁵¹ *J. Nov.* 66 c. 3. On the relationship between Latin and Greek versions of the same law, see Kaiser and Stylianos (2012).

⁵² Honoré (1978), p. 125. See also Maas (1992), pp. 13, 32 and 87, and Millar (2006), pp. 84–96.

⁵³ Noailles (1914), pp. 56–7: called ‘heading’ and ‘date’ in our text, with the heading in italics as in S/K, where it is nearly always printed in Greek.

⁵⁴ Noailles (1914), pp. 67–73; Feissel (2010), pp. 529–31.

⁵⁵ *Ibid.*, pp. 259–62 and 539.

Rather than being transmitted through an officially edited collection, Justinian's novels were instead preserved for posterity through a series of private collections derived from an official source. The dates appended to Justinian's novels clearly indicate that there was a rhythm to law-making in the sixth century, with legislation generally being written in the winter and typically issued around the middle of the month.⁵⁶ Once a law of general effect was formally promulgated, it was immediately advertised in Constantinople, and was then dispatched to provincial governors who were to circulate it to the cities under their charge. The law was then deemed to take effect two months from its date of issue or receipt, which Justinian regarded to be 'a long enough time after its notification to allow it to be published to everyone, both for the notaries public (*tabelliones*) to learn of its effect and for our subjects to come to know about it, and to observe the law'.⁵⁷ In particular, there are indications that bundles of new legislation were sent out from the capital to the provinces on a six-monthly basis.⁵⁸

As well as being sent to governors, these laws are likely to have been automatically notified to bishops, who were expected to advertise imperial laws in the porticoes of their churches, and also to others who needed an up-to-date knowledge of imperial legislation.⁵⁹ Foremost amongst the latter would have been legal practitioners and teachers, such as the professors at the law schools of Constantinople and Berytus (Beirut), who may have belonged to an official subscription list.⁶⁰ It is from this sort of professional milieu that the private collections of the novels evidently originated. This is clear from the fact that certain of them can be seen to have preserved and presented the same laws in the same order, thereby faithfully replicating the sequence of the pulses of imperial legislation as they were transmitted from the centre.⁶¹

Of the private collections on which our knowledge of the novels depends, by far the most important is the so-called 'Greek Collection of 168 Novels' (thirteen of which are actually in Latin) dating from c. 575 and normally assumed to be of Constantinopolitan origin (although see

⁵⁶ Noailles (1912), p. 83.

⁵⁷ *J. Nov.* 66 c. 1. On the mechanics of promulgation, see also *J. Nov. Appendix* 7.11.

⁵⁸ Noailles (1912), p. 87.

⁵⁹ *J. Nov.* 8.

⁶⁰ On whom see Scheltema (1970) and Brandisma (1990). On the right of subjects to ask to be notified directly of imperial ordinances (in this instance relating to taxation), see *J. Nov.* 128.

⁶¹ Noailles (1912), pp. 87–8 and 92–4.

Section VII below).⁶² This consists of the text of 165 laws, of which two are repeated and one of which is included separately in both Latin and Greek.⁶³ Within these laws may be identified a core collection, comprising laws issued by Justinian arranged by year (but not by month) up to 544 (*J. Nov.* 1–120). This core collection was then supplemented with additional Justinianic legislation, arranged in a more haphazard manner, around the year 556 (*J. Nov.* 120–135).⁶⁴ The collection was updated again in 572 (*J. Nov.* 135–149), when it also came to acquire four novels of the Emperor Justin II (565–574) (*J. Nov.* 140, 144, 148 and 149), and finally in 575 (*J. Nov.* 150–168), when three novels of the Emperor Tiberius II (574–582) were added (*J. Nov.* 161, 163, and 164), along with three edicts of Praetorian Prefects (*J. Nov.* 166–168) which may originally have been meant as an appendix.

The fullest and earliest manuscript of the Greek Collection is the late twelfth-century *Codex Marcianus Graecus 179*, which passed through the ownership of the fifteenth-century humanist and churchman Bessarion.⁶⁵ The manuscript is richly adorned with *scholia* and commentary, and importantly is the only source to preserve the Latin subscriptions to the original laws.⁶⁶ There are some signs that the copyist attempted to introduce chapter divisions into the body of the text (the chapters into which the novels are currently divided, it should be noted, are a sixteenth-century editorial innovation).⁶⁷ The manuscript also preserves the text of thirteen edicts issued by Justinian (*J. Edict.* 1–13), which appear to have been collected separately from the Greek Collection of 168 Novels, and which may have originated in Alexandria or (more probably) Constantinople, perhaps derived from bundles of legislation held or sent out by the offices of the Praetorian Prefect of the East.⁶⁸

The testimony of the Greek Collection of 168 Novels with respect to the pattern and nature of imperial legislation in the age of Justinian is mirrored

⁶² Discussed in detail in Kearley (2010) Kroll, 'Praefatio' (1912) and Noailles (1912).

⁶³ *J. Nov.* 75 reappears as *J. Nov.* 104; *J. Nov.* 143 reappears as *J. Nov.* 150; *J. Nov.* 32 appears in Latin as *J. Nov.* 34.

⁶⁴ Noailles (1912), pp. 180–1.

⁶⁵ Noailles (1914) discusses this and the other manuscripts (*Palatino-Vaticanus 387*, *Laurentianus LXXX.4*, and *Bononiensis 1419*). See also Kearley (2010), pp. 388–90, and Burgmann, Fögen, Schmink and Simon (1985), number 296 = p. 339. On Bessarion, see Wilson (1992).

⁶⁶ Noailles (1914), pp. 56–7.

⁶⁷ *Ibid.*, p. 52.

⁶⁸ Kerlihy (2010), p. 388; Noailles (1914), p. 44. Note also discussion of the Egyptian hypothesis by the editor (Dr John Rea) of a possibly missing fragment of *J. Edict* 13 identified amongst the papyri and published as *P.Oxy.* LXIII 4400.

in two further sixth-century Greek sources through which knowledge of the emperor's novels has been transmitted. The earliest of these was an *Epitome* produced by the legal scholar Athanasius of Emesa around the year 572, which summarises 153 imperial novels and arranges them by topic.⁶⁹ All but one of the novels to which Athanasius refers is attested in the Greek Collection.⁷⁰ This fact has led the modern editors of the text to suggest that Athanasius used a collection of the novels derived from the same chain of transmission as the Greek Collection.⁷¹ Alternatively, he may have been making use of the penultimate redaction of the Greek Collection, which he then supplemented.⁷² The *Epitome* of Athanasius would be drawn upon later in the sixth century by the author of the 'Tripartite Collection' (*Collectio Tripartita*): a collection of laws relevant to the Church divided into three parts, drawing upon the *Codex*, the *Digest* and *Institutes* and the novels, respectively, and which, in the seventh century, would be assimilated into the collection of canon law known as the *Nomokanon of Fourteen Titles*.⁷³

Even more striking is the similarity between the Greek Collection and the second additional source, the *Epitome* produced by the Egyptian scholar Theodore of Hermopolis at some point between 575 and 602.⁷⁴ This is described in one of its manuscripts as comprising a 'summary of the new constitutions, with references to the corresponding section either of the *Code* or of the Novels themselves'.⁷⁵ Within the work, the novels are dealt with in exactly the same order as they appear in the Greek Collection (even with respect to the two novels which are repeated). It is hard to avoid the conclusion that Theodore, too, may have been working with a copy of the Greek Collection to hand.

Certain of Justinian's novels were also preserved for posterity by means of a third anonymous Greek summary.⁷⁶ As with the *Epitome of Athanasius*, this work is only known to have referred to a single

⁶⁹ Simon and Troianos (1989).

⁷⁰ Noailles (1912), p. 185; *J. Nov. Appendix 4*.

⁷¹ Simon and Troianos (1989), p. x, 'Als Grundlage seiner Arbeit hat er eine Novellensammlung aus der Überlieferungskette der *Collectio CLXVIII Novellarum* benutzt'.

⁷² Kroll (1912), p. viii.

⁷³ Noailles (1912), pp. 236–7; Stolte (1985). Note also the *Collectio Ambrosiana*, which supplements a collection of the novels down to c. 544 primarily concerned with ecclesiastical matters with material derived from Athanasius: Troianos (1977).

⁷⁴ Zachariae von Lingenthal (1843).

⁷⁵ Kroll (1912), p. i: tr. Miller and Kearley.

⁷⁶ Noailles (1912), pp. 199–227 and Van Der Wal (1998), pp. 196–7.

constitution not also found in the Greek Collection.⁷⁷ Novels, all of which are contained in the Greek Collection, were also included in two additional late sixth-century works on ecclesiastical law: the *Collection of Twenty-Five Chapters* (described as containing ‘constitutions of civil laws from the Novels of Emperor Justinian, supporting and confirming the ecclesiastical canons of the Holy Fathers’), in which the latest law referred to is *J. Nov. 137* dating from 565;⁷⁸ and the *Collection of Eighty-Seven Chapters*, containing laws from the period 535–46 but described in its rubric as having been transcribed after the emperor’s death.⁷⁹ This work was eventually combined with a collection of canon law, seemingly produced in the mid sixth century by the future Patriarch of Constantinople, John III Scholasticus (the *Synagoge of Fifty Titles*).⁸⁰ This compilation of civil and canon law, possibly overseen by the Patriarch John in person, ‘is the oldest Greek canonical collection that we possess and it became the basis for all the later collections in Constantinople’.⁸¹

Taken as a whole, therefore, the late sixth-century evidence would suggest that the Greek Collection should be regarded as comparatively authoritative and reliable, at least up to the year 544 (a point to which we shall return below) and that Justinian’s novels were rapidly assimilated into canon law.⁸²

It is also noteworthy that the Greek Collection (along with the writings of Athanasius, Theodore and other scholiasts whose works survive only in fragmentary form) was likewise heavily relied upon by subsequent generations of Byzantine legislators and legal scholars, especially those of the Macedonian era of the ninth and tenth centuries, which witnessed a general revival of interest in the Roman legal tradition, and a concerted attempt to re-connect to the legal sources of the Justinianic era in order to effectively write out of legal history the works produced by the Isaurian emperors of the iconoclast period.⁸³ This interest is reflected in the extensive synopsis of the Greek Collection found in the ninth- to tenth-century

⁷⁷ Van Der Wal (1998), pp. 199–20.

⁷⁸ Troianos (2012), pp. 115–69, 132–3.

⁷⁹ Kroll (1912), pp. viii–ix; Noailles (1912), pp. 227–35 and Troianos (2012), pp. 133–4 (including discussion of whether the collection was made after the Emperor’s death or, as seems more likely, the preamble was added at a later date). For John and his work, see Gallagher (2002), pp. 18–35 and Troianos (2012), pp. 118–20. For the history of Byzantine Canon Law, see also Wagschal (2015).

⁸⁰ Kroll (1912), p. ix; Noailles (1912) and Troianos (2012), pp. 118–20.

⁸¹ Gallagher (2002), p. 21.

⁸² Noailles (1912), p.144.

⁸³ Pieler (1989); Humphreys (2015); Chitwood (2017).

Athonite manuscript *Codex Athos Pantokrator 234*, and in the presence of passages from the novels and scholiasts in the ninth-century law codes known as the *Procheiros Nomos* and *Epanagoge*.⁸⁴ In particular, it is evident from the extensive use made of the novels in the tenth century by those who were charged by the Emperor Leo VI (886–911) with producing a new codification of the civil law in the form of the *Basilica*.⁸⁵ This was in spite of the fact that Leo himself declared Justinian's post-codificatory legislation to have fundamentally subverted the *Codex* and thereby to have turned Justinian's subjects against the emperor's own programme of legal reform.⁸⁶ Justinian's novels, as transmitted through the Greek Collection, had evidently become an established part of the living body of Roman law as it was received in the medieval Byzantine East.

Knowledge of Justinian's novels in the medieval West, by contrast, was primarily mediated by two distinct Latin sources, each of sixth-century origin. The first of these was the *Epitome of Julian* (*Epitome Iuliani*), that would appear to have been composed c. 556–7.⁸⁷ Julian is described in the manuscript tradition as 'a most illustrious professor from Constantinople who translated the Novels from Greek into Latin'. He seemingly undertook this task to assist those Latin-speaking law students from the re-conquered territories in the West (and especially from Rome, where a law school continued to exist), who needed to acquaint themselves with the current state of imperial legislation, and who as a result are likely to have flocked to the law schools of Constantinople and Beirut, to which Justinian had accorded special status.⁸⁸ The second source is a Latin translation of the novels of unknown authorship known as the *Authenticum*.⁸⁹ In order to appreciate the nature of these texts, however, one must first understand how sixth-century law was taught.

In December 533, Justinian had addressed a constitution to the professors and teachers of the two great law schools of the East (the foremost amongst whom, known as the *antecessores*, had sat on his law commission and helped chair its committees), setting out how the new legal curriculum

⁸⁴ Schminck and Simon (1981), Van Bochove (1996).

⁸⁵ Kroll (1912); Noailles (1912), pp. 199–227 and (1914), pp. 174–29; Scheltema and Van Der Wal (1953–89).

⁸⁶ *Nov. Leo.* 1 in Noailles and Dain (1944), pp. 10–13.

⁸⁷ Noailles (1912), pp. 149–60. For the text, see Haenel (1873); Fiorelli and Bartoletti Colombo (1996). The most important study of the work is Kaiser (2004).

⁸⁸ See Scheltema (1970), pp. 1–6. A law school in Rome is alluded to in *J. Nov. Appendix 7.22* and in *C. Omnem 7*. For its survival, see the groundbreaking work of Liebs (1987), and Loschiavo (2010) and idem. (2015).

⁸⁹ Noailles (1912), pp. 160–78. For the text, see Heimbach (1846–51).

was to be structured as part of a five-year course beginning with the *Institutes*, working through the *Digest* and concluding with the *Codex*.⁹⁰ It is possible that, as post-codificatory legislation proliferated, this five-year course was soon supplemented with a sixth year of study to take account of the novels.⁹¹ The teaching needs of such a sixth year would help to explain the composition of private collections and summaries of the novels, such as we encounter in the Greek Collection, the *Epitome of Athanasius* and the *Epitome of Theodore*. The latter were clearly written with pedagogic intent, in that they both summarised and explained the laws.

The teaching of the codified law, however, clearly also posed considerable linguistic challenges, in that, as noted earlier, the codified texts were overwhelmingly composed in Latin, whereas for most in the empire Greek was, as Justinian put it, the ‘common tongue’.⁹² Accordingly, it would appear that the law schools dealt with the needs of Greek speakers by initially providing lectures in Greek, orally translating, summarising, and explaining the Latin texts. This course was known as the *index* (‘the pointing finger’).⁹³ There then followed a more advanced set of classes which entailed the examination, contextualisation and debate of passages taken from the Latin texts themselves, on which the students would make notes in Greek (*paragraphai*).⁹⁴ Finally, the student would proceed to private study of the texts and associated literature, assisted by word-for-word interlinear Greek translations of the original, known as *kata podas* (literally ‘foot-by-foot’).⁹⁵ Such translations had been expressly permitted upon the promulgation of the *Digest*, and were aimed at ensuring that translators did not distort or re-work the substance of the law.⁹⁶ Greek teaching-materials survive with respect to all three elements of Justinian’s codification, and may be exemplified by the *Paraphrasis* of the *Institutes* written by the Constantinopolitan *antecessor* Theophilus (who had helped to compose the Latin original); the same professor’s *Index* to the *Digest* (which survives in fragments); and the *Index* on the *Codex* written by Isidore, whom Justinian mentions by name in his constitution on legal education.⁹⁷

⁹⁰ *C. Omnem*: Scheltema (1970), p. 8. On the role of the *antecessores* in the composition of the *Digest*, see Honoré (2010). See also Chitwood (2017), p. 153.

⁹¹ Scheltema (1970).

⁹² For what follows, see Scheltema (1970).

⁹³ Scheltema (1970), pp. 13–14

⁹⁴ *Ibid.*, p. 14: *C. Tanta* 21 decreed that explanatory notes styled *paratitla* could also be written on copies of the *Digest*.

⁹⁵ Scheltema (1970), p. 15.

⁹⁶ *C. Tanta* 21.

⁹⁷ Scheltema (1970), pp. 17–43.

When it came to study of the novels, however, the linguistic tables were turned: it was now the Latin-speaking students who found themselves at a disadvantage. Accordingly, the teaching process was switched into reverse, and such students were provided with lectures in Latin explaining the Greek novels, as well as Latin *kata podas* translations of the original Greek text where no Latin version had been issued. The *Epitome of Julian* essentially records the Latin lecture course (*index*) given on the novels by the Constantinopolitan *antecessor* Julian in the academic year 556–7, whilst the original primitive version of the *Authenticum* represents a *kata podas* rendering of a *codex* containing a collection of Greek novels likewise seemingly originally composed c. 557–9.⁹⁸

The *Epitome* consists of summaries and explanatory comments concerning 122 novels covering the period from 535 to 555. Julian omits a relatively small number of constitutions known for those years from the Greek Collection: so, for example, of the Greek Collection's *J. Nov.* 1–120 (covering the period c. 535–544) only six novels are completely absent from Julian's lecture course.⁹⁹ Julian does, however, provide the text of one law absent from the Greek Collection, which instead includes a later, updated version of it (*J. Nov.* 21 concerning inheritance law in Armenia, which may not have been of much direct interest to those planning to practice in Africa or Italy).¹⁰⁰ Manuscripts of the *Epitome* also furnish evidence for a number of additional measures primarily pertinent to the West, and especially Italy (which may not have been of much interest to those planning to practice in Armenia).¹⁰¹

Julian's mode of instruction reveals an eye for the practical realities of the operation of law in a provincial setting. Accordingly, it is likely that Julian's students took copies of the *Epitome* back to the West to aid them in their administrative and legal careers (including, possibly, as teachers of the law).¹⁰² There, the text's careful consideration of issues of ecclesiastical property rights in particular also won it an interested readership (and careful custodianship) on the part of the Church.¹⁰³ Accordingly, the *Epitome of Julian* would come to circulate widely, acquiring additional

⁹⁸ Scheltema (1963) and idem. (1970), pp. 47–60; Liebs (1987), pp. 226–9 and Loschiavo (2010). Liebs and Loschiavo suggest the Latin *kata podas* translation on which the core of the *Authenticum* is based may have been produced in Rome, where it was supplemented with a series of laws issued in Latin.

⁹⁹ Noailles (1912), p. 155; Kearley (2010), pp. 383–5 is especially useful on this text.

¹⁰⁰ *Epitome Iuliani* c. 29 (on succession in Armenia). See also Van Der Wal (1998), p. 195.

¹⁰¹ *J. Nov. Appendix* 1, 2, 3, 6, 7, 8, 9.

¹⁰² See Loschiavo (2015).

¹⁰³ Radding and Ciaralli (2007), p. 49, which needs to be revised in the light of Loschiavo (2015).

scholia and commentary as it did so.¹⁰⁴ Indeed, as a leading expert on the legal manuscripts of the eighth to eleventh centuries has noted, ‘over the course of these centuries, the *Epitome* embodied, almost par excellence, the *lex iustiniana*’.¹⁰⁵ Until the twelfth century, outside of the Byzantine Empire, it was thus through the novels as represented in the *Epitome* that Justinianic Roman law was primarily known.

That situation would be revolutionised by the re-discovery of the text of the *Authenticum* in Bologna c. 1100.¹⁰⁶ The glossators of the period (including Irnerius) identified in this text an official translation or compilation of the novels issued by Justinian for Italy after the imperial reconquest, and it was they who gave it its title (‘The Real Thing’).¹⁰⁷ The work’s true origins, however, as noted above, can be found in the law schools and the classroom. Accordingly, although Kroll in his preface to the modern edition of the novels thought the translator ‘stupid’ (*stultus*), the *Authenticum* often provides the key to unlocking the sometimes opaque text of the Greek original by revealing how the law concerned was understood and interpreted by a contemporary.¹⁰⁸

Within the *Authenticum* are to be found 133 novels covering the period from 535 to 556: these comprise the original text of those laws issued only in Latin; the Latin text of those laws issued in both languages; and *kata podas* translations of those laws issued solely in Greek. It also includes the text of a later law issued in 563, which may have been appended to the original compilation.¹⁰⁹ The novels are presented in roughly chronological order. In particular, the first 115 constitutions included in the *Authenticum* all appear in the first 120 novels of the Greek Collection. Indeed, with respect to the first one hundred or so, they are presented in almost exactly the same order.¹¹⁰ This is a striking fact given that, as noted earlier, the first 120 novels within the Greek Collection, whilst presented chronologically by year, are not listed chronologically by month within those years. A plausible hypothesis is that here the *Authenticum* and the Greek Collection accurately reflect the bundles of new laws as they were issued within and dispatched from Constantinople.¹¹¹ Again, a common pattern of transmission is discernible.

¹⁰⁴ Liebs (1987), pp. 220–44; Kaiser (2004); Radding and Ciaralli (2007), pp. 35–66.

¹⁰⁵ Loschiavo (2015), p. 96.

¹⁰⁶ Radding and Ciaralli (2007), pp. 35–6.

¹⁰⁷ Kearley (2010), pp. 385–7; Vinogradoff (1909).

¹⁰⁸ Kroll (1912), p. xvi.

¹⁰⁹ Van Der Wal (1998), p. 194 and Noailles (1912), pp. 160–78.

¹¹⁰ *Ibid.*, pp. 164–6 and 258–9.

¹¹¹ *Ibid.*

iv) Justinian's Novels and the Demise of the Law Schools

There is no evidence, one should note, for any private collection of the novels to have been updated in the light of subsequent imperial legislation after c. 575. All such activity seems to end with the reign of Tiberius II. Likewise, no legal scholar was accorded the title of *antecessor* after Julian.¹¹² At first sight this is an oddity given that we know that laws continued to be issued and that the law continued to be taught. The impression one derives from the sources is of a golden age of legal scholarship rapidly, and perhaps deliberately, drawn to a close. Any such impression is almost certainly correct. Justinian's programme of legal codification, as we have seen, drew heavily upon the skills of the law professors and *antecessores* of Constantinople and Beirut. The emperor had gone out of his way to elevate this group and represent its members as the *crème de la crème* of the legal profession.¹¹³ Accordingly, in his constitution addressed to them concerning the reform of legal education, Justinian had sought to prohibit the teaching of law elsewhere (with the sole exception of the law school in Rome) and had ridiculed their provincial rivals in Alexandria, Maritime Caesarea and the rest of the empire as 'unqualified men who take an unauthorised course and impart spurious knowledge'.¹¹⁴ He also banned law students in Constantinople and Beirut from telling jokes at their professors' expense.¹¹⁵

Justinian's elevation of the *antecessores* is thus likely to have excited hostility from the start. In particular, there are signs that his privileging of the teachers of the law may have aggravated the practitioners of it, who were obliged to re-orientate themselves in a rapidly changing legal landscape on the one hand whilst, on the other, also finding themselves faced with a diminution in opportunities for employment by virtue of the emperor's repeated efforts to limit litigation, especially before the higher courts.¹¹⁶

Indeed, in a law issued in 537, addressed in part to legal officers attached to the staffs of military and other officials (*assessores*), Justinian took an extraordinary swipe at his legal critics. In a counter-blast seemingly also directed at the writers of contemporary history, the emperor declared that 'if they scrutinized the true facts, those whose goal has been factual truth would not lightly resort to criticism. It is probable that some may complain

¹¹² Scheltema (1970), p. 61.

¹¹³ *Ibid.*, pp. 1–6.

¹¹⁴ *C. Omnem* 7.

¹¹⁵ *C. Omnem* 9.

¹¹⁶ *J. Novs.* 15, 17, 23, 80, 86, 125.

at the large number of laws daily being promulgated by us, without reflecting that it is the constant call of necessity that obliges us to make laws to suit the circumstances, when those already enacted cannot provide remedies for the succession of unexpected problems that arise.¹¹⁷ Interestingly, among those who would have received this imperial barb was the historian and lawyer Procopius, who was serving at the time as *assessor* to the general Belisarius.¹¹⁸ A native of Caesarea (and perhaps a pupil of its so recently maligned teachers of law), Procopius would go on to attack Justinian in his *Secret History* both for ‘constant and daily tamperings with the law of the Romans’ and for ‘ordering those at variance with one another to litigate directly under oath’, as a result of which, ‘the advocates of law fell into great despondency’.¹¹⁹ Elsewhere in the same work, he focuses his criticism on the *Codex Iustinianus*, declaring that the emperor treated the laws with no regard for justice, ‘but simply that everything might be new and might bear the impress of his name’.¹²⁰ Indeed, the third part of Procopius’ *Secret History* can be read almost as a piece-by-piece critique of Justinian’s legislation, as a subversive series of learned *paragraphai* on the emperor’s codification and novels.¹²¹

For, as Procopius’ hostility reminds us, Justinian’s codification of the civil law was from the start deeply political and, as detailed earlier, was undertaken with a view to enhancing the power of the emperor at the expense of his enemies. By co-opting the law professors of Constantinople and Beirut as part of his reform programme, therefore, the emperor had arguably served to politicise their legal culture, and consequently his death in 565 left them politically exposed. As will be seen shortly, the regime of the new emperor Justin II was keen to distance itself from the legacy of Justinian, as a result of which imperial patronage of the two pre-eminent centres of legal scholarship may have been withdrawn.¹²² In the year 551, moreover, both Beirut and its law school had been struck by a devastating earthquake. The pattern of updating within the Greek Collection would suggest that the schools may have limped on into the reign of Tiberius II, but it is clear that by the 570s the teaching of law had again become much more diffuse, and had passed decisively into the hands of the legal

¹¹⁷ *J. Nov.* 60.

¹¹⁸ Sarris and Williamson (2007), pp. vii–xx.

¹¹⁹ Procopius, *Anecdota* 28.16 and 26.1–3. Possibly in response to *J. Nov.* 82 c. 11.

¹²⁰ Procopius, *Anecdota* 11.2.

¹²¹ Sarris (2007).

¹²² See Sarris (2006), pp. 220–7 and (2011a), pp. 226–31.

practitioners.¹²³ There is evidence, for example, that Athanasius of Emesa may have taught law at Antioch.¹²⁴ Moreover, like his late-sixth-century counterpart Theodore of Hermopolis or the historian Agathias (who had studied law at Beirut under Justinian), Athanasius bore the epithet of *scholastikos*, signalling a career at the Bar rather than in the Schools.¹²⁵ The era of the *antecessores* had passed.

v) The Novels in Practice

The interest shown by legal practitioners in Justinian's post-codificatory novels, however, is telling, as it alerts one to a basic fact that is too often overlooked: namely, that the emperor's laws were intended to be put into effect. In seeking to apply the law or construct arguments on the basis of it, practising lawyers were obliged to triangulate between the facts before them, the codified law, and any alteration to the codified law arising from the emperor's novels which, in general terms, inflected the Roman law tradition in the direction of simplification of procedure, greater reliance upon documentary proof, and greater concern for the interests of the Church, the state, women, slaves and children.¹²⁶ Justinian was clear that more recent legislation trumped earlier legislation if the two bodies of law were deemed to be incompatible.¹²⁷ As a result, the novels could not simply be set aside.

In a work known as the *Instructions For Councils (Dictatum de Consiliariis)*, for example, the *antecessor* Julian provided advice to young barristers on how to juggle and master the legal texts once away from the classroom.¹²⁸ Thus, he suggests, 'if you are looking for information about the production of witnesses, read the *Codex*, book 4, chapter 20, *Digest* book 22, chapter 5 On Witnesses, and in the *Novels*, that same constitution, which is under the same heading, On Witnesses'.¹²⁹ Julian advised that particularly

¹²³ Note the remarks of D. Simon, 'Νομοτριβούμενοι', in Ankum, Spruit and Wubbe (1985), pp. 273–83.

¹²⁴ Scheltema (1970), p. 61.

¹²⁵ *Ibid.*, p. 61. In English terms, this is equivalent to the abolition of the Oxford degree of bachelor of civil law and its replacement with the bar vocational course. For the existence of law students in seventh-century Constantinople, however, see Mango (1983), p. 136. See also Loukaki (2016), Troianos (2011), pp. 99–108 and Dareggi (2007).

¹²⁶ Humfress (2005), pp. 171–2; Jolowicz and Nicholas (1972), pp. 478–515; Krumpholz (1992).

¹²⁷ *Digest* 1.4.4.

¹²⁸ For the text see Hänel (1873), pp. 198–202 and Liebs (1987), pp. 235–46. See also Kaiser (2004), pp. 266–73.

¹²⁹ Translation taken from Humfress (2005), p. 172.

close attention be paid to Justinian's novels concerning marriage.¹³⁰ The young barrister also had to keep up his rhetorical skills, in order to be able to present his cases with the appropriate intonation and gestures.¹³¹

Naturally, imperial legislation was highly ideological in character, and was intended to construct and convey a particular image of imperial power.¹³² By virtue of this ideological dimension to law, many historians and legal scholars, faced with the codified law and novels promulgated by Roman and Byzantine emperors, have tended to assume automatically that the laws simply offer an official version or vision of the world.¹³³ Rather, when confronted with the messy reality of social relations on the ground, they suggest, judges and officials effectively had to make up the law as they went along. Knowledge of the imperially codified or sanctioned law, it is further contended, was largely the preserve of the state and the elite: the further away from the centres of political power one was, or the further down the social scale one found oneself, the less significant imperial law became. Instead, at the level of village society, it is often supposed that there existed a world in which disputes and conflicts were resolved largely through private arbitration and at collective *fora* for dispute settlement in which locally established norms and custom tended to hold sway.¹³⁴ This position is not without its merits: Justinian's *Institutes* for example, openly acknowledged that written law was necessarily engaged in a constant dialectic with the socially accepted unwritten norms of provincial society, or with surviving remnants of pre-Roman legal traditions and systems.¹³⁵ As Justinian accepted, 'ancient customs, being sanctioned by the consent of those who adopt them, are like laws'.¹³⁶

Likewise, it is noteworthy how unevenly observed (at least at face value) even the most innocuous pieces of imperial legislation could be. In the year 537, for example, Justinian promulgated a law that henceforth all contracts and legal documents were to be dated according to the regnal year of the current emperor.¹³⁷ As well as being a characteristically Justinianic act of

¹³⁰ Ibid.

¹³¹ See the mock trial that was staged before the Laz court in the late sixth century as recorded by Agathias, *Histories* 4.2.1.

¹³² With respect to Justinianic legislation, see C. Pazdernik, 'Justinianic Ideology and the Power of the Past', in Maas (2005), pp. 185–214.

¹³³ D. Simon, 'Legislation as Both a World Order and a Legal Order' and G. Dagron, 'Lawful Society and Legitimate Power', both in Laiou and Simon (1994), pp. 1–26, p. 25 and 27–52, p. 51.

¹³⁴ Gagos and Van Minnen (1994).

¹³⁵ See Taubenschlag (1956).

¹³⁶ *Institutes* 1.2.9.

¹³⁷ *J. Nov.* 47.

self-aggrandisement, this measure formed part of a drive on his part to crack down on the activities of forgers by making legal documents and contracts easier to authenticate.¹³⁸ Likewise, just a couple of weeks earlier, Justinian had issued a law ordaining that legal draughtsmen (*tabelliones*) in Constantinople were only permitted to use papyri that still bore the official protocol marked with the name of the *Comes Sacrarum Largitionum* (or, it would appear from the papyri, his deputy), which conveyed the date of manufacture.¹³⁹ It is clear from the papyrological evidence that both of these laws were put into effect, but relatively unevenly. With respect to the dating of contracts, for example, the new formula appears almost immediately on a papyrus document from Palestine; it is attested in Egypt in Oxyrhynchus by 539; and by 540 it was being used in the Hermopolite and Heracleopolite nomes.¹⁴⁰ Nevertheless, it is possible to identify numerous papyri down to the end of Justinian's reign that entirely omit the regnal formula, and it appears only sporadically in public inscriptions beyond those territories that were closest to Constantinople (such as Bithynia, Asia Minor, and Thrace).¹⁴¹

Similarly, although a number of authorised protocols of the sort that Justinian demanded be preserved have been found amongst the Egyptian papyri, it is quite clear that most contracts did not preserve the protocol in the manner ordained by the law.¹⁴² Whilst it is true that the original constitution was intended only to apply to documents drafted in Constantinople, and thus the absence of the protocol from Egyptian papyri should not be regarded as especially significant, it is possible to identify documents of apparently Constantinopolitan origin that post-date the legislation and which also lack the official protocol.¹⁴³

In response, however, two points need to be made. First, with respect to the two laws of 537, Justinian's aim, as noted, seems to have been to make documents easier to authenticate. This was consistent with the trend within imperial legislation to place growing emphasis on documentary proof in legal proceedings. It might be suggested that if those drafting contracts or making agreements chose not to avail themselves of the full protection of the law, so be it, for, as Justinian had declared in 535 with

¹³⁸ As noted by Feissel (2010), pp. 504–7.

¹³⁹ *J. Nov.* 44.

¹⁴⁰ Feissel (2010), p. 510, notes 31 and 33. See also Bagnall and Worp (2004), pp. 45–54.

¹⁴¹ Feissel (2010), pp. 509–16. Note, however, its appearance in Coptic documentation: see Nowak (2015), p. 217.

¹⁴² Diethart, Feissel and Gascou (1994), esp. 30–7.

¹⁴³ *Ibid.*, p. 37 – citing two papyri from 541 and 551, respectively.

respect to financial contracts, 'it is open to everyone to spurn what the law has offered him'.¹⁴⁴ Incompetent draughtsmen and ignorant solicitors are probably an historical constant. Moreover, whilst some evidently did ignore the legislation, others chose to apply the terms of the two laws of 537 in contexts for which they had never been intended: thus that the regnal dating formula was adopted for public inscriptions at all is noteworthy, given that inscriptions are not mentioned in the law. By the same token, the presence of the authenticating protocol on documents within Egypt, where it was not mandatory, would suggest that there were always those who were eager to go beyond the letter of the law. Significantly, a number of these pre-date the Justinianic constitution, perhaps providing examples of the documentary practices current amongst those more scrupulous notaries or more careful contracting parties from whom Justinian appears to have drawn inspiration for his law: for, the emperor declared in chapter 2 of the novel, 'we are aware that numerous forgeries have in the past been detected from such papyri, and are still being so'.

Second, one should not lose sight of the social function of law within the late Roman world. As noted earlier, the empire of Justinian was dominated by members of a late antique aristocracy of service with whom the emperor frequently found himself in dispute. The study of Roman law had long played a fundamental role in the education and training of members of this elite; indeed, in the fourth century, the rhetorician Libanius had bemoaned the flight of well-born students from the schools of rhetoric in Antioch to the law school of Beirut.¹⁴⁵

For members of the service aristocracy, therefore, an acquaintance with Roman law was a key component of their social identity. As a result, Roman law and imperial legislation are likely to have done much to shape the social perceptions of members of this elite, and would have informed how they used their power to recast the world around them. The documentary papyri dating from the fifth to the seventh century found in the private archive of the wealthy Apion family from the Middle Egyptian city of Oxyrhynchus, for example, are characterised by a strikingly high degree of legal formalism, even using legal contractual forms to establish fundamentally illegal contractual relations (such as with private armed retainers or *buccellarii*) or to set aside the provisions contained in recently enacted imperial laws.¹⁴⁶ Many of the contractual papyri

¹⁴⁴ *J. Nov.* 136.

¹⁴⁵ See discussion in Criboire (2003), pp. 71–7.

¹⁴⁶ Sarris (2006), p. 173 – discussing *P.Oxy.* I 136: this document is actually consistent with *J. Nov.* 135, allowing people to choose not to avail themselves of protection offered by

found within the Apion archive, moreover, expressly describe members of the estate's workforce as *coloni adscripticii* or *enapographoi geôrgoi* (i.e. agricultural workers bound by imperial law to reside on the estate and pay the public taxes to which they were liable through the person of the landowner).¹⁴⁷ The prominence of the institution of the adscript colonate in these documents proves that the 'adscripticate' was not, as many have inferred, simply an abstract category of imperial tax law.¹⁴⁸ Rather, the papyri record the Apion family (members of which held high office in the imperial government) to have taken advantage of imperial law on *coloni adscripticii* and to have sought to deploy it as a weapon of social domination, using it to intensify the household's control over its agricultural workforce.

This documented application on the ground by landowners of imperial legislation relating to *coloni adscripticii* reveals what common sense itself would suggest: that when the socially powerful found laws that were in their economic interest, they tended to seek to apply the letter of law and to exercise their rights of appeal (all the way to Constantinople if needs be) to assert their claims. But it was not just members of the elite who sought to exercise such rights. The documentary papyri from the large Middle Egyptian village of Aphrodito, for example, record its inhabitants as twice petitioning the Emperor Justinian (in c. 540 and 551, respectively) to seek to assert the settlement's fiscal autonomy, which it had been granted by the Emperor Leo I (457–474), against the demands of local landowners.¹⁴⁹ The latter, it is recorded, were attempting to forcibly collect (and seemingly purloin) the village's tax payments. The first delegation to Constantinople was led by the village headman, Apollos, whilst the second was led by his son, a professional lawyer (*scholastikos*) and poet by the name of Dioscorus.¹⁵⁰ On both occasions the villagers were successful in eliciting official support, and the village was placed under the patronage of the imperial household.¹⁵¹ In 551, however, Justinian issued a response (or 'rescript') to the villagers' complaints, acknowledging that the 'intrigues' of the settlement's aristocratic neighbours had 'proved stronger than our commands' and ordering the local

imperial law with respect to contracts. On *buccellarii*, see *ibid.*, pp. 162–75 plus *P.Oxy.* LXXII 4923–5, which confirm the hypothesis contained therein.

¹⁴⁷ Sirks (2008), pp. 120–43; Sarris (2006); Fikhman, 'Coloni Adscripticii – Enapographoi Geôrgoi in den Papyri', in Jördens (2006), pp. 190–250.

¹⁴⁸ See, for example, Grey (2007).

¹⁴⁹ Sarris (2006), pp. 96–114.

¹⁵⁰ MacCoull (1988); Fournet (1999).

¹⁵¹ *P. Cairo Masp.* I 67024.

governor (or *dux*) to investigate.¹⁵² Predictably, the death of the emperor in 565 led to renewed pressure on the villagers.

The Aphrodito papyri also reveal that the local lawyer, Dioscorus, was well informed with respect to recent imperial legislation and relied upon it in his practice. This can be seen from a document he drew up in the late 530s. Justinian, as noted earlier, was keen that potential litigants should come to terms out of court and, in 537, Dioscorus drafted a contract of dispute resolution (known in Greek as a *dialysis*) involving one of his cousins, which achieved precisely that.¹⁵³ The agreement (which concerned a piece of land) did not sidestep the law, however. Rather, imperial law informed the agreement both in terms of its structure and content: as the text's editors have commented, 'our notary is familiar with current legislation, knows how to handle the various formulas, and even has some knowledge of technical terms in Latin'.¹⁵⁴ Moreover, as the Aphrodito papyri reveal, such extra-judicial *fora* for dispute resolution co-existed alongside what were evidently still fully functioning courts with which the villagers could find themselves involved: *P. Mich.* XIII 660 and 661, for example, preserve extracts from the formal proceedings for a murder trial.¹⁵⁵

Indeed, one of the most striking features of the late antique papyrological record in general is how much Roman law the Egyptian papyri contain.¹⁵⁶ The papyri include fragments of laws (including Justinian's *Edict* 13 on Egypt) and references to laws (including novels). Above all, as is evident with respect to papyri from the archive of the Apion family, they reveal the clear influence of legal models and terminology on private documentary practices.¹⁵⁷ The vocabulary, forms and structure of the imperial legal system were thus clearly able to imprint themselves on provincial practice to a far greater extent than is often supposed, continuing to inform the development of Coptic, Syriac, and Arabic legal institutions and documentary practices even in post-Roman conditions.¹⁵⁸

The heads of the Apion family, or Dioscorus and his father, were men of property, with an evident interest in the workings of the law. But is there any sign that knowledge of imperial legislation was disseminated further

¹⁵² Ibid.

¹⁵³ Gagos and Van Minnen (1994). The editors also provide a useful list of late antique *dialyseis* from the Greek papyri (ibid., pp. 121–7).

¹⁵⁴ Ibid., p. 27.

¹⁵⁵ Discussed in Sarris (2006), p. 107.

¹⁵⁶ J. Beaucamp, 'Byzantine Egypt and Imperial Law', in Bagnall (2007), pp. 271–87.

¹⁵⁷ See *P. Oxy.* LVIII 4400; Pack (1965), pp. 123 and 147–9; Amelotti and Zingale (1985); Beaucamp (2005), pp. 5–56; Sarris (2013), pp. 17–35.

¹⁵⁸ Vööbus (1982); Crone (1987); MacCoull (2009).

down the social hierarchy? The testimony of the novels with respect to this issue is mixed, but nevertheless highly suggestive. On the one hand, in a law of 538, Justinian issued a constitution seeking to prohibit men of the highest social standing from taking wives without dowries.¹⁵⁹ This law effectively provides a guide to early Byzantine social distinctions, describing ‘men of the higher ranks, at the level of the senators and most magnificent *illustres*’, ‘those in the upper service appointments, or in business, and in the more reputable professions’, and lastly those of ‘the least regarded station in life, owning little property, and down at the lowest level of society . . . of undistinguished soldiers under arms, or agricultural workers’. Of the latter, Justinian declared, ‘their ignorance of public affairs and lack of desire for anything other than tilling the land or warfare is something highly desirable, and praiseworthy’.¹⁶⁰ Such men, evidently, were not expected to show much interest in the law.

Some such men, however, clearly did exhibit a keen interest not only in the law in general but, in particular, in imperial legislation concerned with their own station in life, and incurred the Emperor’s wrath as a result. Just the previous year, for example, Justinian had been obliged to legislate against what he termed the ‘criminal schemes . . . to the detriment of owners of estate properties’ that had been devised by *coloni adscripticii*, who had taken advantage of an imperial enactment to seek to free themselves from seigniorial control.¹⁶¹ The emperor had recently issued a law declaring that children fathered by a *colonus adscripticius* but born of a non-adscript (or ‘free’) mother, were to inherit their mother’s status and thus could not be tied to the estate as *adscripticii*.¹⁶² Accordingly, a number of *coloni* had sought to assert their freedom and leave their masters. This, Justinian thundered, was completely illegal: the law only applied to those born *after* its promulgation, and those who claimed otherwise were ‘stupid, or criminal’.¹⁶³

Likewise, in a law of Emperor Anastasius (491–518), it had been decreed that *coloni adscripticii* who provided thirty years’ continuous service to their employer could transfer to the legal category of ‘free’ *coloni* (*coloni liberi*).¹⁶⁴ Such *coloni* were no longer obliged to pay their taxes through the

¹⁵⁹ *J. Nov.* 74.

¹⁶⁰ *Ibid.*

¹⁶¹ *J. Nov.* 54.

¹⁶² *Codex Iustinianus* 11.48. 24.

¹⁶³ *J. Nov.* 54.

¹⁶⁴ *Codex Iustinianus* 11.48.19; see discussion in Sirks (2008). The same law also obliged unregistered labourers who had provided thirty years’ service to an estate to remain upon it as ‘free’ *coloni*.

landowner (although they could ‘re-register’ and continue to do so if they so wished). More importantly, such ‘free coloni’ came to acquire ownership of the *peculium* or ‘working capital’ that they were assigned to or issued with by their employer, which could include a parcel of land. This effectively meant that after thirty years’ service, the employer could not simply terminate unilaterally the *colonus*’ contract of employment and drive him off the estate. So long as labour continued to be provided and dues continued to be rendered, the *colonus* acquired a measure of security.

In common parlance, such estate *coloni* were often known by the Greek word *paroikos* (plural *paroikoi*), which essentially meant someone living on the land of another.¹⁶⁵ This is significant because, in 530, Justinian had been obliged to issue a law concerned with the administration of ecclesiastical estates. Church lands were regarded as strictly inalienable in Roman law. In spite of this, Justinian informs us, certain of those resident on the estates of the ‘Great Church’ of Constantinople were claiming a *paroikikon dikaion* (a ‘right of the *paroikos*’) to ecclesiastical land – and through exercising this right were effectively alienating portions of the Church’s patrimony.¹⁶⁶ Justinian had furiously denied that any such ‘right of the *paroikos*’ existed, and had upheld the traditional prohibition on the alienation of ecclesiastical estates. The measure had then been reiterated in a novel dating from 535.¹⁶⁷

What was this supposed *paroikikon dikaion*, which the workers on ecclesiastical estates believed to be theirs but which Justinian would not countenance? The inferences from the legal texts themselves are that the *paroikikon dikaion* or *colonarium ius* (as the *Authenticum* translates the term) was a right to ownership of their *peculium* that estate *coloni* came to acquire after thirty years’ service according to the law of Anastasius. Given that, as indicated earlier, that *peculium* could comprise a parcel of land, the legislation had unwittingly opened a loophole with respect to *coloni* on ecclesiastical estates that potentially enabled them to claim ownership of Church land. Crucially, this was a loophole that estate employees had spotted, and of which some had sought to take advantage.

Knowledge of imperial law, therefore, appears to have been sufficiently diffuse in the early Byzantine world that it was not only the rich and powerful who attempted to take advantage of it to advance their interests. Rather, as legal texts and awareness of them circulated, we can trace

¹⁶⁵ *P.Oxy* L 3584; Harper (2008), pp. 83–119.

¹⁶⁶ *Codex Iustinianus* 1.2.24.

¹⁶⁷ *J. Nov.* 7.

knowledge of the law (however garbled) percolating down to the level of village society and circulating amongst elements of the peasantry. The modes of communication for such legal knowledge are not difficult to imagine: as noted earlier, for example, newly issued imperial laws were advertised throughout the cities of the empire not only by imperial governors, but also by local bishops, who read them out or displayed them in their churches.¹⁶⁸ It is conceivable that news of imperial legislation was also circulated by rural bishops or *chôrepiskopoi* as they made their way round their parishes, as well as by itinerant preachers, whom we know to have existed in late antiquity.¹⁶⁹ Peasants travelling to market in towns and cities (as described in the sixth century in the *Life of Nicholas of Sion*), merchants traversing the countryside, and lawyers operating in towns and villages, such as Dioscorus of Aphrodito, could all have served as possible conduits of legal information and knowledge.¹⁷⁰ In such circumstances laws could be learned of and rights memorised and transmitted. In the early fifth century, as Roman power in the West began to crumble, it had been claimed that in those territories in Gaul that had been lost to Roman control, 'there even peasants plead as advocates'.¹⁷¹ The evidence of Justinian's novels would suggest that a similar phenomenon was not unknown in the still Roman East.¹⁷²

vi) The Novels and Society

In sixth-century Byzantium, therefore, as in England in the eighteenth and nineteenth centuries, as described by Edward Thompson in a characteristically forthright intervention, 'law did not keep politely to a "level" but was at every bloody level; it was imbricated within the mode of production and productive relations themselves . . . [it] contributed to the definition of the self-identity both of rulers and of ruled; above all, it afforded an arena for class struggle, within which alternative notions of laws were fought out'.¹⁷³ It helped both to constitute social reality, and was also reflective of it, as is clear from the way in which the novels can be seen to describe practices and phenomena that are recorded at the grass roots of provincial

¹⁶⁸ Scott (1985).

¹⁶⁹ For itinerant preachers (at times harsh critics of the wealthy), see Morris (1965).

¹⁷⁰ *The Life of Nicholas of Sion*, I. and N. Sevchenko (eds. and trs.) (1984), c. 52.

¹⁷¹ *Querolus* 2.34.

¹⁷² For Byzantium as a whole, note the perceptive comments of Fögen (1987) as well as Lanata (1989), p. 38.

¹⁷³ Thompson (1978), p. 288.

society through the documentary and epigraphic sources. In other words, the novels describe objectively verifiable social realities that gave rise to petitions to the emperor, which then in turn informed the shape and structure of the novels themselves.¹⁷⁴

To take but a few examples: a papyrus from Aphrodito describes precisely the sort of maltreatment and abandonment of a wife that informed *J. Nov.* 74; the flight of *coloni adscripticii* from their masters alluded to in *J. Nov. Appendix* 6 is recorded in both the papyri from the Apion archive in Oxyrhynchus and the letters of Pope Gregory the Great concerned with the administration of papal estates in Byzantine-controlled Sicily; the employment of imperial troops as private armed retainers on landed estates of which the emperor complains in *J. Nov.* 116 is amply attested in the papyri from both the Apion archive and Aphrodito; the civil disorder caused by private armed retinues in the territory of Paphlagonia (in the near vicinity of Constantinople) to which Justinian refers in *J. Nov.* 24, is described in detail in a contemporary inscription from the province, which reveals that the retainers concerned were employed by landowners of senatorial rank; whilst the forced collection and embezzlement of tax revenues by landowners in Egypt accorded the title of ‘pagarch’, against which Justinian rails in *J. Edict* 13 is described in detail in the archive of Dioscorus.¹⁷⁵

The novels also provide insights into aspects of sixth-century social and economic relations which would otherwise be entirely lost to us, or which are only occasionally visible in the literary sources. The problems posed by the emergence of the Church as a great property owning institution; the complexity of the late-antique ‘banking sector’ and the sophistication of financial and credit arrangements; the status of actors and actresses; the readiness of peasants to stake legal claims, and the ability of some to travel to Constantinople to press their cause; the sharp practices engaged in by property developers and rent evaluators in Constantinople; immigration problems in the imperial capital; the fine detail of consular celebrations; the ravages of the first known outbreak of bubonic plague; imperial attitudes to

¹⁷⁴ On the way in which the structure of petitions can be seen to have influenced the structure of novels, see Feissel (2010), pp. 363–83. See esp. *J. Nov.* 2, *J. Nov.* 155 and, in terms of an imperial rescript rather than a general law, *P. Cairo Masp.* I 67024.

¹⁷⁵ *P. Cairo Masp.* I 67092, discussed in Urbanik (2011), pp. 123–51; *P. Oxy.* XVI 2055; Gregory *Epistolae* IX 129; on employment of troops as private armed retainers, see Sarris (2006), pp. 162–75 and *P. Oxy.* I 156, XVI 2013, 2014, 2045, XXVII 2480, LXXII 4923, 4924, 4925, PSI VIII 953; Feissel (2010), pp. 223–5 (I am informed by Stephen Mitchell that the editor of the text has accepted the emendation that the inscription was addressed to landowners styled μεγαλοπρεπεστάτοι and λαμπρότατοι – indicative of high senatorial rank); Sarris (2006), pp. 96–114 and *P. Cairo. Masp.* I 67024.

homosexuality, rape and incest; the treatment of foundlings; the trafficking of country girls for the purposes of prostitution; or the phenomenon of performers and prostitutes dressing up as monks or nuns: all are recorded and discussed in detail.¹⁷⁶ At the same time, the novels wrestle with the problems posed by incorporating new imperial territories, and changing attitudes to marriage, Jews, Samaritans and heretics in an increasingly Christian society.¹⁷⁷ All this, whilst also detailing aspects ranging from tax-collection and provincial administration, to inheritance law and care for the dead.¹⁷⁸

Above all, however, the novels reveal how the promulgation and application of imperial legislation was socially mediated and negotiated. As was noted earlier, certain of the novels issued by Justinian were clearly the result of petitions that had been brought before the Emperor, the details of which are preserved in the prefaces to the laws concerned: *J. Nov.* 160, for example, presents itself as having been drafted in response to a petition by a certain Aristokrates from the city of Aphrodisias, who wished to alert the Emperor as to how his home town's complicated civic finances were being manipulated to the benefit of 'those with powerful positions in the city', who were taking advantage of a recent imperial law.¹⁷⁹

Obtaining access to the imperial court, however, was far from straightforward. Justinian decreed that only individual cases worth more than 500 *solidi* could be brought to the capital,¹⁸⁰ and it would appear that *c.* 550 Dioscorus had been obliged to insinuate himself into the company of (and flatter) a whole series of high-ranking officials before he could get his case heard: writing poems, for example, dedicated to the *silentarius* Dorotheus, or to a certain Hypatius, *exceptor* of the praetorian prefecture, as well as to

¹⁷⁶ Church and monastic property: *J. Novs.* 3, 5, 7, 9, 40, 43, 46, 54, 55, 76, 111; banking, credit and finance: *J. Novs.* 4, 106, 110, 136; performers: *J. Novs.* 51, 115; peasants and the law: *J. Nov.* 54; property developers and rent valuations: *J. Novs.* 63, 64; immigration controls: *J. Nov.* 80; consular celebrations: *J. Nov.* 105; plague: *J. Novs.* 118, 122, 163; homosexuality: *J. Nov.* 141 (and possibly 77); rape: *J. Novs.* 143, 150; incest: *J. Nov.* 154; foundlings: *J. Nov.* 153; prostitution: *J. Nov.* 14; dressing up: *J. Nov.* 123.

¹⁷⁷ Territories: *J. Novs.* 21, 31, 36, 37, 75; marriage: *J. Novs.* 2, 12, 22, 61, 68, 78, 91, 94, 97, 98, 100, 117, 119, 143; Jews: *J. Novs.* 45, 146; Samaritans: *J. Novs.* 45, 103, 129, 144; heretics: *J. Novs.* 42, 45, 109.

¹⁷⁸ Fiscal and provincial administration: *J. Novs.* 8, 15, 17, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 41, 50, 53, 65, 71, 95, 128, 130, 134, 145, 147, 149, 152, 160, 161, 163, 166, 168; inheritance: *J. Novs.* 1, 18, 19, 38, 39, 68, 72, 74, 87, 89, 92, 107, 108, 118, 127, 164; care for the dead: *J. Novs.* 43, 59, 60.

¹⁷⁹ *J. Nov.* 160.

¹⁸⁰ See Van Der Wal (1998), p. 180, note 95.

the *cancellarius* Domninus.¹⁸¹ We also find a verse written for Domninus' son.¹⁸² This Domninus is almost certainly to be identified with the high-ranking official of the same name who, early in the reign of Justin II, renovated the imperial law courts or *praetorium* in Constantinople, and adorned them with statues of the new emperor and his wife.¹⁸³ On that occasion Domninus found himself the subject of an epigram composed by the distinguished *littéraire* Paul the Silentiary.¹⁸⁴

Justinian and his entourage were thus keen that imperial law should be responsive; so long, that is, as the Emperor was not swamped by litigants. That necessarily meant, in turn, that laws that had been lobbied for could also be successfully lobbied against. In 540, for example, two Constantinopolitan financiers who made their money from lending to ship owners, and who wanted what they asserted to be the customary practices with respect to maritime loans set down in writing, successfully lobbied Justinian to issue an imperial constitution.¹⁸⁵ Just one year later, however, the law was rescinded in response to petitions that were brought before the court.¹⁸⁶ Matters were to proceed, Justinian declared, 'as if the said law had, in fact, not even been laid down'.

Likewise, in 535, Justinian had allowed the Church of Rome to assert ownership over any property it could prove it had owned in the last one hundred years, extending a right that had been accorded to the Church in the East in 530.¹⁸⁷ This was in stark contrast to the previously observed maximum period of 'prescription' in Roman law, which had stood at forty years. This reform clearly excited considerable hostility on the part of other landowners: Procopius, for example, goes out of his way to attack it in his *Secret History*, claiming that those in charge of church properties in the Syrian city of Emesa had immediately set about having documents forged so that they could press their claims.¹⁸⁸ Accordingly, in 541, the law was rescinded, and the Church's right of prescription was limited to forty years. As the emperor put it, 'numerous cases have been launched under the licence of such legislation, and it is as if the concealed scars of ancient wounds have been re-opened'. A law so destabilising had to be set aside.

¹⁸¹ See *J. Novs.* 24, 25, 26, 27, 28, 29, 30, and 31; Sarris (2006), pp.108–9; Fournet (1999) 1, pp. 378–89.

¹⁸² *Ibid.*, p. 389.

¹⁸³ See *PLREIII*A, pp. 416–17 (Domninus 2).

¹⁸⁴ *Anth. Gr.* IX 658.

¹⁸⁵ *J. Nov.* 106.

¹⁸⁶ *J. Nov.* 110.

¹⁸⁷ *J. Nov.* 9.

¹⁸⁸ Procopius, *Anecdota* 28.1–15.

It is also clear that much of the legislation concerning *coloni adscripticii* and the status of their offspring was the result of direct lobbying by land-owners in order to close down loopholes that had emerged as a result of earlier imperial laws. In *J. Nov. Appendix 1*, for example, Justinian sets out the specific circumstances that informed the promulgation of laws such as *J. Nov. 54* in 537 (as discussed above): as Justinian declares, ‘Our Serenity has been approached by the people of Lugdunum (*in Illyricum*). They informed us that promulgation of our previous law, by means of which we commanded that children begotten by *adscripticii* or *coloni* in cohabitation with free women are likewise free, is being detrimental to their estates and their tax-contributions, because agricultural workers have been leaving, on the ground that they were the issue of a free womb.’¹⁸⁹ Accordingly, the law had been altered, as noted above, to prevent such retrospective application.

If the content of the law was negotiable, the novels reveal that the imperial government acknowledged that so, too, to some extent, was its pattern of implementation. The application of imperial law at a local level had always depended on the co-operation of governors, and through the payment of *suffragia* or bribes, the leaders of local communities had long possessed a means of avoiding the most onerous of imperial commands.¹⁹⁰ In his legislation on provincial governors, Justinian set his face against such practices.¹⁹¹ However, the Emperor himself could choose to be pragmatic in the application of his laws, especially if over-zealous implementation threatened to alienate communities or destabilise conditions in politically or militarily sensitive areas, such as the Roman–Persian frontier zone. In one novel of uncertain date, for example, Justinian issued a law concerning endogamous marriage practices amongst the population of the frontier territories of Osrhoene and Mesopotamia, which were in manifest breach of imperial legislation on incest and the permitted degrees of consanguinity within marriage.¹⁹² Whilst Justinian acknowledged that the marriage customs that had been brought to his attention were indeed illegal, that had all been ‘a long time ago, and we do not even feel sure that any such offence has taken place, so even if anything of the kind has actually happened, we are pardoning the inhabitants of the provinces of Mesopotamia and Osrhoene’. Moreover, he continued, ‘in view of the various invasions of them that there have been, and particularly because it is mainly a number

¹⁸⁹ *J. Nov. Appendix 1*.

¹⁹⁰ De Ste Croix (1954).

¹⁹¹ *J. Nov. 8, J. Nov. 17*.

¹⁹² *J. Nov. 154*. See discussion in Clark (1993).

of workers of the land who are said to be guilty in this way, we are in fact letting the situation remain as it is'.¹⁹³

Likewise, with respect to the Samaritan population of Palestine (who had risen up in revolt in the late 520s), Justinian was willing to countenance a measure of legal pragmatism in return for their quiescence.¹⁹⁴ So, for example, in 551, Justinian wrote to the Samaritans reminding them that whilst he had previously legislated to prevent them from making wills and bequeathing their estates to non-Christians, 'yet we did not maintain the same strictness in practice as we had in the text', and no Samaritan legacies had been confiscated, as the letter of the law had allowed. In light of the stabilisation of the political situation in Palestine, the Emperor informed them that henceforth the Samaritans would once more be allowed to testate formally.¹⁹⁵ This act of benevolence was then revoked by the Emperor Justin II in 572, but with one illuminating *proviso*: 'we are making an exception from the present law', Justin decreed, 'for the agricultural workers who espouse Samaritan beliefs. This is not for their own sake, but for the upkeep of the estate properties on which they work, and by reason of the income of taxes and revenue from these estates to the public treasury; also, because their error is due to their rusticity.'¹⁹⁶ Even when in a persecuting mode, therefore, the imperial authorities were willing to temper the implementation of the law. Here, again, successful lobbying by landowners may be detected.

Indeed, the socially and politically negotiable character of the law is likely to have been at its most pronounced with respect to members of the imperial aristocracy. It is striking, for example, that the illegal employment of imperial troops as private armed retainers as set out in *J. Nov.* 116 should be so well attested in the sixth century on the estates of the Apion family around the Middle Egyptian city of Oxyrhynchus. For the Apion family were firm supporters of Justinian and his regime, and held high office under him. Thus the head of the family in the late 530s, an individual by the name of Flavius Strategius Apion, served Justinian as chief finance minister (*comes sacrarum largitionum*) in Constantinople, and is described in one late source as his 'spiritual brother'.¹⁹⁷ How is one to resolve the apparent contradiction between Strategius Apion's palpable commitment to the

¹⁹³ *J. Nov.* 154.

¹⁹⁴ On the quelling of the uprising, see *J. Nov.* 103.

¹⁹⁵ *J. Nov.* 129.

¹⁹⁶ *J. Nov.* 144.

¹⁹⁷ Sarris (2006), pp. 18–19, note 46.

regime, on the one hand, and his household's apparent lack of concern for imperial law, on the other?

The likelihood is that Justinian would have been completely oblivious to the inconsistency of the scenario, and probably never meant the law to be applied against those whose loyalty was not in doubt. Rather, to take a medieval English analogy, it may have been that, as with Edward IV and his statute of 1468 concerning livery and retaining (i.e. the maintenance of private armies), Justinian only meant the law to be applied against his enemies, or in circumstances where the private employment of imperial troops was interfering with military deployment.¹⁹⁸ In spite of the blanket ban on private armed retinues in Roman law, for example, in 528 Justinian had nevertheless dispatched senators to defend a number of eastern cities from the Persians 'along with their forces', whilst, in the Paphlagonian inscription referred to earlier, the emperor had informed the senatorial landowners of the region that henceforth no individual was to keep more than five armed men in his entourage, whereas previously ten had been permitted.¹⁹⁹ Justinian was thus perhaps more flexible than his critics allowed.

vii) The Novels as a Portrait of the Regime

It is difficult to ascertain with any certainty to what extent the Greek Collection of 168 Novels, with the minor additions to it that emerge from the scholiasts and the manuscripts of the *Epitome of Julian*, accurately reflect the legislative output of Justinian's court for the entirety of his reign. The commonality of material between the Greek collection, the *Epitome of Julian* and the *Authenticum* would suggest that the overall impression of legislative activity with respect to laws of general effect is likely to be relatively reliable at least up to c. 544, and probably up to c. 556.²⁰⁰ Thereafter, the position depends on whether one believes Theodore of Hermopolis and Athanasius of Emesa had independent access to the emperor's novels (in which case the collection of 168 constitutions gives an accurate impression), or whether these authors were themselves dependent on different recensions of the Greek Collection. For the reasons set out earlier, the latter seems highly likely with respect to Theodore, at least. Certainly, it seems strange that the Byzantine conquests in southern Spain

¹⁹⁸ Bean (1989), pp. 211–26.

¹⁹⁹ Sarris (2006), p. 174.

²⁰⁰ Noailles (1912), p. 144.

in the early to mid 550s should have left no trace in contemporary legislation.²⁰¹

Likewise, it should not be forgotten that there was clearly very important legislation (such as Justinian's lengthy Edict 13 on Egypt, which was the wealthiest region in the entire empire) that does not appear in any of the novel collections, presumably because their contents were deemed to be too specific to the provinces concerned to merit wider circulation, or because their provisions had been subsumed within general laws.²⁰² That, however, does not diminish the significance of such laws to the historian. Alongside such novels and edicts, the emperor also continued to issue 'pragmatic directives' and imperial rescripts (such as that received by Dioscorus and the villagers of Aphrodito c. 551), which could affect the workings of the law at a local level. With respect to *coloni adscripticii* in the re-conquered province of Africa, for example, Justinian was obliged to remind the region's lawyers and judges that 'the previous commands that we have promulgated on this issue, as well as the present command, are to hold the place of law in the regions of Africa, and are not to be set aside by any prescription of the general laws'.²⁰³ If not quite merely being the 'tip of the iceberg', then, the novels evidently cast light only on certain aspects of Justinian's legislative and legal activity from the 530s to the 560s.

Nevertheless, the novels and edicts taken together do permit one to sketch (if only in broad outline) a pen portrait of Justinian and his regime, at least for the crucial twenty-year period from c. 535 to 555, which would witness some of the Emperor's most aggressive phases of military and political endeavour, as well as some of his starkest reverses.²⁰⁴ In particular, the novels reveal that Justinian had clearly only ever regarded the codification of the civil law as the first phase of his programme of reform, for it was immediately followed by a carefully targeted and inter-related series of laws. First, in 534, the procedure for issuing laws concerned with tax-collection was revised.²⁰⁵ Then, possibly in January 535, Justinian issued a law overhauling appellate procedure, so as to make the reformed law of the empire more accessible to his subjects, and re-energizing the courts of provincial governors.²⁰⁶ This would be associated with a wave of legislation

²⁰¹ On which see Donaldson (2012).

²⁰² *J. Edict* 13; on the role of Egypt, see Sarris (2006), pp. 10–17.

²⁰³ *J. Nov. Appendix* 9.

²⁰⁴ See Sarris (2011a), pp. 125–68.

²⁰⁵ *J. Nov.* 152.

²⁰⁶ *J. Nov.* 23: on the date, see Honoré (1978), p. 57.

aimed at strengthening the authority of provincial governors, tightening their grip over their subalterns, and disentangling them from local patronage networks by dramatically improving their stipends.²⁰⁷ The sale of provincial governorships was prohibited, and governors were issued with a detailed and standardised set of instructions, emphasising their responsibility to maintain order and collect the tax revenues on which the state depended.²⁰⁸ At the same time, concerted efforts were made to increase central supervision of governors by co-opting bishops and others to be the emperor's 'eyes and ears' in the provinces.²⁰⁹

Justinian's legislation on governors is forthright: they were to demand from those charged with tax-collection precise details of what taxes were owed and by whom, and how much had been collected. Those unable to provide the information requested would have their hands cut off.²¹⁰ Powerful landowners were to be prevented from laying claim to the properties of others or stealing their *coloni adscripticii*, and those who attempted to do so would have their own property seized.²¹¹ Private armed retinues were to be disbanded, and governors were to refrain from issuing landowners with licences of fiscal exemption. Under the cover of such licences, landowners had been collecting taxes from their peasants, only to hold on to them.²¹²

With these general instructions to governors and bishops in place, the novels record that Justinian set about overhauling the fiscal and administrative structures of no fewer than nineteen individual provinces (in addition to the city of Constantinople), in a series of laws stretching from c. 535 to 539.²¹³ These novels reveal the Emperor wrestling with the burgeoning power at a provincial level of those members of the senatorial aristocracy and landowning elite whom, it was suggested earlier, he had identified as the 'enemy within' in the wake of the 'Nika Riots'. In his edict on the province of *Phoenice Libanensis* (or 'inland Phoenecia'), for example, Justinian demanded that the governor restrain the 'powerful households', just as, in his novel on Cappadocia, he declared that the lawlessness of the region's magnates made him 'feel too embarrassed even to speak of

²⁰⁷ *J. Nov.* 8. On this, and what follows, see Maas (1986) and Bonini (1976). See also Franciosi (1998).

²⁰⁸ *J. Nov.* 8 (see also the later *J. Nov.* 86); *J. Nov.* 17.

²⁰⁹ *J. Nov.* 8, and *J. Nov.* 15.

²¹⁰ *J. Nov.* 17.

²¹¹ *Ibid.*

²¹² *Ibid.* and *J. Edict* 1.

²¹³ *J. Novs.* 13, 21, 24, 25, 26, 27, 28, 29, 30, 31, 50 (concerned with five provinces), 75, 80, 102, 103, *J. Edicts* 4, 13.

the enormity of these people's errant behaviour, and of how they have bodyguards protecting them and an intolerable number of people behind them, all committing barefaced banditry'.²¹⁴ The illegal erection of signs and boundaries to claim the lands of others, encountered in the general instructions to governors, is specifically referred to with respect to the Helenopontus, where the governor was to smash such placards on the malefactor's head.²¹⁵ The same offence is recorded with respect to both Paphlagonia (where the landowners concerned were to be beaten, irrespective of their rank) and Cappadocia, where it is recorded the 'powerful' were even seizing control of imperial estates.²¹⁶ Likewise, as noted earlier, Justinian's lengthy edict on Egypt records the large-scale embezzlement of tax revenues by local landowners charged with their collection.²¹⁷ Such acts of lawlessness and illicit patronage, as we have seen, were not a figment of the imperial imagination: they are amply recorded in the documentary and epigraphic sources.

At the same time, however, the Emperor and his entourage took advantage of the wave of legislation to seek to convey a particular impression of the regime: Justinian, for example, presented it as his providential mission to bring imperial order to disorder and to restore the sort of lawful conduct of provincial affairs that emperors of old had been able to guarantee.²¹⁸ It was a task, he informed John the Cappadocian, which 'God has granted to be kept for our times and your excellency's ministrations'.²¹⁹ As a pre-eminent scholar of Roman law has commented, Justinian was 'conscious of living in the age of Justinian'.²²⁰ Likewise, the Emperor sought to appeal to conservative opinion within the governing classes and political society by presenting reform as restoration: thus the codification of Roman law was meant to restore it to its pristine glory, whilst the prefaces to the novels setting out Justinian's provincial legislation sought to justify the changes introduced to local government in terms of (largely spurious) antiquarian precedents.²²¹ The portrait of Justinian we derive from the novels is thus, to some extent, a self-portrait.

In reality, of course, in much of his provincial legislation at least, Justinian was simply reacting to objective circumstances in the way that

²¹⁴ *J. Edict* 4, *J. Nov.* 30.

²¹⁵ *J. Nov.* 28.

²¹⁶ *J. Nov.* 29, *J. Nov.* 30.

²¹⁷ *J. Edict* 13.

²¹⁸ As discussed by Roueché (1998).

²¹⁹ *J. Edict* 13 pr.

²²⁰ Honoré (1978), p. 16.

²²¹ Maas (1986); Pazdernik (2005).

most other emperors would have done. As noted earlier, the revival of super-power warfare with Persia had led to mounting fiscal pressures on the East Roman state, which rendered it a matter of pressing necessity that the imperial government crack down on tax evasion and secure the state's sources of revenue. Indeed, much the same was true in Persia, where the Sasanian *Shah* Khusro I engaged in a simultaneous and parallel programme of internal reform.²²² Likewise, it is clear that not everybody was taken in by the classicising veneer of Justinian's codification or the reverence for antiquity repeatedly evoked in his novels: the historian and lawyer Procopius, for example, had no doubt that in fact the emperor 'took no thought to preserve what was established, but he was always wishing to make innovations in everything, and, to put it short, this man was an arch-destroyer of well-established institutions'.²²³

The period between 535 and 539 were years of ambition and hope, which witnessed the consolidation of imperial power in Africa, the initiation of the Italian campaign, and the capture of Rome from the Goths.²²⁴ The empire had also significantly strengthened its position against the Persians in the strategically crucial region of the Caucasus.²²⁵ From 540, however, Justinian's fortunes began to turn: the Persians launched a sustained assault on Roman positions both in the Caucasus and Syria, where the *Shah* even managed to capture Antioch, which was regarded as the greatest city of the Roman East.²²⁶ The city was stripped of its wealth, razed to the ground, and its inhabitants marched off to captivity in Persia. It was a devastating blow to imperial prestige, and one that left a deep mark on Procopius, who declared after his account of the fall of the city that 'I become dizzy as I write of such a great calamity and pass it on to future generations, and I am unable to understand why indeed it should be the will of God to exalt on high the fortunes of a man or place, and then to cast them down and destroy them'.²²⁷ At the same time, in Italy, the Goths rallied under the leadership of their new king Totila (or Baduila) and once more drove Roman forces from Rome.²²⁸

Most devastatingly of all, in 541 the empire was struck for the first time in its history by an outbreak of bubonic plague. Probably originating in

²²² Z. Rubin, 'The Reforms of Khusro Anushirwan', in Cameron (1996), pp. 227–98.

²²³ Procopius, *Anecdota*, 6.21–2.

²²⁴ Sarris (2011a), pp. 115–19.

²²⁵ *Ibid.*, pp. 134–45.

²²⁶ *Ibid.*, p. 154.

²²⁷ Procopius, *Wars* 2.10.4–5.

²²⁸ Sarris (2011a), p. 118.

East Africa, the plague first manifested itself at the important Egyptian entrepôt of Pelusium, from where it spread to Alexandria, the rest of Egypt, and Palestine. By 542, the disease had reached the imperial capital of Constantinople, where Justinian himself was reported to have contracted it (although he was subsequently to recover). The same year it extended its reach to Syria, North Africa and Spain, and by 543 had struck Armenia and Italy.²²⁹ The contemporary narrative sources are unanimous in describing the plague as having had a catastrophic impact on both urban and rural communities. Procopius, for example, who witnessed the arrival of the plague in Constantinople, describes how at one point it struck down 10,000 victims in a single day, with the dead disposed of in mass graves beyond the city walls or simply thrown into the sea.²³⁰ John of Ephesus witnessed ‘villages whose inhabitants perished altogether’ as he passed through Egypt, Palestine and Syria.²³¹ The result was not only much human misery, but also administrative paralysis, and a vertiginous decline in tax revenues as communities of taxpayers were either dramatically diminished or wiped out.²³² Amidst such difficulties, Justinian found himself denied the assistance of his right-hand men in the project of reform, John the Cappadocian and Tribonian. The former had fallen foul of the Empress Theodora and had been exiled in 541; the latter had died (possibly of plague) in c. 542.²³³

The impact of plague necessitated emergency legislation on matters ranging from wage controls to intestate succession.²³⁴ But from c. 544 general legislation would appear to have diminished to a trickle, with only twenty-four of the 165 novels in the Greek Collection securely identifiable as having been promulgated after that date.²³⁵ The impression from the novels is of a regime that, in terms of administrative and internal reform at least, had run out of steam, or was so buffeted by external factors that it was unable to regain its bureaucratic balance. The sense of torpor that the novels convey must be tempered, however, by the fact that between c. 544 and 553, Justinian’s attention was increasingly devoted to ecclesiastical politics and the need to restore theological unity to the imperial Church (not least so as to regain divine favour).²³⁶ Thus in 553, Justinian presided

²²⁹ Ibid., pp.158–9.

²³⁰ Procopius, *Wars* 2.23.

²³¹ For references, see Sarris (2002), pp. 169–82.

²³² Ibid.

²³³ Sarris (2011a), p. 162.

²³⁴ *J. Novs.* 118, 122.

²³⁵ *J. Novs.* 123, 126 (?), 127, 128, 129, 130, 131, 134, 135 (?), 137, 140, 142, 143, 144, 145, 146, 147, 148, 149, 150, 159, 161, 163, 164 (including novels of Justin II and Tiberius II).

²³⁶ Sarris (2011a), pp. 160–8.

over an Ecumenical Council in Constantinople which sought to find a theological solution to the Chalcedonian dispute.²³⁷ These were years of canon law and Christology rather than civil law and fiscality.²³⁸

Nevertheless, it is noteworthy that certain of the Emperor's provincial reforms were put into reverse at this time, as he attempted to contain the restlessness and discontent of his subjects. In 553, for example, Justinian rescinded the provisions he had put in place with respect to the administration of Lydia, Pisidia and Phrygia in Asia Minor, once more justifying his reversal of policy with a medical analogy: 'Every time that we devise the appropriate remedy for a given situation as it arises', Justinian declared, 'once the need has passed we resume our previous position; when the malady is over, we stop the treatment just there. The intention of our present law is another such case.'²³⁹ The novel reveals, however, that the change in policy may have had less to do with the wisdom of the doctor than the restlessness of the patient: 'Now, the people of the two Phrygias and Pisidia have in fact petitioned us, arguing that what was wrong there before is now over: there are no bandit groups in that region, nor are the provinces veering into anarchy; and they cannot bear the burden of the government devised by us . . .'²⁴⁰

It is clear that the inhabitants of Pisidia and Phrygia were not alone in that sentiment: in 562, for example, a plot against the Emperor was discovered to have been organised by a coterie of wealthy bankers from whom he had exacted forced loans.²⁴¹ When, in 565, the emperor died, many went into mourning, whilst others regarded his demise as a blessed relief. As the contemporary ecclesiastical historian Evagrius declared: 'thus indeed Justinian, after filling absolutely everything with confusion and turmoil and collecting the wages for this at the conclusion to his life, passed over to the lowest place of punishment.'²⁴² Evagrius too, one should note, had a background as a lawyer.

Indeed, the novels also exemplify the extent to which Justinian's successor, his nephew Justin II, was determined to draw a line under the old regime. From the first, he adopted a tone highly critical of his predecessor, declaring that he had 'found the treasury burdened with numerous debts

²³⁷ Price (2009).

²³⁸ For the intellectual overlap between such concerns, however, see Maas (2003).

²³⁹ *J. Nov.* 145.

²⁴⁰ *Ibid.*

²⁴¹ Whitby (1985), pp. 215–28.

²⁴² Whitby (2005), p. 254. For the mass hysteria of mourners, see Cameron (1976).

and heading towards utter destitution'.²⁴³ In particular, the novels reveal, he sought to rebuild bridges between the imperial court and those elements of the senatorial aristocracy and provincial elite with whom Justinian had found himself locked in conflict. Thus, amongst the emperor's first moves, was a large-scale tax rebate that disproportionately favoured the wealthy.²⁴⁴ Moreover, in a remarkable measure that served to consolidate and entrench aristocratic power at the grass roots of East Roman society, Justin II decreed that henceforth governors were no longer to be sent out from the imperial capital to curtail the activities of the locally powerful. Rather, they were to be elected by the great landowners and bishops of the provinces concerned.²⁴⁵ As they were now locally elected, the Emperor declared, he would no longer countenance any complaints or appeals against the governors' behaviour.²⁴⁶ Justin II's 'localism agenda' would have had Justinian turning in his grave. He had added to his uncle's novels whilst effectively undoing a good many of them.

Indeed, this may well explain why Justin II's reform of gubernatorial appointments was recorded in the Greek Collection of 168 Novels in the first place. For what is perhaps too easily taken for granted is what the original purpose of the Greek Collection, such as we find in the *Codex Marcianus Graecus*, and on which the Greek epitomisers drew, may actually have been. As noted earlier, the overwhelming bulk of the laws contained in the Collection were issued by Justinian, and as such it seems to accurately reflect the strong pulses of legislation sent out from the capital, at least down to the year 544. For the period from 544 to the Emperor's death in 565, the pulse is more irregular, and the collection appears rather more disordered. Nevertheless, as has just been seen, the novels we possess from the Greek Collection permit one to paint a portrait of the regime, especially for the crucial years of the late 530s when, as the novels concerned with provincial reform reveal, the Emperor found himself locked in bitter conflict with members of the senatorial and provincial aristocracy, trying to shore up tax revenues, reform provincial administration, and tighten the grip of governors on local society and the grip of the Emperor on local governors. As such, to describe the Greek Collection (as most scholars do) as a collection of the novels of the Emperor Justinian would not be entirely misleading.

²⁴³ *J. Nov.* 148.

²⁴⁴ *Ibid.* For the character of Justin II's ultimately disastrous regime, see Sarris (2011a), pp. 226–32.

²⁴⁵ *J. Nov.* 149.

²⁴⁶ *Ibid.*

On the other hand, the Greek Collection, as already noted, appears to be a private rather than official one, closer in format to the *Variae* of Cassiodorus rather than the codified novel collections of the fifth century or the Burgundian *Liber Constitutum* of the sixth.²⁴⁷ It draws to a close, moreover, not with laws of Justinian, but rather with examples of laws of his successors Justin II and Tiberius II, who also issued other laws transmitted through different collections.²⁴⁸ So what, one might reasonably ask, was the Greek Collection meant to be?

The outward similarities between Justinian's novels and the *Variae* may here be significant. It has been argued, for example, that the *Variae* of Cassiodorus were edited and presented in such a way as to justify the role of members of the Roman governing classes in Italy in supporting and collaborating with the Gothic regime of Theoderic and the Amals. On this model, the administrative letters or laws of the sixth-century Italian Chancery were ordered and re-worked by Cassiodorus to convey a narrative of a golden age of legal order (*civilitas*) under Theoderic (r. 475–526) and his well-born Roman ministers such as Cassiodorus and his relatives, which essentially persisted under the Queen Amalasantha (r. 526–534), before ultimately being brought down by the machinations of her roguish and avaricious cousin Theodahad (r. 534–536).²⁴⁹

Perhaps significantly, whilst, in the Greek Collection, Justinian's novels themselves do not appear to have been tampered with by any editorial hand, by adding to them the laws of Justin II and Tiberius II that are appended, the compiler of the Greek Collection manages to convey a similar narrative: one of a golden age of active rulership under Justinian in the late 530s as he cracks down on corruption and restores order to provincial society, which is then cast into disarray by Justin II, as he reverses Justinian's reform programme, dispenses money to his favourites, and turns provincial governors into the puppets and playthings of the provincial aristocracy, only for order to be restored by Tiberius, whose legislation is strikingly reminiscent of Justinian's reform legislation of the late 530s both in substance and rhetorical style.²⁵⁰ Tiberius II is thus perhaps the first emperor to be represented as a 'New Justinian'. The

²⁴⁷ The *Variae* were a private collection of official enactments issued by the Ostrogothic rulers of Italy edited by the Italian scholar and bureaucrat Cassiodorus. Like Justinian's laws, these enactments preserve extensive preambles containing much antiquarian detail. See Bjornlie (2013). The *Liber Constitutum* is an official collection of novels issued by the kings of Burgundy in the early sixth century. See Heather (2011).

²⁴⁸ See, for example, the laws edited by Von Lingenthal (1857).

²⁴⁹ Bjornlie (2013). For the history of Italy in this period, see Sarris (2011a), pp. 97–119.

²⁵⁰ See esp. *J. Novs.* 161 (on *suffragia*) and 164 (on inheritances).

concatenation of post-Justinian materials would perhaps suggest, therefore, that the Greek Collection of 168 Novels originated as a private collection of Justinian's post-codificatory laws, extended in such a way as to glorify not Justinian, but rather Tiberius II.

But who might have compiled such a text? After Justinian, as we have seen, the great law schools of Constantinople and Berytus went into decline. Thereafter, the evidence would suggest, the teaching of law became more diffuse, passing into the hands of practitioners and seemingly clustering around the Church and the great Patriarchates of Constantinople, Alexandria, Jerusalem, and Antioch (as well, possibly, as the Papacy in Rome) which, as wealthy landowning institutions, needed a ready supply of experts in both civil as well as canon law.²⁵¹ It would be logical, therefore, to look to these centres for a putative origin to the Greek Collection.

There is some evidence, for example, that the epitomiser of the Greek Collection, Athanasius of Emesa, may have taught law at Antioch, where the legal practitioner and church historian Evagrius is also known to have found employment on the payroll of the Patriarchate.²⁵² Interestingly, Book V of Evagrius' *Ecclesiastical History* contains a highly laudatory account of the reign of Tiberius, and refers explicitly to administrative measures enacted by him, each of which appears in the Greek Collection. 'By writing constitutions', Evagrius concludes, Tiberius 'made the future secure.'²⁵³ Given that Tiberius ascended the throne on the back of his stalwart defence of Syria and, hence, Antioch, from Persian assault, an Antiochene origin to the Greek Collection is thus perfectly plausible.²⁵⁴ Alternatively, it should be noted that the Patriarch of Constantinople at the time when the Greek Collection appears to have reached its final form (c. 575) was John Scholasticus, who was regarded as more of a lawyer than a theologian and who, as noted earlier, has also been identified as the probable author, prior to his appointment as patriarch, of an important collection of canon law known as the *Synagoge of Fifty Titles*, which he would appear to have compiled during his time working as an advocate in Antioch,²⁵⁵ whence he may have brought with him to Constantinople relevant legal materials (including copies of imperial constitutions). It is also worth noting in this Constantinopolitan context that the ecclesiastical historian John of Ephesus records Tiberius to have been especially

²⁵¹ On Rome, see Loschiavo (2015).

²⁵² See D. Simon, 'Athanasios', in Stolleis (2001), p. 44 and *PLREIIIA*, pp. 452–3 (Evagrius).

²⁵³ Evagrius, *Ecclesiastical History* 5.13 and *J. Novs.* 161 and 163.

²⁵⁴ See *PLREIIIB*, pp. 1323–6 (Tiberius Constantinus I).

²⁵⁵ See Gallagher (2002), p. 20.

generous to the guild of lawyers of Constantinople, whose members, either along with or separately from the Patriarch John, we might also imagine to have played a role in the compilation of the Greek Collection, so as to express gratitude and loyalty to the Emperor.²⁵⁶ A Constantinopolitan origin to the Collection thus remains probable, although not certain. Even then, however, the collection may have had Antiochene roots.

viii) Modern Editions and Translations

As discussed earlier, for much of the Middle Ages, Justinian's novels were known in the West primarily through the *Epitome of Julian*. That situation was transformed c. 1100 by the discovery of the *Authenticum*, which was soon treated as the standard text. The earliest manuscript of the Greek Collection (dating from c. 1200) appears to be of southern Italian provenance, indicating that it too was in circulation in the West by that point.²⁵⁷ The first print edition of the novels (based upon the *Authenticum*) appeared in 1476 as an appendix (*volumen parvum*) to the Digest, Code and Institutes.²⁵⁸ The first print edition of the Greek text appeared in 1531, drawing upon an inferior manuscript of the Greek Collection.²⁵⁹ A manuscript copy of the Greek text as preserved in the *Codex Marcianus Graecus* was made by Scrimger in 1548, who proceeded to publish it ten years later.²⁶⁰ In 1571, Contius published what would prove to be a widely read edition of the novels, drawing upon both the *Authenticum* and the Greek text.²⁶¹

Editions of the novels proliferated in the seventeenth and eighteenth centuries, and the emergence of Byzantine legal history as a distinct focus of study in the nineteenth century led to an important milestone: the incorporation of the edicts into a Teubner edition of the Greek Collection by the *éminence grise* of Byzantine law, Zachariae von Lingenthal.²⁶² The modern critical edition of the novels (on which this translation is based) was published in 1895 by S/K, as volume three of the *editio stereotypa* of Justinian's legal works (known since the sixteenth century as the *Corpus Iuris Civilis* – 'the body of the civil law'). Schöll (who initiated the project)

²⁵⁶ John of Ephesus, *Ecclesiastical History* 3.11.

²⁵⁷ Burgmann, Fögen, Schmink and Simon (1985), p. 339.

²⁵⁸ For what follows, I am indebted to Kearley (2010), pp. 391–5 and Noailles (1914). See also Biener (1824).

²⁵⁹ Haloander (1531); see Noailles (1914), pp. 162–70.

²⁶⁰ Scrimger (1558); Noailles (1914), pp. 91–6.

²⁶¹ Contius (1571).

²⁶² von Lingenthal (1881).

and Kroll (who completed it) presented a revised and emended version of the Greek text, drawing on the most reliable manuscripts, alongside the Latin text of the *Authenticum* and their own Latin translation.²⁶³

The nineteenth century also saw the novels translated into modern European languages for the first time, although the important German version that was produced in the 1830s was primarily based upon a Latin translation of the Greek.²⁶⁴ Likewise, the only English language translation of the novels to have appeared in print – in S.P. Scott’s *The Civil Law* – was based upon the Latin of the *Authenticum*.²⁶⁵ An English translation based on the modern Latin translation of the Greek by S/K was produced between 1920 and 1952 by University of Wyoming Professor Justice Fred Blume, but was never published, although it has since been made available online.²⁶⁶ Blume was expert in Roman law, but undertook his task at a time when there was relatively little by way of secondary literature on late Roman history on which he could rely. Understandably, therefore, his acquaintance with the social and economic context of the sixth century was limited, and this is occasionally evident in his translations from the Latin.

Accordingly, what is presented here is the first published translation into English of Justinian’s novels with the Greek translated directly from the original, and with a wide-ranging commentary, with a view to the needs of civil lawyers and historians alike. The value of the novels to the latter is immense, whilst to the former it may be less apparent. But those reading this volume from a legal perspective are invited to remember the words of the late H.F. Jolowicz: ‘we should not underestimate the Byzantine achievement. A society so sophisticated in its theology cannot have failed to import some similar sophistication into its law.’²⁶⁷

²⁶³ Schöll and Kroll (1895).

²⁶⁴ Otto, Schilling and Sintenis (1830–3); see Kearley (2010), p. 394 for discussion and references.

²⁶⁵ Scott (1932): the novels are found in volumes XVI and XVII.

²⁶⁶ Kearley (2010), p. 395, note 149 for details. An unpublished translation of Justinian’s edicts is also to be found in Thurman (1964).

²⁶⁷ Jolowicz and Nicholas (1972), p. 515.

1 | Heirs: Falcidian <Share>¹

¹ The transmission of property by will was one of the great preoccupations of Roman legislators in general and Justinian in particular. Roman law established three types of testamentary heir, charged with the task of executing the will. First came the *sui* ('immediate heirs') who comprised those free members of the deceased's family (*familia*) who were released from the testator's paternal power (*patria potestas*) upon his death. By definition, therefore, only the male head of a household, or *pater familias*, could possess such heirs (see Johnston (2015), pp. 200, 203). Traditionally, such individuals (who automatically inherited under intestacy) had been conceived of as both 'immediate and compulsory' (*sui et necessarii*), in that they could not evade the inheritance. However, from the time of the Emperor Hadrian (r. 117–138 AD) at the latest, *sui* were granted the so-called *beneficium abstinendi*: i.e. the privilege that so long as they had not involved themselves (*se inmiscere*) in the estate after such a manner as to indicate an intention to inherit, they could abstain from it (*se abstinere*). Importantly, this enabled them to escape liability for the debts (and moral taint) associated with a financially compromised inheritance (see Gaius, *Institutes* 2.157–8, 160 and 163 and Kaser (1980), p. 361). Second, were *necessarii heredes* ('compulsory heirs'). These were slaves manumitted by will by the testator and appointed as heirs (Justinian took the appointment of the slave as heir as proof of manumission). Unlike *sui*, such manumitted slaves remained under a strict obligation to accept the role and responsibilities of heir if so appointed. Accordingly, slaves were generally nominated as heirs to insolvent estates (see Buckland (1963), pp. 304–5). Roman law also permitted the testator to appoint an heir from outside his household (known as an *extraneus*). Such heirs, however, could not be forced to accept the appointment, and Roman law thus developed various means of attempting to induce them to do so. The most successful of these was the *Lex Falcidia* of 40 BC, which directed that testamentary heirs were entitled to 25 per cent of the net estate, meaning that not more than 75 per cent of an estate could be assigned to legacies (*legata*) or trusts (*fideicommissa*). If the legacies or trusts exceeded that proportion, heirs had the right to scale them down until the 'Falcidian' quarter share was achieved (with heirs dividing the proceeds between themselves in proportion to the amount each inherited). This necessarily led to various and on-going legal complications (on which see *Digest* 35.2). The original law also aimed to impose some restriction on the dispersal and fragmentation of estates, since this was perceived as endangering the ability of some of the senatorial and equestrian elite to meet the minimum property qualification required for membership of their order (*ordo*). A feature of Justinian's legislation with respect to wills and testaments is what has been described as the emperor's 'stronger sense than most of the propriety of the deceased's obtaining fulfilment of fond hopes' (Johnston (1988), p. 253). A number of juristic texts included in the *Digest* were thus inflected in this direction by Justinian's law commissioners (*ibid.*, p. 243): see, for example, *Digest* 40.4.17.1 and *Codex* 6.43.3.4. In accordance with this general tendency, the main purpose of the current law (as set out in section 1 of the preamble) was to ensure that heirs and beneficiaries complied with the wishes of the testator and did not attempt to profit from the estate more than they were entitled to through tardiness and foot-dragging in putting legacies and trusts into effect. Henceforth, heirs were to be allowed a time limit of one year in which to execute the will, and were obliged to begin an inventory of the estate within thirty days of the initial notice of death. This inventory had to be completed within sixty days. If heirs failed to meet these deadlines, Justinian decreed, they would lose their entitlements under the Falcidian law and any other bequests (as well as a fair degree of protection against the claims of the deceased's creditors) and others would be found to

*Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician*²

Preamble

Busy as we are with the concerns of the whole realm, and preferring not to have any minor matter in view, but rather how Persia is to remain quiet, how the Vandals, with the Moors, are to be obedient, how Carthage is to keep her ancient liberty, now regained, and how the Tzani, newly under the Roman realm, are to take their place among our subjects (something that God has never hitherto granted to Rome even in modern times, except in our reign), there are also private concerns reported from our subjects continually pouring in, on each of which we give the appropriate directive.³ On all those that enjoy frequent individual help but are also capable, by being enshrined in law, of affording general benefit to all on the matters on which they require it, we think we should make a law and impart it to our subjects, as being intrinsically beneficial, and as obviating the need for ad hoc rulings from successive Sovereigns.

1. We are constantly being troubled by petitions over legacies or emancipations bequeathed but unexecuted, or over some other issue on which the testators' instructions for payment to certain persons, or for action to be taken, are not complied with by persons covetous of the property, who take possession of it without implementing the instructions – and this

take their place, including, if needs be, agents of the imperial government (by the procedure known as *bona vacantia*). On the *Lex Falcidia* in Justinianic and post-Justinianic Byzantine law, see Urbanik (2008). On this novel, see also Cervencia (1972), pp. 268–9 and Beaucamp (2001).

² John 'the Cappadocian' was one of Justinian's most trusted advisers and right-hand men in his programme of imperial reform. In 541, however, he would fall out with the Empress Theodora and suffer exile from court: see *PLREIIIA*, pp. 627–35 (Fl. Ioannes 11).

³ This law, written in 535, is placed firmly within its military context and what Justinian regarded as the providential character of his reign: the Vandal kingdom has been conquered and subdued; the 'Endless Peace' negotiated with Persia in 532 is still in place; and a push to project Roman power over the central and western Caucasus by more fully incorporating into the empire the territories of Roman Armenia and the crucial Black Sea kingdom of Lazica has been consolidated through the imposition of direct rule over the Tzani, whose territory bordered the mountainous frontiers of Lazica. For further details of the military context, see Sarris (2011a), pp. 89–96 and 145–52. The historian Procopius provides a detailed account of the imposition of Roman rule on Lazica, including the posting of garrisons, the construction of Roman roads, and the conversion of the locals to imperial Christianity, which had become a favoured means of disseminating imperial influence in the region (Procopius, *Wars* 1.15.20 and *Buildings* 3.6).

despite the ancient legislators' statement that all decedents' directions that are not in conflict with laws should by all means be implemented.⁴ Since we have found that the laws laid down to this effect have by now become generally neglected, we have thought it necessary for them to be re-established, both to provide a source of security for those still living and to pay due respect to the dead.

2. A prior consideration must be that on some testators the law lays an obligation to assign a certain share to certain persons as being owed to them by nature herself, such as, for example, children, grandchildren, fathers, mothers, sometimes brothers too, and any such person as has been counted by law among either our progeny or our progenitors;⁵ whereas others have no set obligation to give a share of their own wealth to anyone, their bounty being independently directed to whomever the testator may wish.

1

Subject to those provisos of ours, we decree that those who have been appointed by anyone as heirs, and also those who come into *fideicommissa*,⁶

⁴ See note 1 on Justinian's determination to protect the intentions of the testator.

⁵ Roman law dictated that at least a quarter of a testator's net estate had to be left to those 'natural successors' entitled to inherit in intestacy unless the testator had legitimate grounds for disinheriting them. Failure to comply with this expectation rendered a will open to challenge under the 'complaint against an undutiful will' (*querella inofficiosi testamenti*). The quarter-portion such 'natural successors' could expect was known as the *portio legitima* (in *J. Nov.* 18, Justinian would increase the 'legitimate portion' to one-third of an estate: see Buckland (1963), pp. 327–9). The *portio legitima* was similar to, though distinct from, the 'Falcidian share' although, from the sixth century onwards, Byzantine lawyers increasingly conflated the two both in theory and in practice: see Urbanik (2008). This tendency may be explained by virtue of the fact that there is evidence to suggest that Roman testators had a tendency to appoint their children (and especially their sons) as heirs (see Johnston (1999), pp. 47–52), meaning that, in such circumstances, the 'Falcidian share' and the 'legitimate share' often effectively approximated to the same thing.

⁶ The *fideicommissum* or 'trust' was a highly flexible legal instrument which Roman testators increasingly used in late antiquity to achieve a number of intended results. In the context of an estate which was in a perilous financial condition, for example, a share of it could be entrusted to someone (known as the *fideicommissarius*) who was charged with transferring it to a third party, who might be a relative to whom the testator wished to pass on benefits but not liabilities. Alternatively, it could be used to transfer money or property to individuals who were otherwise unable to receive inheritances under civil law. Above all, in Justinian's day, it was used to attempt to prevent heirs from alienating land outside the family, effectively establishing a form of perpetual entail, which the Roman law prohibition on leaving property to 'unknown persons' (*incertae personae*) otherwise prohibited. The 'Roman law of trusts' appears to have been taken particular advantage of by members of the late antique aristocracy of service to advance their dynastic ambitions (see Johnston (1988) *passim* and Sarris (2006), pp. 194–5).

whether it may be as to the whole estate or to a specific part of it, or to legacies, are obliged, without fail, to implement whatever the testator who has honoured them may have instructed, provided that the instruction is lawful, and that there is no law explicitly declaring that it is to stand even should it not be implemented by the person honoured.

1. Should anyone not implement the disposition once the bequest is legally due to the person honoured, and should he drag out a whole year without doing what has been instructed, after receiving notice by court order, if on the one hand he is one of those obligatorily receiving something under the law, but has been appointed as heir to more than the law requires him to be given, he is to take only so much as the law allows him to be given as an heir's quarter-share in an intestacy, and to have all the rest expropriated.⁷ If there are in fact others also appointed as heirs, each of them is to receive an increase in proportion to the share of the inheritance assigned to him; whereas if there should be no other heir, or if there should prove to be some who have been appointed but who do not accept the bequest, then the sum expropriated is to be added to the rest of the estate, and *legatarii*, *fideicommissarii*,⁸ and slaves honoured with their freedom are to be granted licence to accept and possess it, on condition that they by all means implement the instruction. Security must, of course, first be received from them that, as far as the type of property and persons concerned allows, they will, on taking the property, deal with it in accordance with the proper wishes of the testators.⁹ Alternatively, if none of those receiving mention in the will – that is, joint heir, *legatarius*, *fideicommissarius* or slave honoured with freedom – should wish to accept, in that case the property is to pass to the others whom the law calls upon in an intestacy, after one appointed in the will but limited to the legal share, as defined in this law; these too must similarly give security for implementing the contents of the will. We intend there to be nothing irregular or confused about this process, either: the first person to be called upon is the one called first in order after the one who has now been excluded under our present law, next the one after him, and so on in turn until the last one

⁷ In event of intestacy, under the praetorian scheme of succession, those with the first claim on an estate were descendants (*liberi*) including *sui* (see note 1); followed by *legitimi* (mostly agnates, i.e. relatives in the male line from a common male ancestor); and *cognati* (blood relatives in both male and female lines of descent). See Buckland (1963), pp. 370–5 and Gardner (2011).

⁸ *Legatarii* = legatees; *fideicommissarii* = trustees.

⁹ 'Security' (Greek ἀσφάλεια) = Latin *cautio*. The *cautio ex lege Falcidia* was a security provided to the heir by legatees or trustees that they would return anything they had received beyond the terms of the law (Berger (1953), p. 384).

defaults, so leaving room for an outsider¹⁰ who is willing both to accept, and to implement the bequests. After those, we add the public treasury, should it be willing.

Now in the case of *legatarii* and *fideicommissarii* also, we intend a similar order: namely that the first to be given freedom to accept should be the *fideicommissarius* of the whole estate, or, if there is more than one, the one with the larger share, as being in a position representing that of an heir. This is especially so in our day, as we dislike and reject the tortuosities of Pegasus, and have given applicability only to the Trebellian decree in *fideicommissa* of this kind.¹¹ Should there be no-one honoured with the whole estate, or should one so honoured be unwilling to carry out the instructions, such freedom is to pass to those honoured with the larger individual *legata* or *fideicommissa*. Thus even slaves honoured with their freedom are to be given an opportunity to accept, and to be safely free to take the property and to implement the instructions, with the above-mentioned security. Should there be no *legatarius* or *fideicommissarius* of the estate as a whole, or of a specific part of it, honoured with a larger share or bequest, but all turn out to be in an equal position, then in that case, too, for the reason we have stated above, priority is still to be adjudged to the *fideicommissarii* of the whole, or to the one of them who is willing to implement the instruction; but as many of the remaining *legatarii* or *fideicommissarii* as have no advantage over each other in the bequest are, all of them or those willing, to be called upon. Should no *legatarius* or *fideicommissarius* choose to do so, we allow slaves honoured with their freedom to have precedence among each other in the order of their names as given by their owner.

2. All those provisions of our law apply to cases in which there subsists a compulsory payment to one of those to whom some succession from the decedent testator is due by nature. However, wherever there is no such person subsisting among the appointees, but the testator's generosity in disposition has been at his own discretion, then, should the person appointed not implement the instruction within the time we have specified

¹⁰ 'Outsider' (Greek ἐξωτικός) = Latin *extraneus*, an heir (*heres*) who was appointed from outside the family (Buckland (1963), p. 306).

¹¹ Justinian is here rejecting the *Senatusconsultum (SC) Pegasianum* (c. 73 AD) which had allowed heirs to keep a quarter of anything they were obliged to deliver under *fideicommissum*, preferring instead the *Senatusconsultum Trebellianum* (56 AD) which allowed for the full transmission of rights and responsibilities to a trustee or beneficiary (Berger (1953), p. 699). That is to say, with the abolition of the *SC Pegasianum* (on the 'tortuosities' of which see Gaius, *Institutes* 2. 254–9), the *fideicommissarius* was able to act in full place of the heir (*loco heredis*): see Van Der Wal (1998), p. 153 (entry 1018).

above, take note that everything bequeathed to him is to be expropriated and he is to be unable to take anything at all, either in terms of the Falcidian share or for any other cause. The same provisions are similarly to hold good, also, if there should be joint heirs: they are to be called upon, but otherwise the property is to go on to *fideicommissarii*, *legatarii*, slaves and all those entitled under intestacy, in the order prescribed by us above, in each case with the burden attached of having to implement whatever the testator has lawfully enjoined, according to what we have already said.

3. Should the institution¹² also contain a substitute *legatarius*, it is evident that in the first place the whole property will go to the substitute, if he is willing, and if he implements all the bequests in accordance with the law. Thus, if he too is unwilling, the sum expropriated will then pass to the joint heirs, *legatarii*, slaves, those called upon under intestacy, outsiders, and the public treasury, according to the procedure already stated by us, on condition of implementing the lawful dispositions of the decedents in all respects. Note that our purpose in envisaging so many successions is to avoid the decedent's inheritance remaining unaccepted.

4. We do not call upon nor admit sons who are *exheredati*,¹³ that is any justly excluded by their father with his intention that they should have nothing, even if they express their willingness any number of times, because the law's sole aim is that the decedent's instructions should be implemented. How could it be just to call upon a person, expelled by the testator himself from his own possessions, to take property of which, by *exhereditio*¹⁴ explicitly directed at him, the testator intended him to have no part? Given that we have transferred the expropriated portion from one not implementing the deceased's intention, first to substitute heirs, then to joint heirs, and after them to *legatarii* and *fideicommissarii*, and even, what is more, to slaves, and so onwards to call, as under intestacy, both outsiders and the public treasury, this has not been done irrationally or fortuitously, nor as if one had overlooked what is proper. It is done deliberately, by law, with the purpose that we should only proceed eventually to call under intestacy, and the rest, after first going through all the persons named in the dispositions, and after they have refused. In all cases where those originally appointed do not implement, and we call upon either the persons in the will or those entitled under intestacy and the rest of them, we allow all such persons to become heirs with the right of *aditio* or of *pro herede gestio* (those being the actual words of the law); they may act in all respects as

¹² 'Institution', i.e. bequest.

¹³ *Exheredati* = disinherited (see Berger (1953), pp. 462–3).

¹⁴ *Exhereditio* = disinheritance.

heirs, both as defendants and as plaintiffs.¹⁵ This is just what the most ancient laws also allowed, on their own authority: they instituted as heirs those not even appointed as heirs, nor called to the inheritance in intestacy.

All these provisions hold good even if it is not an heir by whom the testator has desired something to be given, or some action to be taken, but a *legatarius*, a *fideicommissarius* or one receiving a gift *mortis causa*.¹⁶ In the matter of the sums expropriated, the same order is to be observed, beginning with the substitute *legatarius* and ending with the public treasury.

No-one is to be discontented with this law on the ground that he is being deprived of bequests. Instead, bearing in mind that death is the end of life for all mankind, he should not just have in view what he receives from others, but should consider also that he too will be giving instructions to others at his death, and that if he does not obtain the benefit of this law, he will not carry into effect any of the dispositions he has taken every care to make. We are legislating not just for our own subjects, or for the people of this age, but also for the whole course of time still to come.

2

Next to occur to us was a desire to take the Falcidian law into consideration. Even against the testators' will, should they have expended all their property by way of legacies, this law allows the retention for the heirs of as much as constitutes their quarter-share of the estate. Here, despite its being based on the law that commands this, there appears to be a conflict with the deceased's intention. We decree, therefore (as we must at all points hold to the intention of those deceased), that the heirs, should they wish to enjoy the benefit of this provision, must keep the law's authority untainted, and not, by means of some conceivable concealment or fraud, try to bring in the Falcidian law despite its perhaps not having been applicable without such fraud on their part.

1. Therefore, if an heir is afraid that after debts and legacies he may eventually not have his Falcidian share, he is to have an *inventarium*

¹⁵ *Aditio hereditatis*: an heir's acceptance of the inheritance, which in Justinianic law could take the form of an informal declaration of intent (*aditio nuda voluntate*) (see *Digest* 29.2 and *Codex* 6.30). *Pro herede gestio*: acting intentionally as an heir, so as to signify by one's actions an effective *aditio hereditatis* unless the person concerned made a witnessed statement (*testatio*) to the contrary (Berger (1953), pp. 349 and 652).

¹⁶ 'A gift *mortis causa*' = a gift made on the assumption the donor would pre-decease the donee (Berger (1953), p. 443).

made.¹⁷ This is to be in the manner, and within the period, that we recently laid down when we were exempting people from loss to their own property as a result of accepting bequests, by limiting their burden to the amount of the property bequeathed. The sole addition to that is that such an heir, who is apprehensive about legatees as well as creditors, and is afraid not just of suffering loss but of not making any gain, must assemble all the *legatarii* and *fideicommissarii* who happen to reside in the same city, or someone to act for them, in the possible case that the persons' sex, rank, quality, age, or any other compelling reason does not allow them the opportunity to be present at the *inventarium*. If some are absent, no fewer than three trustworthy property-owners from the city itself, of good repute – as far as this purpose goes, we do not trust *tabularii* on their own – are to be present as witnesses, and the *inventarium* should be made under their supervision.¹⁸

Thus, if the legatees come back and lodge a complaint that something has perhaps been abstracted from the property, or has not been revealed, there will be freedom to investigate the matter – not just by putting the slaves to the torture (that is something we also allow under our recent guidance on the procedure for putting slaves under torture), but also under oath from the heir, and from the witnesses saying on oath that they were present at the proceedings, observed what then took place, and know of no fraud on the part of the heir – and so to discover the truth about the effects left by the testator.¹⁹ There is an exception: should it happen that some or all of the available *legatarii* refuse to come and attend at the *inventarium* when formal notice is delivered to them, the heir will then

¹⁷ In a significant innovation, Justinian is here granting the *beneficium inventarii*: the right of an heir to call for an inventory of property (*inventarium*) contained in the inheritance. By having this inventory produced, he protected his right to one-quarter of the estate, with creditors, legatees and the beneficiaries of trusts only having a claim to a maximum of three-quarters. Failure to call an inventory, however, within thirty days of his institution potentially jeopardised the heir's 'Falcidian' share.

¹⁸ For Justinian's suspicions of notaries (*tabularii*) and determination to authenticate documents drafted by them more effectively, see *J. Novs.* 44 and 47. Notarial fraud in the Syrian city of Emesa is described by the sixth-century historian Procopius (*Anecdota* 28. 1–15). A possible papyrological example of an extract from such an inventory is to be found in *P.Oxy* XVI 1925. This document lists the contents of a suburban villa belonging to the Apion family (a great landowning family from Middle Egypt with an estate centre in the city of Oxyrhynchus). *P.Oxy.* XVI 1829 records discussion of the arrangements contained in the will of a deceased member of the same family. For an emended version of the text of this document, see Palme (1998).

¹⁹ Slaves questioned for purposes of legal testimony were usually subject to torture (*quaestio per tormenta*). Here, as elsewhere in the law, Justinian refers to slaves by the Greek word οἰκέται rather than the more usual δοῦλοι, perhaps indicating that they are 'household' slaves rather than 'field slaves' (see Harper (2011), p. 515).

have licence to be satisfied with the presence of the witnesses, and to make the list even in the absence of the *legatarii*. In those circumstances also, the *legatarii* have a right reserved to them of putting the heir under oath and the slaves under torture. When all these procedures have been observed, he does have the benefit of the Falcidian. In this way we shall not be giving the impression either of derogating from a law hitherto in such high repute, or of wronging the deceased. If he wishes there to be people to inherit from him whatever happens, and to have some compensation from their succession to him, but also believes he has a sufficient estate when the truth of the matter shows that this is not so, it will evidently be a clearing-up of a mistake on the part of the departed, not opposition to his wishes at all.

2. However, should the heir not make an *inventarium* in the form we have stated above, he will not retain his Falcidian share, but will pay the *legatarii* and *fideicommissarii* in full, even if the payment of the *legata*²⁰ overtops the amount of the deceased's unencumbered fortune. In saying this we are not derogating from our previously made law to the effect that heirs are not to suffer any loss to their own property for the benefit of the creditors; this is because he will be paying them a penalty as reparation for his own wrong-doing in contravening the law, when it was open to him to take the precaution of following the whole procedure and so to avoid any loss, but on the contrary to gain under the Falcidian law.

Now, that is what we say in the case where a testator's action is due to his having made an error over the size of his own fortune, or perhaps to his having made too small a disposition when he should have left his heir a larger amount. After all, that too is the outcome of a mistaken idea, not of a clear and precise injunction. However, should he explicitly enjoin that he does not wish his heir to retain his Falcidian share, the testator's intention must prevail, and the heir must either voluntarily comply with the testator (whose bequests may well be, in fact, both just and pious) and, without thinking of such an inheritance as being unprofitable, take his gain as being not in receiving, but merely in acting with due piety; or else, should he not wish to comply, he must withdraw from such an appointment and leave room, as we have already stated earlier, for substitute heirs, co-heirs, *legatarii*, *fideicommissarii*, slaves, those entitled under intestacy, and the rest, following the route devised by us above for such cases.²¹

²⁰ *Legata* = legacies (see note 1).

²¹ Here one arguably sees Justinian's concern for the intentions of the testator undermining the basis of the inherited law: it would not hitherto have been possible for a testator to expressly prevent heirs from taking the quarter-share. The result is likely to have been more *extranei* refusing to act as heirs and greater ultimate forfeiture of the role (and thus

3

We shall not be giving licence to an heir with accurate knowledge of the amount of the property to begin by paying some of the legacies in full, in complete compliance with the testator's intention (as our predecessors' constitutions also state), but with the desire to withhold something from others; nor to implement the testator's intention in part, but to detract from it in part. Instead, one who has made no mistake at all about the size of the property, but is aware of it, and who has begun by following the testator's intention, must continue to follow it throughout, without changing his mind for the worse; that would not be pure compliance. And we shall certainly not permit them, after originally making incautious payments despite full knowledge, subsequently to harass the recipients with the intention of recovering whatever they happen to have paid out. Action must be preceded by reflection, and only then carried out; correct action must not later be changed into non-compliance. Only exceptionally, from an unexpected development that detracts from the estate and gives ground for recovery, a just cause might arise to make this admissible.²²

4

Another care that we have taken is for the time taken on such inquiries not to be long. We decree that no such inquiries or suits should exceed one year's duration, and we impose a binding duty to pay legacies, to implement the testator's dispositions of each type appropriately, and to do all that we said above, within one year at most from accepting the inheritance. As the beginning of that year, as we have stated above, we assign the issuing of the court order. Once a year has elapsed through the fault of the heir, he

of the estate) by the state under the procedures for *bona vacantia* (on which see *Codex* 10.10). This appears to be alluded to in the *Secret History* of Procopius, where the author attacks Justinian for 'by his own arbitrary act making himself the heir of deceased persons' (*Anecdota* 19.11). This squeezing of the 'Falcidian share' would presumably have facilitated larger donations to the church and other charitable organisations of which Justinian approved (for which see also *Codex* 1.3.48.7 dating from 531). For Justinian's inclination to support such dispositions, see Johnston (1988), p. 242 and Procopius, *Anecdota* 13.6, where the author attacks the emperor's propensity to try to build up ecclesiastical landholdings. This provision of the law with respect to exclusion of wills from the system of the *lex Falcidia* is recorded to have been put into effect in a will that survives papyrologically from Egypt (*P. Bodl.* I 47). Revealingly, the arrangement set out in that document records that the Falcidian share was to be squeezed to the benefit of a charitable foundation (see discussion in Nowak (2015), pp. 171–2).

²² See *Codex* 6.30.22.8.

will then drop out of the bequests, and the others whom we have called upon above will come into them.

1. Those below the age of puberty, or minors, are not put in any prejudicial position by this law of ours. Should they have been injured in any way for the reasons we have stated, they have a double recourse: both by way of restitution, and by way of their guardians' negligence.²³ Nor do we except successions by patrons from this law: in that respect also, as long as the legal share that we have determined for them is safeguarded, should anything beyond that be left to them and they are asked by the freedmen to implement something, we decree that if they should be unwilling, the arrangement that we stated at the beginning of this divine constitution of ours should be in force, namely that their lawful share should remain with them unencumbered by claims of this kind, but the rest should go by the route now opened by us for such cases. This is especially so in that, precisely in the constitution laid down by us concerning inheritance by patrons, we have appointed virtually the same successions from freedmen as from the free-born.

2. As there are two types of wills – either recorded in a written direction, or by unwritten intention – we decree that all these provisions are equally in force, and equally to be observed, in the case of unwritten wills also, and of any dying wish; and of any person, whether private citizen, service person, priest, Palace official or any other whatsoever. We are laying down this law for all people in common.

Conclusion

We have drawn up these provisions for the common profit of all people, with the purpose that the living may enjoy what has been bequeathed them, and the dying may depart in contentment at the knowledge that the law will be of service to them even as they lie buried, and that it will bring their dispositions into effect whatever they may be.

1. Thus, since the benefit of this is common to all people, announcements will be made, here, by your excellency reporting to all the force of this law, and will also be sent abroad, among what are now all the provinces under Roman rule, both those that have previously been so and those that have now by us, under God, been added to it. On receipt of them, the

²³ The law is here protecting those under the age of twenty-five. The *restitutio in integrum* ('restoration to original condition') was a so-called 'praetorian remedy' to which litigants could appeal to have a transaction nullified (see Buckland (1963), p. 719).

authorities of the metropolitan cities will,²⁴ in accordance with legislation already laid down by us, forward it to each city, and no-one shall remain unaware of a law that allows no life to be lived in poverty, nor any death to be in despair.

Given at Constantinople, January 1st, consulship of the Most Distinguished Belisarius,²⁵ indiction 13²⁶

535

²⁴ 'Metropolitan cities' = the capital cities of the various provinces.

²⁵ Belisarius was Justinian's greatest general, responsible for the emperor's initial campaigns against the Persians, the reconquest of Africa, and the opening stages of the Italian campaign, which the emperor would soon launch (see Maraval (2016), p. 229). In 562, however, two members of Belisarius' staff would be implicated in a plot to assassinate the emperor and the emperor's erstwhile favourite was placed under house arrest. At the time this law was issued, Belisarius held the office of *consul* (on which see *J. Nov.* 105 note 1), which he was awarded as a token of the emperor's gratitude for his leadership of the African campaign. For full details, see *PLREIIIA*, pp. 181–224 (Fl. Belisarius 1).

²⁶ The indiction was a fifteen-year fiscal cycle (see Van Der Wal (1998), p. 192). This law was thus issued in the thirteenth year of the current indiction. For the origins of the indiction, see Chouquer (2014), p. 311.

2 | Remarried women to have no right of preference, and other heads¹ (*Constitution occasioned by one Gregoria*)²

*The same Sovereign to the Most Illustrious Hermogenes, magister of the sacred officia, ex-consul, patrician*³

¹ The heading in the *Authenticum* is more detailed ('Concerning the Rule Prohibiting Women Who Have Married a Second Time From Making a Selection <From Amongst Their Children>; And Concerning the Alienation and Profit From Ante-Nuptial Donation; And Concerning the Successions from Themselves to Their Children'). The general subject matter is the legal implications that arose by virtue of the re-marriage of widows and the status of any ante-nuptial gift they had received from their deceased husband. Re-marriage was entirely legitimate in Roman law, and the re-marriage of widowers considered perfectly standard. In this law, whilst firmly asserting the legal parity of husbands and wives with regard to their respective claims to dowries and pre-nuptial gifts, Justinian suggests that it is morally preferable for widows to remain unmarried. That having been said, the constitution conforms to the general pattern of Justinianic law in terms of protecting the rights of women: see Beaucamp (1990), especially pp. 225–9, 231 and 234. Compared to many other legal systems, the Roman law of marriage had relatively limited implications for property relations between the contracting parties, and a strict regime of separation of the spouses' property was preserved (Johnston (1999), p.34). The two exceptions, to which this law relates, were the *dos* or dowry (on which see Treggiari (1991), pp. 323–64) and *donatio propter nuptias* or ante-nuptial gift. The former consisted of property or some other contribution that was given to the husband by the wife or her family and which effectively comprised the wife's contribution to the matrimonial home (Borkowski (2015), p. 131). The latter comprised a gift made by the husband to the wife prior to their marriage, the purpose of which was normally 'to ensure provision for the wife in the event of the husband predeceasing her' (ibid., p. 134). In late Roman and Justinianic law the *donatio* was 'elevated from a customary practice into an important legal institution subject to many of the rules applicable to dowry' (ibid., p. 134). One of the most significant innovations with respect to the *donatio* evident from the present novel is that Justinian confirmed that it could be made even after the couple had been married. All other gifts within marriage were prohibited 'so as to prevent large capital settlements being made from one side of the family to the other' (Johnston (1999), p. 34; see also *Digest* 24.1). Roman law was thus concerned to prevent marriage from destabilising the patrimonies of families that found themselves conjoined through matrimonial alliances.

² This constitution provides an interesting example of a law issued in response to a case brought before the emperor by way of petition, and which, as a result, preserves elements of the form of the original petition itself (see discussion in the Introduction). Nothing is known of the lady Gregoria beyond this novel: see Feissel (2004).

³ On the *magister officiorum* Hermogenes and his career, see *PLREIIIA*, pp. 590–3 (Hermogenes 1). *Officia* = offices. The 'Master of Offices' was an extraordinarily powerful figure in the empire, charged with supervision of both the Palace and most of the palatine bureaux. He was, in effect, 'the head of the empire's central administration' (Haldon (2005), p. 41).

Preamble

Those who have preceded us as Roman legislators have been given cause for legislation, according to circumstances, by the diversity of matters arising; and we too, in our reduction to order of the whole legislative side of the realm, have sometimes based our virtually complete revision on matters submitted to us by petitioners, and sometimes on judicial proceedings.⁴ These have in fact been the source of many of the laws we have enacted for our subjects; and something of that kind has now arisen, which has prompted us to this law.

1. The suppliant Gregoria has said that she had been married previously, and had two children, one male and one female. She had lost her consort, and she thought that, through long experience of kindness from her son, she should not leave him unrewarded, nor leave him without the honour due to him. For that reason, despite the fact that she had not yet contracted a second marriage, she has resigned her pre-nuptial gift, and has given it to her son. He, however, did not remain alive, but departed this world before his mother had formed the wish to enter on a second marriage.

Now both ancient law, and our own, called both of them, mother and daughter, to the young man's succession. If the mother were still in her first marriage, there would have been no problem; however, she is eager for a second husband. She has the whole use of the pre-nuptial gift, as the condition on which it had been given was that the use should remain with her, but the ownership⁵ should become her son's. However, the daughter is threatening to claim entire ownership, not inasmuch as inheriting it from her brother, but inasmuch as her father gave it to her mother; she says that her mother, on contracting a second marriage, has no right, on any argument at all, to retain ownership of the gift. Against this, her mother claims that this is no longer simply a pre-nuptial gift, but is now combined with her son's property; and that the ownership, as well as use, of six *unciae*⁶ of his estate belongs to her, as being an inheritance, no longer a gift.

Nor is it just this that is in controversy: the daughter is also contending against her over the inheritance itself. Whereas the mother claims to inherit at the rate of the half-share (on the basis that we call her to her son's inheritance, and that the deceased son has one sister, called along

⁴ Justinian here deploys the trope of new legislation being required by changing circumstances and the imperial obligation to impose order on disorder (see Introduction and discussion in Lanata (1984a), pp. 56–7).

⁵ 'Ownership' = *dominium*.

⁶ Six *unciae* = one-half (or six-twelfths). See Berger (1953), p. 750. The estate, the mother contends, was simply to be split equally between herself and her daughter.

with her), the daughter very insistently urges that she has her brother's inheritance, on the basis of previous legislation.⁷ She argues that her mother would be justified in claiming her son's inheritance if she did not contract a second marriage, but once she has gone over to a second husband she forfeits everything that belonged to her son from his father's estate. Thus, if the son had died after the second marriage, the daughter claims that she herself would have become mistress⁸ of his estate, from whatever source he had acquired it, that being the intention of both the constitutions that decide matters of this kind. The mother insists that those constitutions are extremely cruel, and unworthy of these humane times of ours. Apart from that, she makes use of the constitution enacted by us, saying that no distinctions are made in that by the original constitutions, and that it is not the case that it calls mothers who have not yet taken a second husband, together with their children, while no longer doing so once they have contracted a second marriage. Further, she says that, underlying this, there is something out of keeping; she was showing her son favour in virtue of her right of preference,⁹ and thought that in this way she had received a return gift, rather than just making an unaccountable gain.

After lengthy examination of this, and consideration of the whole question of such rights of preference, and inheritances, we have decided that we must lay down a general law on these matters, by which the present question also receives a conclusion.

1

Accordingly, we have resolved not to leave this matter of rights of preference confused or undecided, but to regulate the matter on the following lines: that once the mother has entered into a second marriage, ownership of the pre-nuptial gift immediately accrues to all her children, and the

⁷ The laws in dispute are *Codex* 6.56.5 and 6.56.7 (the latter a Justinianic law of 528).

⁸ 'Mistress' (Greek κυρία, Latin *domina*) = the owner of a property, as opposed to someone who merely has possession of it or a right of usufruct (see Berger (1953), p. 442).

⁹ *Codex* 5.9.5, permitting a mother to choose to which of her children to give her ante-nuptial gift (*ius electionis*). This law, along with *Codex* 5.9.3, is effectively repealed by the present constitution and *J. Nov.* 22. It had already been abolished in the West in the fifth century in a novel of the Emperor Majorian (*Nov. Maj.* 6, dating from 458: see Van Der Wal (1998), p. 85 (entry 615) and note 89). By virtue of Justinian's reform, a woman who re-married, or who granted to a child her *donatio ante nuptias* but then inherited upon the death of that child, only retained or received the usufruct or use of the *donatio* rather than ownership. Likewise, upon re-marriage, she could only claim a right of use (*ibid.*, pp. 80 and 87).

mother has no licence to show preference to some of her children and dishonour others, because by her second marriage she has injured all of them alike. Thus in the present case, also, ownership of the pre-nuptial gift shall pass wholly to the daughter, with the use kept for the mother in her lifetime. If the mother predeceases, the whole of the pre-nuptial gift is, under our constitution, legally due to the daughter; if the daughter predeceases, the mother's gain by the agreement in the case of childlessness remains with her, but the rest belongs to the daughter, who at her death transmits it to her heirs, should there be any called by law.

2

We are also laying down by this law, as a valuable augmentation and addition, something that does always take place, but has not yet been specifically determined by law. If perhaps a mother, while still uninvolved in a second marriage, gives a share of her pre-nuptial gift, or any item from it, or indeed all of it, or perhaps alienates it in any other way, not to a child but to some outsider,¹⁰ and then goes to live with a second husband, it is clear that by the subsequent second marriage the act of alienation will be cancelled; yet not unconditionally: all aspects of both the alienation and the cancellation shall remain in suspense. This is because if the children should remain alive, what has been done shall be overturned entirely, as the law bestows ownership of the gift given before marriage on the children, without regard to any action the wife may have taken to her children's detriment. However, if they should all predecease their mother, the transaction will still hold good, not in respect of the entire inheritance but just to the extent of the agreement in the case of childlessness, just as we first introduced and legislated recently when laying down the law on this matter. In respect of one part, the transaction will hold good; in respect of another, it will be declared invalid. That is, it will be valid in respect of what remains with the mother under the agreement in the case of childlessness, but invalid in respect of what is transmitted to her child's successors. Thus, if the mother is found to be her son's sole successor, it will again be the whole that is valid.

1. The penalties on those who remarry are common to both husband and wife: the man entering on a second marriage will jeopardise the dowry, while the woman jeopardises the gift given before or in respect of marriage.

¹⁰ 'Outsider' = legal Latin *extraneus*, i.e. somebody from outside the family; a non-relative (Berger (1953), p. 466).

This law is to be laid down with reference to each person, and also to all three points: right of preference, alienation and gain.

3

It remains, therefore, to consider the subject of the children's inheritances, on which there is also a controversy in the present case. We have thought it necessary both to arbitrate the present issue, and to give a decision for issues that will be raised in future, by means of a general law.

We decree that should the child, be it male or female, have made a will, other property that has come to the children after the pre-nuptial gift should, under the law, go to those who have been appointed as heirs. Here, there is nothing to prevent the mother from being appointed as her child's heir. Moreover, the rights given her even against the will, should her child have passed her by, or disinherited her unreasonably, are safeguarded. If, however, the child should die intestate, his share, should he have children of his own, goes to his children; should he have no children of his own, and the call to inherit belongs to his siblings, then in accordance with our enactment the mother comes into the inheritance together with the siblings, and is secure in possession of it whether or not she has become a partner in a second marriage. This is because we are not going to increase the severity of the penalties against women taking up with a second husband, nor, consequently, to put them under such severe duress, unworthy of our times, that for fear of a chaste marriage (albeit a second one) they would shun that, and resort to illicit relationships, perhaps even to seduction of slaves, behaving immorally and illegally because they cannot behave chastely within the law.

We therefore wish to end the validity of the constitution, laid down in the fifth book of the Code in the name of our Piety, determining the matter of the inheritances of children whose mothers, in second marriages, have seen them predecease her; and also of that entitled 'the Tertullian', in the sixth book of the same work, which deals with women in second marriages who have lost their children before that second union.¹¹ Instead, the mother is in any case to be called to her child's inheritance, together with the siblings, and to possess it securely, with no detriment arising from her second marriage. This is to apply also in the present proceedings, which

¹¹ See note 9: the novel here refers to *Codex* 5.9.5 and the *SC Tertullianum* (from the reign of Hadrian) concerning the rights of a mother to succeed to her children on intestacy, as revised by Justinian in *Codex* 6.56, *Institutes* 3.3 and *Digest* 38.17. See Berger (1953), p. 699, Buckland (1963), pp. 355–7 and Gardner (1986), pp. 196–8.

have given rise to this law: the mother is to receive the inheritance, together with her daughter. Moreover, having inherited it, she is to possess it inalienably, with no detriment arising from the prospect of her second marriage: she is to be joint mistress with her daughter, absolutely. It would be a fine, laudable thing, and one devoutly to be wished, that women should have dispositions of such purity that, once married, they would keep their deceased husband's bed undefiled; such a woman we both admire and praise, putting her not far from the state of virginity. However, should she not have that strength (it is, after all, not unreasonable for that to be a woman's situation, especially when she is young), and be unable to resist the urgings of nature, she is not to be punished for that, nor barred from the laws that are common to all. Let her enter honourably on marriage with another husband, refrain from all immorality, and enjoy her succession from her children. In this way she will love them the more, and not see them as among her enemies, as a result of being subject to such severe penalties.

We do not deprive fathers of succession to their children, should they enter into a second marriage, and there is no law to any such effect; thus, we shall not exclude mothers, either, from succession to their children should the mothers go on to a second husband, whether the children should die before the second marriage or after it. Otherwise, as a result of the law's absurdity, if all the children predecease without children or grandchildren, the penalty will await her all the same; their mother will not succeed them even if they should all die childless, but will be inhumanely disbarred from succession to them. Her birthpangs will have been in vain, her nurture will have been in vain, and she will be subject to penalties consequent on her perfectly legal marriage; some more distant relatives will be their successors, and the mother will be unreasonably evicted. Consequently, she too is to be her children's successor, and this law is to be a generous, compassionate reconciliation of mothers to their children.

Summing up this section of the law, we decree that just as we have put the mother on an equal footing with the father, as was said above, so she too is to be liable to the same penalties over the pre-nuptial gift as the father is over the dowry; but that father and mother alike are to come into the inheritance from their children unequivocally, subject to the proceedings applicable to each individual case. Thus what fathers have, whether or not they enter into second marriages, is what the mothers are to have; and the mother is to be called to inheritance from her child should she have already contracted a second marriage, or should she enter one subsequently.

1. Even inasmuch as she is her child's heir, she is not, after having entered a second marital relationship, to have the benefit of the pre-nuptial gift: that is to be solely her children's asset, conferred on them by the law. It is to be regarded, not as part of her child's inheritance, but as not losing its character as the pre-nuptial gift. It is appropriate that this should also hold good in the case of women, now widows, who have succeeded from their own children, while they have not yet entered a second marriage, and even should they do so in future.

That, then, is how things stand on these matters; it is to have been laid down as law for all time.

4

On the subject of re-married women and the pre-nuptial gift there is another point that we have thought it well to add to the above. Previous constitutions have allowed the wife in a second marriage the right of preference as to whether she wishes to take the gift given before marriage, insofar as the agreement allows, and give her children security for returning it to them at her death; or (if she is unable to give that security, or perhaps unwilling to do so) to let the capital of the pre-nuptial gift remain with her children, while they pay her one-third of 1 per cent interest on it.¹² On the basis of the various proceedings that have been arising, we have observed that minors are endangered over this; when the gift before marriage was in money, and they do not have cash, they have been compelled to sell all they have inherited from their father in order to clear their debt in respect of the pre-nuptial gift, even though by law the gift given before marriage is going to come to them.¹³ For this reason, we have thought it necessary to lay down the following ordinance on this matter.

If what is conferred by way of pre-nuptial gift should be property, in the case of its being all immovable, use of it is to remain with the mother; she is to exercise that as her preference, not decline it, nor make demands on her children for interest on its value. Instead, she is to take good care of it, as the law requires of those with a right of use, and keep it safe for her children

¹² 'One-third of 1 per cent', i.e. per month = 4 per cent per annum; 'security' (Greek ἀσφάλεια) = a security or surety or bond (Latin *cautio*: see Berger (1953), p. 384 and *Codex* 6.38.3). For rates of interest, see Gofas (2002), p. 1095.

¹³ For the economic and financial difficulties caused by the need to repay like with like (especially in an economy characterized by periodic shortages of coinage), and Justinian's attempts to resolve them, see Lucks (1991).

in their lifetimes, according to the ancient laws. Alternatively, should they all be dead, by our law the mother's contingent portion in the case of childlessness is secured to her, and the rest to the children's heirs. In any case of the pre-nuptial gift's being in fact wholly in money, or in other movable property, the mother would take her interest of one-third <of 1 per cent>, under the already-enacted security, but not demand payment in cash from her children. Exceptionally, should her husband's means be abundant, and include gold, silver, clothing and anything else assigned in writing to the mother, we shall then give the mother the right of preference as to whether she wishes to take the property and give security, or to receive the stated interest, in accordance with both previous laws and our own.¹⁴ In the case of the property's being mixed, with the gift comprising part in money and part in immovable property, the immovable parts are in any case to remain with the mother, those being her source of livelihood; while as to the movables, the same is to apply as we enacted above in the case that the entire constituents of the gift given before marriage were actually in movables.

5

Now there is another matter also, only obscurely enacted in previous laws and seldom examined in court, that we thought we should embody in a clear law and hand down for use, passing it to the courts as a resource for the general benefit. It is as follows.

If certain persons should ally themselves to each other under contracts of dowry and pre-nuptial gift, on terms that* the husband should contribute a pre-nuptial gift, and the wife should in addition bring in a dowry (providing it either herself, or from the gift of her father or someone who is an outsider¹⁵), should it then prove that her dowry has remained unpaid to her consort throughout the period of their marriage, while he has sustained the marriage's burdens, it would not then be at all just, on the marriage's dissolution by the husband's death, for the wife to receive the pre-nuptial gift without having given her consort the dowry. Also, should she not have paid it in full, she is only to demand the same proportion of the gift as she has given of the dowry.

* Conjecturing ἔφ' ᾧ for εἶτα [S/K, p. 17, line 12].

¹⁴ Note the assumption that most estates primarily consist of immovable (i.e. landed) wealth. Justinian is here abolishing the right of the woman to acquire possession of movable wealth in return for security as set out in *Codex* 5.9.6 c. 5–8 except for where her husband is very wealthy (Van Der Wal (1998), p. 85, note 90).

¹⁵ 'Outsider' = *extraneus*. See note 10.

We are lovers of equity and justice, and wish that to prevail in all affairs, especially marriage-partnerships. Thus she who has contributed nothing at all is to receive nothing at all, and she who has contributed less than she agreed is to receive back only as much as she contributed. This is to be another valuable amplification of the present law, which decides many of the matters that are constantly in controversy, but have only just now been brought under legislation. We wish this law to be valid both in the case which gave it its origin and in those now pending in the courts, and also in all cases that shall occur in the future.

Conclusion

Your excellency is to take pains to put these decisions of ours into practical effect, and to make them public to all by means of his own proclamations, so that they will be in force and become public to everyone in all the cities in which our governance holds sway, in accordance with our instruction.

Given at Constantinople, March 16th, consulship of the Most Distinguished Belisarius

535

3 | **Clergy numbers to be limited in the most holy Great Church and the other most holy churches of this all-fortunate city¹**

The same Sovereign to Epiphanius, archbishop of this sovereign city, ecumenical patriarch²

Preamble

By a common, general law laid down for your beatitude and for the other most holy patriarchs,³ we have already made such dispositions as seemed to us valuable, appropriate and in keeping with the sacred canons, about the appointments of holy bishops and most reverend clerics, and also of women as deaconesses, including the point that those appointed should

¹ By the sixth century the Church had become a major landowner and property-owner within the empire, enriched by both imperial and lay donations. The revenues generated by these endowments were placed under episcopal and patriarchal supervision and were used to fund charitable purposes (such as poor relief, hospitals and orphanages) and also to pay the attendant clergy. The arrangements varied to some extent from region to region, but it is clear with respect to the churches that formed part of the endowment of the Patriarchate of Constantinople (also referred to as 'The Great Church of Christ'), that the members of the various grades of clergy were assigned fixed stipends rather than a proportionate share of the revenues as a whole (which was more common in Rome and the West). This meant that excessive expansion in the numbers of the clergy could cause the Church financial difficulties, and it is this situation that Justinian addresses here by seeking to limit clerical numbers (see Jones (1964), pp. 902–3). For episcopal supervision of Church revenues, see also Rapp (2005), pp. 215–35. This situation continued to cause problems for the Patriarchate into the seventh century, when Heraclius was obliged to legislate on clergy fleeing the Persian conquest of Roman territory in the Near East attaching themselves to the Church in Constantinople (Heraclius, *Novel 2*).

² Epiphanius was Patriarch of Constantinople (520–535). The Patriarch of Constantinople was one of the five patriarchs of the imperial (or 'ecumenical') Church amongst whom authority was divided (the others being the patriarchs or bishops of Antioch, Alexandria, Jerusalem and Rome). At the Council of Chalcedon in 451, it had been formally acknowledged that the Bishop of Rome, as heir to St Peter, possessed a primacy of honour amongst the patriarchs, who were all otherwise equal (he was *primus inter pares* or 'first amongst equals'). At the same Council it was also confirmed that the Patriarch of Constantinople was also equal to the others, in spite of the fact that Constantinople alone of the patriarchates was not an apostolic foundation. The usage of the title 'ecumenical' by the Patriarch was contested by the bishops of Rome, especially under the pontificate of Pope Gregory the Great (590–604). See Markus (1997), pp. 83–96 and Sotinel (2005).

³ A reference to *J. Nov. 6*.

not exceed the original number.⁴ The present law is one that we are laying down for your beatitude personally, with instructions on the number of most reverend clerics here.

Nothing excessive, one may say, is good.⁵ Correspondingly, it would be appropriate that appointments among most reverend clerics or most reverend deaconesses should not be so numerous that, by the expense of supporting them, the most holy church falls into indebtedness for large loans, and is gradually reduced to extreme poverty. We know that from such a cause the most holy great church of this sovereign city, the mother of our realm, is troubled by large debts, and is unable to make every distribution to its most reverend clergy without borrowing a considerable amount of money, by taking out hypothecs and giving securities on its very fine properties, both estate and suburban.

For these reasons we resolved to undertake a judicial enquiry into the matter, and to find out, first, what the original situation was and, second, what the passage of time has devised. Investigating it from every angle, we find that each of those who have built most holy churches in this fortunate city has taken care not only over building, but also over provision of adequate means of support for the holy houses they have founded, and over determining for each church an appropriate number of presbyters, deacons (male and female) and sub-deacons, and, again, of cantors, readers and janitors.⁶ Additionally, each has determined the house's expenditure, and endowed it with its own revenue, sufficient for his establishment, but not capable of being subsequently extended to any larger numbers that might be added.

Such arrangements have continued to be observed over a long time; and while that has been so, the possessions of the most holy churches have remained sufficient for their own people. However, the most God-beloved bishops, by repeatedly paying heed to certain people's importunities, have become extravagant over the number of persons being appointed, and expenditure has grown to a seriously excessive level. There are money-lenders and interest-payments on every side; and finally not even money-lenders any more, because by now credit is unavailable for this. Instead, there are forced, illegal alienations and improper transactions, unworthy

⁴ On male clerical appointments see Rapp (2005), pp. 141–7. On deaconesses, see Clark (1993), pp. 54–5: 'this was the highest official status which the Church offered women, since it accepted the cultural assumption that women were not suited to positions of authority, or capable of giving instruction except to other women.'

⁵ 'Nothing excessive' = the Delphic μηδὲν ἄγαν.

⁶ 'Janitors' = akin to sextons.

even of a respectable private household.⁷ As a result of such misconduct, neither the estate properties nor the suburban ones are sufficient to provide for the hypothecs and the securities; and, for that reason, there are no lenders available. A complete state of destitution has been reached, with inability even to provide subsistence for the ministrants; it has come down to the most wretched route of all, that of surrendering all they own to the creditors.

We can hardly bring ourselves even to speak about this; and we are making provision to prevent its happening. Given that one would not meekly tolerate a person spending beyond his existing means, how should we not also have to give particular consideration to this situation? What we have to find is not extra acquisitions to meet the expenditure (because that leads simultaneously to both greed and impiety), but a way to match expenditure to means. We shall therefore legislate appropriately on this also, and do away with profligacy by subjecting the matter to a specific remedy.

1

Accordingly, we decree that those hitherto in the same most holy great church and all the other holy houses – that is, their most reverend clerics, their deaconesses and their janitors – are to remain in their present position, as this legislation of ours is not cutting down the existing state of things, but making provision for the future. From now on, however, no appointment of most reverend clergy is to be made until the number has been reduced to the original total established by the builders of the most holy churches.

However, a limit had been imposed in the past even on the most reverend clergy of the most holy great church of our sovereign city, and it was a very restricted one, as there was only the one most holy great church. Later, however, the venerable house of the holy, glorious virgin Mary, Mother of God, was built by Verina of pious destiny, sited close by the most holy great church; the august house of the holy martyr Theodore was consecrated by Sphorakios of glorious memory; and the venerable house of holy Eirene was also attached to the most holy great church.⁸ This

⁷ The alienation of Church land was prohibited, and Justinian would make concerted efforts to maintain the integrity of ecclesiastical estates (see *J. Nov.* 7). He was criticised by Procopius for favouring the Church in land disputes (see Procopius, *Anecdota* 13.4–7). On the inalienable character of Church property, see Stolte (2007) and *Codex* 1.2.14.

⁸ The emperor is here alluding to three foundations in the near vicinity of the Patriarchal cathedral church of Hagia Sophia: the Church of the Theotokos in Chalkoprateria (which Justinian attributes to the wife of the Emperor Leo I, who reigned from 457–474); the

being so, it is an impossibility for the number to be confined to its original level. An establishment of only a small number would be insufficient for so many churches, as not one of those three houses has its own particular clerics: they are shared between the most holy great church and themselves, and they all do the rounds of them, holding the services in them on a periodic rota. There is also the special point that, by the grace of our great God and Saviour Jesus Christ, and thanks to our own exertions and exhortations, a large additional number of former heretics has been added to the most holy great church.⁹ Accordingly, for the pious conduct of the liturgy, double the original number of ministrants must be appointed.

1. We thus decree that in the most holy great church there are to be not more than sixty presbyters, one hundred deacons, forty deaconesses, ninety sub-deacons, one hundred and ten readers and twenty-five cantors, so that the total number of the most reverend clerics of the most holy great church comprises four hundred and twenty-five persons with, in addition, one hundred of those called 'janitors'. That, then, is to be the number of clergy for the most holy great church of this fortunate city of ours, and for the three holy houses united with it. No present member is to be dismissed, even if the number should greatly exceed that determined by us; but no-one is to be added in future, in each existing rank, until its number has been confined to that limit.

2

An additional point is that, whereas hitherto a number of most reverend clerics have disdained to remain in the churches to which they have been appointed, either here or abroad, but have joined the most holy great church and its holy clergy, through some act of patronage, this improper practice is no longer to be in use; we absolutely forbid it to take place in future. Given that in the case of holy monasteries we forbid migration from one monastery to another, we shall a fortiori not permit this to our most reverend clergy, either; we take the view that the desire to do so has the

Church of St Theodore (built by the *consul* of 452 Flavius Sporacius or Sphoracius, in gratitude for having escaped a fire); and that of St Eirene (which survives). See Mango (1985), pp. 33–5 and 52, Bassett (2004), pp. 322–3, Croke (2005), pp. 61–3 and 78–9, *PLREII*, pp. 1156 (Aelia Verina) and 1026–7 (Fl. Sporacius 3).

⁹ Possibly a reference to the confiscation of properties and churches belonging to Arians in Constantinople and the Eastern Empire, on which see Procopius, *Anecdota* 11.14–20.

mark of profit-making, and commerce.¹⁰ However, if at any time your beatitude, or the Sovereignty at the time, should decide on such a transfer, it is not to take place except when the level has been confined to the number we have stated, so that the transfer is into a post that has been left vacant. In absolutely no case is anyone supernumerary to join; we do not permit that to occur by any means or contrivance. So much for what concerns the most holy great church.¹¹

1. In all the other churches whose expenses are met by the most holy great church, we decree that their present members should, similarly, remain in their position until the number of presbyters, deacons (male and female), sub-deacons, cantors and readers has been confined to what is called the *statutum* of each church,¹² as determined by those who built them. Absolutely no-one at all is to be added in the meantime. We ourselves will be careful not to take any such action, or send prospective appointees, nor will any of our office-holders take any such action, out of respect for our law. Even if the command should come from the Court, his beatitude the archbishop and patriarch of this sovereign city is to have licence to oppose the appointment; both the giver and the receiver of the order, should they take any such action, will be liable to an ecclesiastical penalty. Nor is it in order for other churches, which do not receive their financial support from the most holy great church, to allow the number of persons consecrated in them to go out of control, or to exceed, in future, the limit originally assigned to them. That could result in those consecrated in them eventually over-running to an excessive level, sub-dividing the revenues coming into them from the pious, and hence falling into a serious difficulty through seeing those revenues become insufficient for their needs.

If the most holy archbishop presiding at the time over the most holy great church should make appointments beyond the limit determined in the most holy great church, or in the other churches, and the most God-beloved stewards of the same most holy church should increase the expenditure from the ecclesiastical revenues, they themselves, and his beatitude the patriarch who allowed them to provide the funds, are themselves to make good the expenditure, at their own expense and out of their

¹⁰ For Justinian's determination to crack down on those seeking to profit from the sale of ecclesiastical office, see discussion of this novel and related items of legislation in Bonini (1990).

¹¹ For Constantinopolitan monasteries, see Hatlie (2007), pp. 25–172.

¹² *Statutum* = a fixed number, or (on the basis of *J. Nov.* 16) a statute setting out the number of priests et al. assigned to the foundation of a religious or charitable institution (comparable to the statutes of an Oxbridge College or a monastic *typikon*).

own property.¹³ Those who may take any such action are to know that we are granting both to the most holy patriarchs who succeed the one who has done this, and to future stewards, and also to all other most reverend clerics, licence to intervene in such actions, prevent them from taking place, and report them to the Sovereignty. On receiving the information, the Sovereignty will issue orders for the recovery of these sums for the most holy church, out of the property of the stewards who took this action, or also of the archbishop who allowed it; there will thus be no future repetition of such mismanagement and disorder in the matter.

Once the situation has been confined to its original level, and not before, appointments are to be made, but only in such proportions as not to exceed the stated limit or overrun the number; no malpractice is to be involved.

Something else that we shall in no wise tolerate is the claim that there will be licence to make appointments without a supporting endowment. Those making that claim are producing renewed disorder, using the additional number to set up secondary membership-lists. In particular, it would entail numerous frauds; instead of providing financial support, they would be devising new openings for profiteering. That, then, is something we absolutely forbid, and we put it under what is called the 'ecclesiastical penalty'.¹⁴ We take the view that it is a great benefit to ourselves to see our most holy church not borrowing, being in difficulties, and constantly short of money, but in permanent prosperity.

3

Just as we have determined the expenditure in this matter, it is equally appropriate that the most holy patriarch at the time, and the most reverend stewards, should see to it that the other payments out of ecclesiastical revenues are also being expended for purposes that are pious and pleasing to God. They are to pay this money to people in genuine need, with no other source of sustenance, such payments being in the service of the Lord God; they are not to lavish ecclesiastical funds, by way of patronage and personal favours, on persons who are well off, so that the poor go without the necessities.¹⁵ Both those who are now our most God-beloved stewards,

¹³ The emphasis on such personal liability (Greek οἰκείος κίνδυνος) on the part of those responsible was a favoured response of Justinian to acts of financial or fiscal irresponsibility. See, for example, his treatment of those ecclesiastical office-holders responsible for the issuing of licences of fiscal exemption in *J. Edict* 13.

¹⁴ 'Ecclesiastical penalty' = a punishment imposed by the Church for the moral correction of a delinquent Christian (e.g. excommunication). See Hillner (2015), pp. 66–76.

¹⁵ For such imperial concern for philanthropy, see Constanelos (1991), pp. 43–64.

and those who will from time to time be so, are to know that any action of theirs in contravention of this will be subject to punishment from God, and that they will also be paying indemnity to the most holy church out of their own property.

Conclusion

We accordingly decree that your beatitude, having from the outset, virtually from childhood, adorned the most holy church in every sacred rank and position, and being descended from a priestly family, is to observe these instructions unremittingly, recognizing that you will have no less concern for what is in the interest of the most holy churches than for your very soul.

Given March 16th, consulship of the Most Distinguished lord Belisarius

535

4 | **Debt-recovery: creditors to proceed first against the principal debtors; in second place, if those are found to be without means, against *mandatores*, guarantors or those who have given surety¹**

The same Sovereign to John, Most Illustrious prefect of the sacred praetoria

Preamble

We have thought it good to revive and restore to use an ancient law already enacted, which, we do not know how, has become disrespected in practice, but has proved necessary in the course of successive cases under trial. We are not simply laying it down exactly as it was enacted, because part of it was entirely lacking in precision, but are adding distinctions that are appropriate, and pleasing to God.

1

A creditor who has been given an additional person as provider of surety, *mandator*, or guarantor is not to proceed in the first place directly against the *mandator*, guarantor or provider of surety, or to take action against the backers while ignoring the borrower; he is to proceed, first, against the person who took out the loan and has received the money. Should he

¹ *Mandator* = a Latin term used in late Roman law to signify someone who provides backing, surety, or a guarantee (see Levy (1951), pp. 198–9); ‘guarantor’ or ‘one who has promised to pay the debt’ (Greek ἀντιφωνητής, see *P. Oxy* I 136, line 39) treated in the *Authenticum* as equivalent to Latin *fideiussor* = ‘a surety who assumes guaranty for another surety’ (Berger (1953), p. 471); ‘one who gives surety’ (Greek ἐγγυητής), treated by the *Authenticum* as equivalent to Latin *sponsor* = ‘one who assumes an obligation as a surety . . . [or who assumes] an obligation as a principal debtor’ (ibid., p. 713). The main significance of this law is that it ordains that if a debtor does not possess sufficient movable wealth or money to pay a debt or loan and is unable to find a purchaser for his land or immovable property, the creditor should be obliged to accept by way of payment the debtor’s best-quality land or immovable wealth. Only bankers are exempted from this, although that exemption was later modified by *J. Nov.* 136 (Van Der Wal (1998), pp. 120 (entry 842) and 125 (entry 869)). Lucks (1991) explains this measure in terms of a shortage of coin, perhaps generated by the mounting fiscal demands of the East Roman state, on which see Sarris (2011a), pp. 145–52.

receive payment from him, he is to leave the others alone; because what claim could he have against those not directly involved, when he has been paid in full by the recipient? Should he, however, have been unable to receive payment from the borrower, either in whole or in part, he is to proceed against the *mandator*, provider of surety or guarantor for the amount he has been unable to receive from the borrower, and recover it from him. Should both the principal and the guarantor, *mandator* or provider of surety be available, that is the procedure to be observed, without fail; but should it turn out that the guarantor, *mandator* or provider of surety are available, but the principal is not there, it is harsh for the creditor to have to send elsewhere when he can sue the guarantor, *mandator* or provider of surety for it directly. It was the great Papinian² who first pointed this out; but as no means were defined in the ancient law of providing a remedy for it, it is certainly something for which we must provide one, of a suitable kind.

Accordingly, he is to institute proceedings against the guarantor, provider of surety or *mandator*, and the judge sitting on the case is to allow time for the guarantor (or provider of surety or *mandator* – no distinction is meant), if they wish to produce the principal for him to take on the suit first, and for themselves then to be kept as last resort. The presiding judge is to protect the guarantor, *mandator* and provider of surety in this regard, it being no sin to assist guarantors and the like; so that, once the person has been produced, those who have been proceeded against on his behalf, in the suit so far, are released. However, if the time-limit for this has expired (because the judge must specify a time-limit), the guarantor, provider of surety or *mandator* must then contest the suit and pay the debt, having had the right of actions against the person who was given the guarantee, or for whom he drew up the instruction, or undertook the surety transferred to him from the debtor.

2

Nor, again, is he to begin by taking proceedings first against the property of debtors, should it be held by another, before he has followed the route of personal action against *mandatores*, guarantors and providers of surety. Only after that is he to proceed against the principal's property, if held by others; and should he not receive satisfaction from those holding it, either,

² Papinian was a third-century jurist held in particular esteem by Justinian and his law commissioners: see Berger (1953), p. 617.

after taking them to court, not till then is he to proceed against the property of the guarantors, *mandatores* and providers of surety. One may say the same should all these persons have others under them who are liable to them and are capable of being answerable to hypothecal actions.³

Against the principal, however, and against property in his possession, we give him complete licence to use actions either *personales*⁴ or, subsequently, *hypothecariae*, or both, as he may wish; these are to be by the route, and in the order, previously stated by us in our legislation concerning other persons and cases.

We are stating this with application not only to creditors, but also to any case where a purchaser of something from someone has been provided with what is called a 'voucher',⁵ but there is something unsound in an aspect of the sale. If a suit is filed against the seller, the buyer is not to proceed directly against the guarantor, nor against the holder of any of the seller's property, but first against the seller, then against the guarantor, and only in third place against the holder. In that case also, there is to be the same distinction over those available and those absent as we have enacted above in the case of guarantors, *mandatores*, providers of surety and the borrowers. Similarly, it is to be valid also in the case of other transactions in which certain guarantors, *mandatores* and providers of surety have been received, both as to the principals themselves, on either side, and as to their heirs and successors.

The ancient law, then, is again to be valid in these matters, and is to give our subjects the reassurance of this additional fairness and distinctness.

3

The next point is a reinforcement of the remedies that benefit people in general; though it is not, perhaps, to the satisfaction of some lenders, it is to

³ 'Hypothecal actions' = Latin *actiones hypothecariae* or actions against property that has been pledged by way of security (Berger (1953), p. 490). The implication here is that action can be taken against the personal fund or property (*peculium*) of members of the household of the guarantor subject to his authority.

⁴ *Actiones personales* = otherwise known as *actiones in personam*; 'actions in which the plaintiff based his claim on a contractual or delictual obligation of the defendant', as opposed to *in rem*, actions in which the plaintiff asserts a right to a particular thing, which in this instance would take the form of the *actio hypothecaria* in pursuit of the security pledged, even if held by a third party (Berger (1953), pp. 346 and 490).

⁵ 'Voucher', rendering the Greek βεβαιωτήρς. This refers to any of the three kinds of personal surety mentioned in this novel as being provided by a vendor to a purchaser. See also *J. Edict 7 c. 4*.

stand enacted by us for a humane purpose. Suppose that someone has lent money on the credit of the borrower's property; that the borrower has insufficient funds to repay in cash, but has movable property; that the lender absolutely insists on requiring payment in cash when the borrower has none available, nor any movable property (as we do grant the lender permission also to accept movable property in lieu of cash, if he wishes); that no-one is forthcoming to buy his immovable property; and that the lender, by constantly putting it about that the borrower's property is under hypothec to him, is deterring interested purchasers. In that situation, an accurate valuation of the debtor's property is to be made (in this fortunate city, by the Most Illustrious office-holders of our realm, under the jurisdiction assigned to each by law and by ourselves; and in the provinces, by the provincial governors), and the creditor is to be awarded an immovable holding of a value corresponding to the debt, with such security as the debtor would be able to give. The awarder's principle is to be such that he awards better property to the creditor, and allows the less good to remain with the debtor, after the clearing of the debt. After all, it would be unfair for the person who has parted with money but cannot now receive it in money, and who is being obliged to accept an immovable holding instead, not at least to receive the better items of his debtor's property, and at least to have the consolation that even if he has not received money or other portable property, he can nevertheless own something that is not inferior.

That is, nevertheless, to be a clearly humane aspect of the law; and let moneylenders realise that even had we not laid down this law, the logic of inevitability would have led to this effect. After all, the borrower with no money or purchasers available would have had no other course of action than surrender of his possessions,⁶ and the property would presumably have again been going to the creditor unable to be paid in cash. We have thus made a decision simultaneously humane and legislatively sound, on a situation gravely injurious and harsh in outcome to both creditor and debtor. In coming to the assistance of unfortunate debtors, we should not seem unsympathetic to even the harshest of creditors, as what we are imposing on them is what they would have come to in any case, had they persisted in refusal.

However, if the creditor is ready to procure a purchaser, the debtor is bound to agree to that, and to give such security as, on the judge's

⁶ What is referred to here is the practice of *cessio bonorum* whereby 'a debtor who became insolvent without his fault might voluntarily surrender his property to the creditors in order to avoid an execution by a compulsory sale thereof which involved infamy' (Berger (1953), p. 387).

assessment, he is anyhow able to give; at all events, we must not go so far in making provision for creditors as to lay an overwhelming burden on debtors.

1. We are using the term 'creditor', in accord with ancient laws, to mean anyone capable of filing suit against another, even if the transaction comprised some other contract, not a loan. It is to be understood that banking contracts remain as at present, because of the utility of these transactions.

Conclusion

Your excellency, on being informed of our legislation for our subjects' benefit, is to cause it to be made public by the usual proclamations, both here and everywhere in the subject realm, so that our subjects in the provinces may also come to know the importance of the provision we have made for their benefit.

*Given March 16th, consulship of the Most Distinguished Flavius Belisarius,
indiction 13⁷* 535

⁷ 'Indiction 13' = the thirteenth year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311. The year the law was issued was 535 (see Lounghis, Blysidu and Lampakes (2005), p. 262 (under entry 1051)).

5 | Monasteries, monks and hegumens¹

Emperor Justinian Augustus to Epiphanius, most holy and most blessed archbishop of this sovereign city, ecumenical patriarch

Preamble

The ascetic life of the monastery is so honourable, and knows so well how to bring close to God the person entering it, that it strips from him every human blemish, and makes him pure, outstanding for his rational character, generally intelligent in his actions, and above human concerns. If, then, one is to be a true monk, he needs education in the divine scriptures, and careful training, so as to become worthy of so great a transformation. Thus we, too, have seen fit to give monks directions for what they must do, and to render them true contenders on the road to the divine. That is our aim in the present law, so that after our legislation on the

¹ Monasticism had become an increasingly important feature in the life of the Church since the fourth century. The earliest monks, such as the Egyptian St Anthony, were laymen who separated themselves from society to live a life of asceticism and divine contemplation, but monasticism had acquired an increasingly communal or 'cenobitic' aspect, with the foundation of ascetic communities where monks and nuns shared a common life (for the origins of the phenomenon, see Brown (1971) and Chitty (1966)). Monks, monasteries and other religious institutions had been placed under episcopal jurisdiction by the Council of Chalcedon of 451. So as to facilitate tighter supervision of ascetics (which was regarded as necessary to prevent the potential spread of heresy on the part of unsupervised holy men or women), the canons of Chalcedon had also placed considerable emphasis on the stability of the monastic life and the obligation on monks to abstain from vagrancy. In this novel and subsequent legislation, Justinian essentially upholds Chalcedonian canon law, 'insisting too on the subordination of ascetics to bishops and on the same principles of proper ascetic practice and *stabilitas loci*' (Booth (2014), p. 17). The major innovation in Justinian's legislation, evident from this novel, is that whereas different ascetic lifestyles were treated in the context of the Council of Chalcedon as part of an undifferentiated whole, Justinian here takes it for granted that the communal (cenobitic) arrangement is the more common one. The novel thus casts important light on the development of monasticism from the fifth to sixth centuries. It is interesting that Justinian's agenda for the essential elements of a well-ordered monastic life, and his view of the role of monasteries and monks within society, is reflected in contemporary spiritual literature, such as the hagiographic writings of Cyril of Scythopolis and the late sixth-century *Rule of St Benedict*, which drew upon eastern materials (see Booth (2014), pp. 16–17, Flusin (1983) and Sarris (2011a), p. 219). The novel also attempts to prevent the spread of monasticism from disrupting social and economic relations by protecting the property rights of the heirs of aspirant monks and by limiting the ability of slaves to escape the control of their masters by claiming monastic vocation. For further discussion of this law, see Hillner (2015), pp. 327–9.

most God-beloved bishops, and our ordinances on the most reverend clergy, we may also leave monasticism not without its due.

1

What must be said before all else is that, at all times and in every territory of our sovereignty, no-one who should ever wish to build a holy monastery is to have licence to do so until he has called in the most God-beloved bishop of the area, who shall have raised his hands to heaven and consecrated the site to God in prayer, after setting up in it the symbol of our salvation, that is to say the venerable, truly precious cross. Only then, having dedicated this as a fine and fitting foundation, is he to begin the building.

Let that, then, be the commencement of the pious construction of holy monasteries.

2

Next we must also consider what concerns individual monks: what is the appropriate way for them to become so, and whether they are to comprise only free persons, or perhaps slaves as well, given that divine grace accepts all alike; it clearly proclaims² that, as far as the service of God is concerned, there is neither male nor female, neither free nor slave, as all are rightly considered to be one in Christ. Therefore, following the divine canons, we decree that candidates for the monastic life are not to receive the monastic habit from the most reverend hegumens³ of the holy monasteries straight away, summarily; they are to wait patiently, whether their status is free, it may be, or slave, for a full period of three years without yet being deemed worthy of the monastic habit. Their haircut and dress are to be those of what are called the 'laity', and they are to remain under instruction in the holy scriptures. Their most reverend hegumens are to ask them about their status, free or slave, and about the source of their desire for the monastic life. If they find out from them that there was no base cause that brought them to this decision, they are to keep them with those still under instruction and admonition, and to test their perseverance and their holiness; changing one's life is a difficult thing, not to be done without spiritual exertion.

² A reference to *Galatians* 3.28.

³ The *hegumen* (Greek ἡγούμενος) was the head of the monastery, equivalent to the figure of the abbot in the western tradition.

1. If they should continue, throughout the three-year period, to show both the hegumen and the other monks evidence of their excellence and high perseverance, they are the ones that he is to deem worthy of the monastic habit and tonsure. If free, they are to stay there, unmolested; or if slaves, entirely without maltreatment now, because the ownership into which they are changing is that which is common to all – that is to say, that of heaven – and they are to be rescued into freedom. After all, if there are many cases in which that is done, and such freedom is conferred even by law, how could divine grace not have the power to release them from such bonds?

However, suppose someone should come, within the three-year period, wanting to seize one of the candidates as a slave – this is something recently reported to us from Lycia by the most God-beloved Zosimus, a man renowned for ascetic life and now nearing his hundred and twentieth year, but at the peak of his soul's virtues and of his physical powers, so great is the flowering in him of God's grace. Suppose, then, as we were just saying, that someone comes, within the three-year period, trying to seize into slavery one of those who are waiting patiently to become monks, and says that the reason for the man's running off to the monastery is that he has stolen some property: we decree that he is not to do this summarily, but is first to show that the man genuinely is a slave, and also that it is by reason of a fault of his own – theft, perhaps, or criminal behaviour, with serious offences – that he has absconded, and come to the monastery. If he should be proved to be telling the truth, and it should become clear that that was the reason for the man's submitting to monastic training, or also that his absconding was the result of disgraceful behaviour, and not of a genuine desire for the ascetic life, he is to be returned to the owner, together with what he has perhaps stolen, if it is in the monastery; and the person proved to be his master is to give him what is called the 'pledge' of doing him no harm, and is to receive him and take him home.

2. Suppose, on the other hand, that the person claiming to be his master should fail to establish anything of the kind, and that the victim of such accusations should both prove, from his actual training, to be holy and good, and also, perhaps, have attestation that when with his owner he had been well-behaved, and devotedly honourable: in that case, even if his three-year period has not yet been completed, he is nevertheless to remain in the most venerable monastery, and be rid of those presumptuously attempting to seize him. Then, once the three-year period has elapsed, if he is adjudged worthy of the honourable status of a monk, he is to remain in the monastery. From then on, we give absolutely no-one

licence to interfere in anything to do with him; whether he be slave or free, we wish him to remain in the ascetic life. Even if he has perhaps committed some fault in his previous life – human nature is, after all, quite prone to slip into offences – the evidence of his three-year period suffices for a reasonable purging of his past sins, and for progress in virtue. That notwithstanding, stolen property, in whosoever possession it may be found, is at all events to be returned to his original owner, even then.

3. However if, after escaping from the constraint of servitude, he should subsequently try to leave the monastery and pursue some other livelihood, we give his owner freedom to seize him and, on proving his status, to keep him among his slaves. No injury could be done him, by being seized into genuine slavery, as serious as the gross injury he has committed by deserting his service to God.

That, then, is our decree concerning the status of those wishing to present themselves as monks.

3

Next to be considered is their living-arrangements and how they are to spend their time, if we are to make them into worthy contenders for the monastic calling.

We wish no single monastery in our subject territory, whether it comprise greater or smaller numbers of persons, to keep its members apart from each other, with accommodation of their own. We decree that they are to have their meals together, and to sleep together, with each lying on a separate mattress but all having their beds in the same building; otherwise, should one building not suffice for the number of monks, then perhaps in two or even more, but definitely in common, not individually or apart. In this way they can be witnesses to each other's good behaviour and morality, and not even their sleep will be idle: it will be practice in good conduct, under reproof from those who will be watching. There is an exception: certain of them, commonly called 'anchorites' or 'hesychasts', who are living out lives of contemplation and perfection, may have a small cell of their own, exempted from the common life in pursuit of something higher. Otherwise, we wish the rest, whose monastic life is with the main body, to be what is called 'cenobitic', because in that way their zeal for virtue will increase. This is particularly so for the younger ones, being put together with their elders: the elders' conduct will form a strict education for their youth.

Thus they are to be in cenobitic communities, obedient to their own hegumen, and impeccably observant of the ascetic life that has been bestowed on them.

4

Should a person subsequently leave the monastery, once he has consecrated himself and taken the monastic habit, and choose some form of private life, he is to know, for his own part, what kind of account he will be rendering to God for this; and as for any property he may have had on entering the monastery, it will be in the monastery's ownership; he will take nothing whatever out with him.

5

We ordain further that a person intending to enter a monastery shall have licence, before doing so, to dispose as he wishes of what is his. Once he has entered, his property will come with him in any case, even should he not expressly declare that he is bringing it in; he will no longer be the owner of it, in any way. In the case that he has children, should he actually have already given them any property, presenting it either by way of pre-nuptial gift or as a dowry, and be making that into the quarter-share of his estate in intestacy, the children are to have no share in the rest of his property. If he gives them either nothing, or less than their quarter, then even after the person renouncing his property has become a candidate for the monastic community, the quarter-share is nevertheless still to be due to the children, either so as to bring it up to the full amount, if they have in fact already received something, or actually for the whole sum to be given them.⁴ Should he have a wife, and be now leaving her to enter the monastery, the dowry is to be secured to the wife, and so is her entitlement on his death, as has been also enacted in another decree of ours.

All that has been said on this with reference to monks is to hold good also for women who are entering a monastic community.

6

Should anyone leave the monastery and enter any government service or other position in life, his property, in this case also, stays with the

⁴ That is the quarter-share or *portio legitima* to which such heirs were entitled: see *J. Nov. 1*.

monastery, in accordance with what we have stated above; and he will find himself assigned as one of the civil servants of the Most Distinguished prefect of the province.⁵ That is the reward he will have for his change; he who has despised divine service is to endure servitude in an earthly court.

7

Should he leave the monastery in which he has had his training, and transfer to another monastery, his property is, in this case as well, to remain behind and be claimed by the previous monastery in which he left it, on renouncing it. However, it is inappropriate for the most reverend hegumens to accept a person acting in this way, because a life like that is one of vagrancy, nowhere near that of monastic perseverance; it is the mark of an unstable, flighty soul, one that roams about pursuing different aims at different times. Accordingly, that is something else that the most God-beloved bishops, and those called ‘archimandrites’, shall prevent, thus upholding monastic rectitude, in accordance with the divine canons.

8

Should any professed monk be found to merit ordination to the clergy, he is still to be steadfast in keeping his ascetic practice undefiled.⁶ Should he, for example, abuse the privilege granted to members of the clergy by presuming to enter into marriage (his rank among the clergy being, of course, one of those which permit marriage, namely cantors and readers – as, in accordance with the divine canons, we absolutely forbid all the other ranks to marry, to have a concubine, or to abandon their life to immorality), he is in all circumstances to be ejected from the clergy, on the ground that he has disgraced his earlier profession and the monastic life. He is to be for the future an ordinary citizen, not having the temerity to enter the service or any other occupation – unless he should wish to incur the penalties threatened by us above. He will live out his life on his own, and come to realise what account he will be rendering to the great God for this.

⁵ I.e. they will be forced to attend and work at the court of the provincial governor.

⁶ By the sixth century, it was becoming increasingly common for a period as a monk to become an expected part of an ecclesiastical career, culminating in episcopal office (for the consequent monasticisation of the episcopate, see Rapp (2005), pp. 100–54).

9

On any occasion when the monastery should be without a hegumen, the ordination of hegumens is not to be made by the rank-order of the most reverend monks. As another law of ours states, it is not at all the next person in order after the first who is immediately to be made hegumen, nor the one next after him, nor the third, and so on. Instead, the most God-beloved bishop of the area is to go through them all in turn (because seniority, with the rank-order it brings, is not to be entirely disregarded), and is to choose the one who is first found to be the best among the monks, and to deserve the position of hegumen over them. This is because it is a characteristic of human nature that not everyone is in continuous rank-order either at the top, or again at the bottom. No; examination of who is to be hegumen* must at all events proceed step by step, in order of seniority, and the first on the list to prove best is to be hegumen, with his quality to support him, as well as his rank-order. Those trying to discriminate between the superior and the less good must allow the primacy to go to one side, and concede that the other is to be subject to it, but itself to reach superiority by a gradual process of education.

* Reading ἡγησομένου for ἡγησάμενου [S/K, p. 34, line 21].

1. We lay down all our legislation on clergy, monks or monasteries, in all previous divine constitutions as well as those now being enacted, as applying in common to both male and female monastic houses and foundations. We make no distinction in these matters between male and female because, as we have already said above, all are one in Christ.

Conclusion

The most holy patriarchs are to publish all these provisions to the most God-beloved metropolitans under them; these are to disclose them to the most God-beloved bishops under them; and those are to make them known to the monasteries under their authority, with the object of ensuring that the worship of the Lord God remains permanently inviolate. Very heavy penalties will be imposed on those who contravene them: that is to say, the heavenly penalties inevitably imposed on those in contempt of orthodox doctrines. The authorities of our realm, should any such contravention be brought before them, are without fail to take pains to provide

for the putting into effect of what is contained in the divine canons, which our law follows; if they are negligent, they too will not escape the penalty for this.

It is the duty of your holiness, in pursuance of this, to make these provisions public to all the most holy metropolitans under your holiness.

*Given at Constantinople, March 17th, consulship of the Most Distinguished
Belisarius*

535

6 | **How bishops, priests, and deacons male and female must be ordained and appointed; nature of penalty for contravention of the directive of the constitution¹**

The same Sovereign to Epiphanius, most holy archbishop of this sovereign city, ecumenical patriarch

Preamble

The greatest gifts that God, in his celestial benevolence, has bestowed on mankind are priesthood and sovereignty, the one serving on matters divine, and the other ruling over human affairs, and caring for them. Each proceeds from one and the same authority, and regulates human life. Thus nothing could have as great a claim on the attention of sovereigns as the honour of priests, seeing that they are the very ones who constantly offer prayer to God on the sovereigns' behalf. Hence, should the one be above reproach in every respect, and enjoy access to God, while the other keeps in correct and proper order the realm that has been entrusted to it, there will be a satisfactory harmony, conferring every conceivable benefit on the

¹ This novel is justly famous for the position set out by Justinian in the preface, where the Emperor defines the relationship between the imperial office (*imperium*) and the priestly (*sacerdotium*). More explicitly than any Emperor before him, Justinian asserts that the authority of both emperor and priest is derived from a common divine source, and that it is the unique responsibility of the Emperor to regulate the lives of both his clerical and lay subjects (see discussion in Dvornik (1966) 2, p. 817 and Dagron (1996), pp. 312–13). Accordingly, in this novel, clerical and episcopal office is treated as would be any other type of imperial office subject to official regulation (Rapp (2005), p. 277). The Emperor also sets out his vision of the beneficial effects on the Empire at large of synergy and concord between *imperium* and *sacerdotium* and the ability of a well-ordered priesthood to elicit divine assistance for the Emperor through prayer. Justinian makes clear his determination to prevent the direct appointment of laymen to high clerical office (such as had been especially common in the late Roman West, where the episcopate had effectively been treated as a magistracy appropriate for retired high-ranking civil servants and aristocrats) and to crack down on the purchase of ecclesiastical office ('simony'). Instead, a career structure or *cursus honorum* for aspirant clerics is set out, in which monasticism can be seen to play an increasingly significant role (see *J. Nov.* 5 and, for further discussion, Rapp (2005), pp. 203, 205 and 278–9). Justinian's concern for the moral character of clergy and bishops foreshadows that of Pope Gregory the Great at the end of the sixth century, as set out in his Book of Pastoral Care (*de Cura Pastoralis*, on which see Markus (1997), pp. 17–34).

human race. We therefore have very great concern for the honour of priests, as well as for the truth of theological doctrine; as long as they maintain that honour, our confident belief is that, through it, great gifts will be bestowed on us by God, and that as well as keeping firm possession of what we hold, we shall also gain what has not yet come to us, even now.² All would go duly and well, provided that the first step in the matter is taken in a way correct and pleasing to God; and we believe that that will be so, if only observance of the sacred canons³ is maintained in the manner that the apostles, justly celebrated as the venerable eyewitnesses and ministers of the divine word,⁴ have handed down, and as the holy fathers have maintained and taught.

1

Therefore, following the divine canons throughout, we decree that, for all time to come, whenever anyone is to be inducted for appointment as a bishop there must first, as the divine apostle says,⁵ be consideration of his life, to see if it has been honourable, impeccable and irreproachable in all respects, attested for its good works, and befitting a priest.

1. He must not come from the status of civil servant⁶ or city councillor, unless as a young man he was admitted to a monastery, and has been

² Presumably a reference to hope for success in the Italian campaign that was about to begin (see Maraval (2016), p. 229).

³ This usage of the word 'canons' for enactments of the Church councils, it has been suggested, may have been a development of the sixth century (see Humfress (2007), p. 198).

⁴ A reference to Luke 1.2.

⁵ Titus 1.7.

⁶ 'Civil servants' (= Greek ταξεῶται) = Latin *cohortales*, i.e. officials attached as office-holders to the courts of provincial governors. Such positions were nominally hereditary, but as they could be well remunerated, the government typically had little difficulty finding men to fill them (see *J. Edict* 10, note 1). Alternatively, the term could be applied to subordinates of the Praetorian Prefects and agents of the palatine bureaux such as those of the financial departments of the *res privata* and *sacrae largitiones* (see *Codex* 3.25, 12.57 and Delmaire (1989), p. 127). 'City councillors' (= Greek βουλευται, Latin *curiales*) were local landowners whose civic status was similarly hereditary. *Curiales* were burdened with considerable administrative responsibilities and costs by the state and were heavily involved in the collection of taxation (see Liebeschuetz (1996)). In order to ensure the financial cohesion and viability of city councils, emperors had decreed that *curiales* whose appointed heirs were not themselves of curial status were obliged to leave one-quarter of their estate (equivalent to the 'legitimate share') to their native council (*Codex* 10.35.1–3). Justinian here appears to draw on that law to rescind and revise a lost one whereby *curiales* appointed to clerical or episcopal office had been able to nominate a replacement to fulfil their curial obligations (see discussion in Van Der Wal (1998), p. 57, note 27). The share of an estate to be left to the council by an aspirant cleric would be increased by *J. Nov.* 38. In

emancipated from his original status, as has been directed previously, but with the proviso that he did previously pay the quarter of his property to the council.

2. He must not rise directly to the episcopate from private life as a member of what is called the 'laity'; nor must his appointment be contrived by making him a bishop with only a short interval as cleric, straight from having only just been in private life.

3. He must also not be cohabiting with a wife. He must either have been living in celibacy from the outset or, if he had one, she must have come to him as a virgin, not as a widow or a divorcee, or having been a concubine.

4. He must have no children or grandchildren, whether acknowledged by the law or disowned by it.

One who contravenes any of these provisions will himself forfeit his appointment, and the person appointing him will likewise be expelled from his episcopate for having offended against this law.

5. We do not permit him to pay money for his priestly office, either.⁷ We wish him to attend solely to the worship of the Lord God, and not to be distracted by numerous human concerns.

6. Again, he is not to enter his episcopate without having studied the sacred doctrines, . . .

7. . . . but must first have been trained in the monastic life, or been enrolled in the clergy, for at least six months, without, as we have just said, cohabiting with a wife, or having children or grandchildren; that is something we definitely look for in our most God-beloved bishops, as has also been enacted in two previous divine constitutions of ours. Under those, while disregarding the past and raising no objection to those already in cohabitation with a wife, we permitted no such appointment to be conferred in future, from the laying down of the law, on a man with a wife. That law we now renew, to prevent there being any contravention of it, in which case he would be dismissed from his priesthood himself, and would also cause the person who appointed him to be similarly dismissed.

an earlier law, Justinian had sought to prevent *curiales* from becoming priests on the revealing grounds that they were too caught up in the brutal realities of late Roman administration to be morally fit for clerical office, declaring that it was not 'right for a man who has been brought up to engage in extortion with violence, and the sins that in all likelihood accompany this, and is fresh from deeds of the utmost harshness as a *curialis*, suddenly to take holy orders and to admonish and instruct concerning benevolence and poverty' (*Codex* 1.3.52 pr, discussed in de Ste Croix (1981), p. 474).

⁷ Here, as also in c. 9, Justinian prohibits 'simony' (i.e. the sin of Simon Magus, Acts 8 18–20) which had been legislated against by the Council of Chalcedon in 451 and then in a law of Leo I (see Rapp (2005), p. 211 and Bonini (1990), pp. 41–2).

Thus, the person appointed as a bishop is to be from a background either monastic or clerical, with the further condition that, in his life as such, he has been attested as honourable and as enjoying good repute, laying that down in his soul as foundation for his high priestly office.

8. Even with such a character, it is also appropriate that in preparation for his episcopate he should, before his appointment, read the holy and universally approved canons which our impeccable, orthodox faith has accepted, and the catholic and apostolic church of God has received, and hands down. When, through continuous perusal of the canons, the person being presented to the episcopate comes forward, the person about to appoint him is to ask him whether he is able to uphold and carry out what the divine canons have enacted. Should he then demur, and say that he is not capable of keeping the commandments of the divine canons, the appointment is under no circumstances to be conferred on him. Should he, however, accept, and say that as far as is humanly possible he will fulfil the requirements contained therein, he is then to be given the admonition that, should he not keep them, he will be estranged from God and forfeit the honour given him; and also that the civil law, too, will not leave his offence unpunished. This is because we ourselves, as well as our predecessors in the sovereign power, have correctly stated that the sacred canons must have the force of law. Then, should he still remain resolute in holding to it, he is to receive his sacred appointment to the episcopate on those terms.

9. This appointment is not to be bought for money, nor to be received in exchange for any gift of property; it is the gift of God, and as such is to be received in purity, and without price. Even supposing that all the other qualifications we have mentioned are sound, he is to be aware that, should he prove to have purchased his appointment by money or property, he himself will lose his episcopate and forfeit it, and that the return gift he will have made to the man who ordained him is that he, too, will be dismissed, and forfeit his episcopate: the reciprocal effect of the gift on each other will be such that one fails to achieve what he was hoping for, and the other fails to keep even what he had. The money or property that changed hands in respect of the appointment will, of course, accrue to the most holy church, whether the recipient thus deprived of office be a bishop who has consequently forfeited his priestly office, or a member of the clergy; because on him, too, we impose the same penalty of forfeiting the rank he held among the clergy, and of repaying, to the church that has been injuriously affected by his action, the money or property that changed hands in respect of the appointment. Should it be a lay person, not a member of the clergy, who

has received the money or property in return for patronage over the appointment, especially if he should be an office-holder, he will, for one thing, have his own punishment from God – yes, penalties from heaven will await him, as well; and for another, double the entire amount given him is, without fail, to be mulcted from him and paid to the most holy church. In addition, he is to forfeit any office he may hold, and be condemned to permanent exile.

Another point of which the purchaser of an appointment, whether by money or property, is to be clearly aware is that, should he bribe his way to his priestly office after having been a deacon or presbyter, he will not merely forfeit his episcopate, but will be left without his previous position either, be it of presbyter or of deacon; he will lose that, too, for having aspired unbecomingly to improper ends, and will be expelled from any priestly rank at all.

On the actual occasion of the appointment, the person conferring it on him must, in the presence of the whole most faithful congregation of the most holy great church, proclaim all this to him, so as to induct him to his sacred appointment in the knowledge that he is in possession of all the facts we have stated above. As a result, he, for his part, on hearing this in everyone's presence, will not only have the fear of God, but will also be abashed at the pronouncement, and his acceptance of it, before them all.

10. Suppose that, when he has come forward for appointment to the episcopate, he is believed to be such a person; but that someone then opposes him, and says that he knows something to his discredit. In that case, he is not to be deemed worthy of the appointment until there has been an enquiry into the allegations, and he has proved to be entirely innocent. If, even after such an objection, the person conducting the appointment should hurry on with it without waiting to subject the matter to the statutory enquiry, he is to be aware that his action is null and void: the person illegally appointed will forfeit his appointment, and the person conferring the appointment without enquiry will similarly be dismissed from his priestly office; he will be held to account before God, who seeks above all the purity of his priests. However, should the person who opposed the appointment, or proceeded against it, be shown to be a calumniator, or should he have the temerity not even to pursue the matter at all, the person wishing to conduct the appointment is to excommunicate him permanently from the sacred congregation, so that that falsehood will not go unpunished, either; we punish a groundless accuser for his calumny, just as much as we seek good repute in an appointee.

Should there be no accuser at all, or should one completely fail to proceed with his accusation or, if he does proceed, fail (as we have just said) to prove his accusation true, it is then appropriate for the person to be admitted to the prospective appointment, now that he has been seen, in so many ways, to be innocent. A person thus appointed will have learnt the fullest and finest lessons, from his own experience; thus taught such wisdom, in both theory and practice, he will not fall away into a life of disobedience.

2

Another ordinance that we are adding is that none of our most God-beloved bishops is to be absent from the church under him for more than one full year, except – and this is the sole inculpable case – by sovereign command. It is the duty of the most holy patriarchs of each diocese to make their most God-beloved bishops stay firmly at their most holy churches, and not set off for any long distance or make plans to stay abroad; nor are they to neglect their most holy churches, nor exceed the year, that being in itself a generous concession on our part. If he should, nevertheless, go off on wide-ranging excursions for more than the year without returning to his own see, and without, as we have just said, being constrained by a sovereign command, the patriarch of the region is to have regard for ecclesiastical discipline, as follows: should he be a metropolitan,⁸ the patriarch is to send for him by means of the customary summonses, in full observance of the sacred canons; and, should he remain persistently disobedient, he is to expel him from the divine assemblage of bishops and bring in another in his place, one who deserves that reverend and honourable position. Should the absentee not be a metropolitan but one of the other bishops, let this be a matter for his metropolitan. None of them should accept the possible plea, as an excuse for bishops leaving their own churches, that they are travelling about on legal cases or other affairs, either of their own or with regard to the most holy church; or that they are having to wait over their business there, or are moving on elsewhere. There would be no satisfactory reason for them to be travelling about abroad with the large number of attendants that bishops have to have, incurring expense without producing any benefit at all for the most holy churches, and living in a style unbecoming for priests. It would be quite possible, if their most

⁸ A metropolitan was the senior bishop in each province, resident in its capital city (*metropolis*).

holy churches did in fact have any legal cases that they are giving as this excuse, to conduct them through the agency of the most reverend clerics, *apocrisarii*⁹ or stewards on the church's staff, and to gain their ends by sending petitions to the Sovereignty. For those reasons, we decree that if any need should arise, for an ecclesiastical purpose, it is to be made known to the Sovereignty or to our office-holders, either through those known as *apocrisarii*, who conduct the business of the most holy churches, or through sending here either some of the clergy, or the stewards in person. It is they who are to procure what is necessary; that is not to be made the cause of roaming and absence on the part of the most God-beloved bishops, and of detriment to their most holy churches due to neglect of ecclesiastical affairs in the provinces through their absence, and to the incurring of heavy expenditure by them, both here and during unacceptable time spent abroad. From every point of view, that does the most holy churches no good at all; in fact, it does them harm.

3

No God-beloved bishop is to presume to set out for this fortunate city without first having received, if an ordinary bishop, a letter addressed to the Sovereignty from his own metropolitan, of the kind called in the divine canons 'commendatory', attesting the necessity of his presence here.¹⁰ Should the bishop wishing to come here be himself a metropolitan, he should obtain from the patriarch of his diocese a letter saying that his presence is essential. With that, he may petition the Sovereign and have permission for his presence here; he is not simply to leave without the agreement of metropolitans or patriarch, as that is also forbidden in the divine canons.

On arrival here, they are not to presume to begin by reporting to the Sovereignty on their own account. They are first to present themselves either to the most God-beloved patriarch, or to the *apocrisarii* of the individual diocese from which they are; they are to impart to them their reasons for coming, and to go with them to the Sovereignty. They will then be granted a royal audience, at a time convenient to the Sovereign.

⁹ *Apocrisarius* = an officer responsible for conveying letters between the emperor and petitioners on ecclesiastical matters and representing the interests of the church. High-ranking *apocrisarii* serving the great patriarchal establishments of Rome, Constantinople, Antioch, Alexandria and Jerusalem were effectively ecclesiastical ambassadors.

¹⁰ I.e. in Constantinople. Ecclesiastical petitioners at the imperial court are described by Procopius in his *Secret History* (*Anecdota* 12.24–7).

However, petitioning bishops are also to be allowed to refer to the Sovereignty through the officials of the most holy great church who are called ‘*referendarii*’,¹¹ or through the most reverend *apocrisarii* of the most holy patriarchs of their individual dioceses, and obtain a summary reply. Thus, if their request to the Sovereignty is justified, they may have it granted; or, if it is not a justified purpose, they may the sooner go back to where they came from.

4

After drawing up those constitutions with reference to the most God-beloved bishops, in accordance with the divine canons, we decree that the most reverend clerics under them are also to be appointed with the fullest possible enquiry, in accordance with the sacred canons. They are, of course, to be well-attested and, necessarily, literate men; we absolutely do not wish any illiterate person to hold any position in the clergy whatsoever. Presbyters and deacons are to be taught the sacred prayers, and are to read the books of the ecclesiastical canons. They are to receive their appointment in an unimpeachably legitimate manner, with no opposition, and no payment of money or property. Further, we absolutely do not wish them to accept appointment if they are either civil servants or city councillors, except as provided by the laws we have enacted previously on these matters; these laws we are now confirming, as well. At their ordination, they too are to receive their sacred instructions before the whole congregation, for the same reasons as we legislated for this to be done in the case of the most God-beloved bishops.

5

One who is, or has been, in a second marriage is not to be ordained deacon or priest; nor is one cohabiting with a wife who has left her husband and divorced; nor one who has a concubine. These too must either be living chastely, or not cohabiting with their wives; or else, he must have been, or be, the husband of one wife only, who must herself be chaste, and previously unmarried. Nothing is to be so high a recommendation for sacred ordinations as chastity; that, according to the divine canons, constitutes the starting-point and firm foundation of all other virtue as well. Should any presbyter, deacon or subdeacon subsequently bring in a wife or

¹¹ *Referendarius* = a legal officer who brought cases before the emperor (see *J. Nov.* 10).

concubine, either openly or disguisedly, he is at once to be dismissed from his sacred office and live thereafter as a lay person. Any reader who takes a second wife, even for some apparently compelling reason, is not to proceed any further or gain any higher level in the priesthood, but is to remain permanently at the same level; and is most certainly not to embark on yet a third marriage: the second is quite enough. Should he do any such thing, and aim at a higher level after having entered a second marriage, he will ipso facto be dismissed from any sacred ministry, and become a private person and a layman.

Morality of life is a constant concern of ours. Should it be men of that kind who are inducted and ordained to the clergy, their progression up to the episcopate will be unproblematic, and it will be easy, from a large number of men, to find those worthy of being raised to priestly office.

6

We wish all that we have stated in the case of most reverend clerics to be valid also for most God-beloved deaconesses: they, too, are not to be made without due observance. Their age, for one thing: it is not to be youthful, or just at maturity, or such as to be in itself precipitate towards misdoings; they must have passed middle age and be about in their fifties, in accordance with the divine canons. Only then are they to receive their sacred ordination; and they are either to be virgins, or to have been married once only.¹² We shall not allow either remarried women, or those whose lives have not been above all suspicion, to say nothing of condemnation, to present themselves for the sacred diaconate and to minister at the venerable rites of baptism, or take part in the other esoteric duties normally performed by them during the most awesome mysteries. Should some necessity arise for a person below the age we have stated to be ordained as a deaconess, it is in that case permissible for her to be ordained to one of the holy monastic foundations, and to live there, where there is no contact with men, and no independent life; her life is to be restricted, modest, and witnessed by the accompanying community.

We also wish those being inducted for ordination as deaconesses to come to it either as widows, or as virgins, and without any men living with them in the alleged capacity of brothers, relatives or what are called 'dear ones';¹³ their use of such expressions fills their way of life with all kinds of

¹² For moral disapproval of second marriages by women, see *J. Nov.* 2.

¹³ 'Dear ones', or possibly 'those with whom one must be content' (ἀγαπητοί): apparently used here as a technical term, the exact meaning and implications of which were subjects

base suspicion. They must be living either alone, or only with parents, children and those who genuinely are their brothers or uncles, in which case anyone daring to harbour wicked suspicions will be credibly regarded as being himself impious and unholy. If anything of the kind is said about any woman wishing to embark on ordination as a deaconess, to the effect that she is living with some man under an appellation contrived as respectable, but in reality open to suspicion of wickedness, such a woman is absolutely not to be admitted to ordination as a deaconess. Should she be ordained and then do any such thing, and live with a man with the said appellation or position, she will forfeit her diaconate, and both she and he will be liable under this law, and under the others which punish seducers.

All those being ordained as most reverend deaconesses are, like the men, to be given the admonition on the occasion of their ordination, and to listen to the sacred instructions in the presence of the others who are already most reverend deaconesses. Thus they will have both the fear of God, and the opportunity afforded by the sacred instructions to fear the shame of dismissal from their sacred office, in the knowledge that if they have the temerity either to disgrace their ordination, or to abandon their sacred ordination and marry, or choose any other course of life that is in any way wicked, they themselves will become liable to execution, and their estate will accrue to the most holy churches or monastic houses they are in. The men who had the temerity to seduce or marry them will also be subject to the sword, and the public treasury will take possession of their property. By the ancient laws, the virgins invited to be with those men in their immorality had the death-penalty imposed on them for being seduced; that being so, how shall we not all the more specify that penalty for women whose religious beliefs are the true ones? We wish chastity, women's highest adornment, to be preserved above all in the case of most reverend deaconesses, in such a way that they preserve what befits their character and observe what is due to their priestly office.

7

Those once made deacons or priests on these terms are on no account to abandon their ministry; and we are decreeing that not only for presbyters and deacons, but for anyone who is a sub-deacon and, as it may be, for a

of discussion by Christian writers (see Lampe (1969), pp. 1317–18). In *J. Novs.* 123 c. 29 and 137 c. 1, the word *συνεῖσακτος* ('introduced additionally') is used, similarly, in the sense of women not allowed to live in a priest's household.

reader as well: he, too, is not to abandon his original position and change to a different way of living. He must realise that, should he do any such thing, he will be demoted, in accordance with our previously enacted law, to being either, with his property, a city councillor, or, if without means, a civil servant.

8

It is, moreover, not acceptable in future for appointments of most reverend clerics to be made exorbitantly.¹⁴ We remit, as being too long in the past, anything that ought to have been rectified hitherto; but we decree that, from now on, they are not to be made without due consideration, or in a way that tends to the detriment of the most holy churches. We have subsumed under a special law everything that should have been done about this sort of thing in the most holy great church of this sovereign city of ours, in its subordinate churches and in the other ones here. In all places outside this, we decree that if the church's original founder and builder defined a limited number of ordained persons, so as to confine the expenditure to that number, no further appointment is to be made for that same church until its complement has been confined to the number originally defined. Should this not have been the case, but the city's own church is nevertheless supplying the stipends for the other churches as well as itself, it is not then to increase its clergy without due consideration, nor weigh itself down with the consequent expenses for possible reasons of amity, or favours; such actions are irreligious and unworthy of priests. They should supply only what is possible out of whatever the Lord God gives, or else abide by the old practice and make absolutely no departure from it at all.

It is thus for the most God-beloved patriarchs and metropolitans to pay attention to this matter. While leaving already-existing clergy in the same positions as they hold at present, they are to calculate the means of each church. That done, the most holy patriarchs themselves are to bring into line the churches under them; their metropolitans, at the prompting of the most holy patriarchs, are to do the same; and they are to set all the other bishops under them to the same task of calculation, and to take pains to prevent appointments of clergy from exceeding the set expenditure. We know how many most holy churches have become destitute for just this reason of extravagance over appointments, and other expenditure; and also know that although we have just managed to save some of them, albeit with difficulty,

¹⁴ See *J. Nov.* 3.

others are still weighed down under their burdens, and unable to recover from their straitened position. Thus the most holy patriarchs, the metropolitans and the other most God-beloved bishops will take steps over this in such a way that we, on being informed of what they have done, will approve of them for showing that the letter of our law is being put into actual practice.

Conclusion

Therefore, in accordance with the prescriptive force of the divine canons, the most holy patriarchs of each diocese, the most God-beloved metropolitans and the other most reverend bishops and clergy are in future to keep perpetually inviolate this legislation of ours, and the sacredly constituted establishment; they are to maintain God's service, and sacred order, inviolate in all respects.

The penalty imposed on one who contravenes these provisions is absolute estrangement from God, and from the dignity inherent in his priesthood: he will be expelled from it as unworthy. We give licence to all, in whatever rank and station in life, if they see anyone contravening them, to inform us, and each successive Sovereignty, so that we, who have made this decree in accordance with the guidance of the divine canons, and with the apostolic tradition, may also bring our wrath to bear on the contraveners. This includes, of course, also the observance of all our legislation on matters of inheritance from the most God-beloved bishops.

1. The most holy patriarchs of each diocese will advertise these provisions in the most holy churches under them, and publish our ordinances to their most God-beloved metropolitans. They in turn will also advertise them in the most holy church of their metropolis, and will make them known to the bishops under them, each of whom will publish them in his own church. Thus no-one in our realm is to be ignorant of what we have ordained to the honour and exaltation of our great God and Saviour, Jesus Christ. Wherefore, in pursuance of this, your holiness is to publish these provisions to the most holy metropolitans under you, to be handed down for all time.

2. Copies have been made for Timotheus, most holy archbishop of Alexandria; Ephraem, most holy archbishop of Antioch; Peter, most holy archbishop of Jerusalem; John, for the second time Most Illustrious prefect of sacred *praetoria*, ex-consul, patrician; and Dominicus, Most Illustrious prefect of sacred *praetoria* in Illyria.

Given at Constantinople, March 16th, consulship of the Most Distinguished Belisarius

Added also:

[in the Latin version only]

In the knowledge of these provisions, your excellency also, together with those who will successively occupy your high office, is to take pains to observe them. If any such malpractice is reported, particularly in anything that has been forbidden with respect to appointments of city councillors and government officials, your excellency is to put a stop to it, and also to report it to us, so that due correction may be imposed. Your excellency is also to issue instructions to the Most Distinguished governors of the provinces, so that they, too, may keep watch over what is going on, and prevent anything from taking place outside the bounds of what we have constituted. To the end that proper procedure may be observed in appointments to office, there will also be the threat of a fine of five pounds of gold, if they knowingly fail to report any transgression they see to either your high office or the Sovereignty.

Given at Constantinople, April 1st, consulship of the Most Distinguished Belisarius

535

7 | Church property not to be alienated, exchanged or offered to a lender as special hypothec; he is to be satisfied with general hypothecs¹

Emperor Caesar Flavius Justinian Augustus to Epiphanius, most holy and most blessed archbishop of this fortunate city, ecumenical patriarch

Preamble

We have always made it one of our aims to clear up every matter that seemed previously imperfect or confused, and to render it perfect, instead of imperfect. Having done this for the law as a whole, we think it necessary

¹ In this novel Justinian attempts to reassert the inalienable character of ecclesiastical property in the face of loopholes in earlier legislation of the Emperor Anastasius (491–518) that had opened the way to the alienation of church lands. Certain of the loopholes identified by Justinian seem to have been opened by Anastasius inadvertently. However, the regime of Anastasius had been well disposed towards aristocratic interests, and members of the aristocracy are likely to have been keen to acquire ecclesiastical property (much prime agricultural land by this point having been acquired by the Church: see discussion in Sarris (2006), pp. 200–2). Justinian encourages claims to be made to reassert ecclesiastical ownership over alienated property, for which he would be criticised by Procopius (*Anecdota* 13 4–7). The prohibition against alienation would later be eased (especially in the wake of the bubonic plague of 541–2) primarily so as to allow the church to pay taxes it owed to the state (see *J. Nov.* 120 of 544). For rules on alienation, see Stolte (2007). Justinian does, however, allow the Church to borrow on surety of its land (*hypotheca*), which still opened the way to possible alienation in the event of failure to repay a creditor (also alluded to in *J. Nov.* 3 pr.). Such contracts could only take the form of a ‘general hypothec’ (*hypotheca generalis*: ‘an expression used by Justinian for the hypothecation of the whole property of the debtor’) otherwise known as ‘the hypothecation of all goods’ (*hypotheca omnium bonorum*: ‘embracing the whole property of the debtor at the time of the agreement (*res praesentes*)’ and which could also cover things later acquired by the debtor (*res futurae*) (Berger (1953), p. 490). In other words, the debt could not be tied to a specific piece of land or real property (under *hypotheca specialis*) and, in contrast to the situation with respect to lay debtors (as set out in *J. Nov.* 4), Justinian would go on to decree that the Church would be allowed to choose against which property the action for claim (*actio hypothecaria*) could be taken (or, in other words, what property would be ceded) and could only give land of modest quality (see *J. Nov.* 120 c. 6 and Van Der Wal (1998), p.121 (entry 843)). The novel casts useful light on the character of ecclesiastical landownership in this period and the range of interests it embraced. The preamble repeats the rhetorical tropes of bringing completion and divine order to disorder, whilst the main body of the law goes on to repeat that of legislation being necessitated by the variety (Greek ποικιλία) of things, on which see Lanata (1984b), pp. 88–94 and 174–81 (discussing this constitution). For further discussion of the development of the hypothec in Justinianic law, see especially Van Der Wal (1999a), pp. 154–8.

to include all previous laws on alienations of church property, which have been taking place, under a single law that renews and amends them all, adding what was lacking and removing what is superfluous.

After the first sovereign to champion the Christian faith, Constantine of pious memory, it was Leo of pious destiny who enhanced and established the honour and position of the most holy churches; and there is a law laid down by him on ecclesiastical alienations, which is confined solely to the most holy great church in this fortunate city.² We applaud most of the provisions of this law,³ laid down as it is with all due forcefulness and religious feeling; however, a fault we find is that it is not so framed as to apply generally, overall, and we have become convinced that it, too, needs some correction.

A law laid down on such matters by Anastasius of pious destiny is, unlike its predecessor, unsatisfactory in every way.⁴ Disseminated though it was to outlying regions as well, it nevertheless remained imperfect: it has regard only to the highest priesthood, and to the diocese under the direction of the most holy patriarch of this sovereign and fortunate city, with no concern for any other high authorities. Yet, if he thought the matter needed correction, what reason was there for his correcting a part of it while leaving the rest in disorder? We thus decree that that law is, for the future, to stand repealed. It was imperfect, restricted in its area, had no general place among laws, and introduced nothing of importance.

We have thought it necessary to rectify this situation by bringing this whole subject under a single piece of legislation, applying to all property that belongs to most holy churches, hospices, hospitals, almshouses, monasteries, children's homes, old people's homes and every institution of a sacred kind.⁵ This law is to supplement the constitution of Leo of pious destiny, whose terms we shall first outline in brief; that done, we shall go on to interweave all the rest with it.

The intention of that constitution is that neither the most God-beloved archbishop and patriarch of this fortunate city or of its most holy great church, nor a steward, shall sell, give away or otherwise alienate any immovable property, such as house, farmland, agricultural worker,

² 'This fortunate city' = Constantinople. The Leo referred to was the Emperor Leo I (457–474).

³ *Codex* 1.2.14.

⁴ *Codex* 1.2.17.

⁵ These were known collectively in Greek as ἁγίαι οἰκοί ('holy households' or 'holy estates') in contrast to θεῖοι οἰκοί ('divine' meaning 'imperial' or 'royal estates') and ἔνδοξοι οἰκοί ('glorious estates' or 'glorious households'), signifying properties belonging to the crown and lay aristocracy, respectively (see Kaplan (1992), pp. 136–49).

agricultural slaves or civic allowances – these are also to be counted as immovable property, inasmuch as they belong to the most holy great church in Constantinople –; nor are they to do any such thing by way of a return gift, or any other subterfuge.⁶ It threatens the purchaser with the forced return of the property: he is to restore the property that he has received from the most holy great church to its steward at the time, together with all it has produced in the interim, and the other profits.⁷ The penalty imposed on one who has the temerity to receive or purchase any such property is forfeiture of all it has cost him, because the constitution sets an illegal action on the same footing as one that never took place at all. It also orders the steward who contravened these provisions to pay in full to the most holy great church, from his own resources, whatever profit he may have made from the same cause, or loss he may have caused to the most holy church; in addition, it expels him from his stewardship, and gives the most holy church an action, not only against its most God-beloved stewards, but also against their successors, either if they alienated the property themselves, or if they saw the most God-beloved bishop at the time, or any of the other clergy, alienate it, but kept a disgraceful, servile silence – and much more so, if they saw him consenting to some such action but agreed to it, instead of preventing it.⁸ Further, it consigns to permanent exile the notary who drew up such contracts, allowing him no mercy nor any eventual return. Moreover, it threatens even the highest authorities who allow this kind of thing, and abet such actions, or tolerate the drawing up before them of records confirming such gifts or other transactions, with expulsion from their office, their rank and their property.

Despite those forceful penalties, it does allow the most holy great church to grant the use, or what is called *ususfructus*, of a piece of church property for a specific term, or for the lifetime of the recipient; but that is on

⁶ The agricultural workers referred to (Greek γεωργοί) are *coloni adscripticii* who were tied to estate property (see Sirks (2008)). Such workers were legally free with respect to society at large, but unfree with respect to their master or employer, with whom they had a status analogous to that between a master and a slave or a son under paternal power (*in domini potestate* or *in patria potestate*; see Sarris (2011b)). It is revealing that here the *colonus*, like the slave, is treated as a piece of real property. The civic allowances (*annonae*) referred to were payments made by the state to select recipients in the form of bread, oil, wine and other supplies (see Sirks (1991) and Durliat (1990)). The entitlement to such *annonae* is again here treated as akin to real property.

⁷ Greek ἀνάδοσις translating the Latin legal term *restitutio in integrum* (see Berger (1953), p. 682).

⁸ Note once more the emphasis on the personal liability of agents for their actions (οικεῖος κίνδυνος).

condition that the recipient of such munificence is, in return, to provide the most holy great church with title to full ownership of property of the same value, from which the most holy church shall be able to receive the same amount of income as the recipient has received from the use.⁹ It is to be noted that after the recipient's death, or after the time specified for his use, use of the church property that has been given him shall return to the most holy church; the use of what he gave, along with full ownership, becomes the property of the most holy church. Under the law, such a transaction is safe.

However, if the value of what the most holy church has received in exchange (to which it is immediately going to receive the title, and of which it expects to receive the use) should be less than that of what it has granted, it renders the transaction invalid, and as if not done.¹⁰ It also gives licence for a remedy at law, on the ground that there has been fraud against the rights of the most holy church.

1. Such, then, in brief, are the provisions and penalties determined by the law; but it covers no more than the property of the most holy great church alone. It eliminates all double-dealing, as we have just stated; but it has not been able to check the criminal activity of later generations: certain people have devised what is called the 'right of *paroikoi*', something unknown either to our own laws or to any other law at all, and have practised a significant evasion of the law by contriving a virtually permanent alienation.¹¹ This practice we have prohibited for the future, from the time of our laying down the law on these matters.

⁹ *Ususfructus*: defined by Berger (1953), p. 755, as 'the right to use another's property and to take produce therefrom without impairing its substance'. The ownership referred to is that encompassed by the Latin term *dominium* (ibid., p. 441) which contrasts with mere possession or retention of a piece of property (*possessio*).

¹⁰ Literally 'as not having taken place'.

¹¹ The Greek word *πάροικος* (like the word *γεωργός*) was used as a synonym for the Latin word *colonus*, meaning a farmer or agricultural worker (as in *colonus adscripticius*). The term 'right of the *πάροικος*' (Greek *παροικικὸν δίκαιον*) used in the novel is thus a translation of the Latin term *colonarium ius*, meaning the law or rights concerning *coloni adscripticii*. The *παροικικὸν δίκαιον* alluded to here refers back to a law of the Emperor Anastasius (*Codex* 11.48.19) whereby *coloni* and others who had worked on an estate continuously for thirty years became 'free *coloni*' (*coloni liberi*) acquiring ownership of their personal fund (*peculium*) which could comprise a piece of land assigned to them by the landowner (see Sirks (2008) and Sarris (2011b)). This right was presumably granted partly as an incentive to prevent *coloni adscripticii* from resorting to flight. By granting this right, however, Anastasius had unwittingly created a legal loophole which permitted *coloni* employed on ecclesiastical estates to claim land or property that belonged to the Church, thereby infringing the prohibition on alienation. As noted in the Introduction, some peasants appear to have known enough law to assert this right, to Justinian's great annoyance. The issue is also addressed in *Codex* 1.2.24.

These people have now also turned their attention to emphyteuses, and those in charge of what was formerly the property of the most holy great church have greatly reduced the value of its real income by granting concessions to the emphyteusis-holders.¹² As a result, we have, in one of our constitutions, limited the duration of the emphyteusis to three holders: the recipient, and two others in succession.¹³ This we have allowed in the case of property belonging to the most holy church, as well; but we have legislated that a concession made for contingent circumstances should not exceed one-sixth.¹⁴ This is because we have found that contracts have been being drawn up, by some, in such extravagant and impious terms that not even a one-sixth share has been left for the most holy church, all the rest having been granted as a concession to the emphyteusis-holder.

The constitution of Anastasius of pious destiny ordered that alienations, should the need ever arise for that, were to be registered in the official records; and he limited emphyteuses, if without an entry in the records, only to the lifetime of the person taking out the lease, whereas, with an entry, he extended them to perpetuity.¹⁵ This law that he made has been neither strict nor expedient, as well as being altogether incomplete, as we have said, in that he confined its application solely to the diocese under the patriarchal office of this fortunate city.

1

It is now time to proceed to the law. We decree that neither the most holy great church of this fortunate city, nor the subordinate churches whose support it has undertaken, as defined by Anastasius of pious destiny, nor any other churches at all, whether in this fortunate city or in its vicinity, nor those under the patriarchal office of this fortunate city, whose

¹² The emphyteutic lease (ἐμφύτευσις) was an instrument of Greek origin which was something of an anomaly in Roman law, in that it granted the tenant such security of leasehold, and once fixed, rendered the level of rents so unalterable, as to effectively drain the concept of ownership of almost all its legal content (the level of rent could not be altered, and the lease could be permanent in duration and bequeathed to the tenant's heirs: see Nicholas (1962), pp.148–9). Indeed, in a law of the Emperor Zeno dating from 476–484, it was treated as neither quite a lease, nor a form of alienation, but as something in between (*Codex* 4.66.1). In the *Institutes*, Justinian declared that by virtue of this law emphyteusis 'no longer leans towards sale or hire but stands apart' (*J. Inst.* 3.24.3). The primary purpose of emphyteusis in late antiquity was probably to ensure the continuous cultivation of land that was otherwise potentially unattractive to an investor or farmer.

¹³ *Codex* 1.2.24.

¹⁴ I.e. tenants in dire straits should not have their rents reduced by more than one-sixth.

¹⁵ *Codex* 1.2.17.

metropolitans he himself appoints, nor any other patriarch, metropolitan or bishop anywhere (we mean those in the East, in Illyria, and also those in Egypt and the adjoining area of Libya united with it, and in the African lands – in short, all those in our territory), nor yet the most God-beloved bishops in the West, from the elder Rome itself to the most holy orthodox churches at the Ocean, nor any head of a hospice, almshouse, hospital, orphanage, old people's home or children's home, nor any hegumen or hegumene of a monastery for men or women, or any person at all in charge of our holy foundations, is to have licence to alienate any immovable property, comprising houses, farmlands, market gardens or anything of the kind at all, nor any agricultural slave or any civic allowance; nor to surrender it to lenders as special security.

We have defined the term 'alienation' in a rather general sense, so as to prohibit sale, gift, exchange and emphyteusis extended in perpetuity, which is not far from alienation. We restrain all priests everywhere from making any such alienation, on pain of the penalties employed in the constitution of Leo of pious destiny. That constitution, we decree, is to be in force, and valid in all respects; and for that reason we have made it public by putting it, not in the ancestral language, but in Greek, this common tongue, so that it may be known to all through the availability of a translation.

We remit what is now in the past, because it would take a great deal of trouble to reconsider so many contracts made over a long period. Thus, those made hitherto are to retain their own form; but, for the future, we forbid all alienation, and impose the aforesaid penalties.

2

So that the law may remain undisturbed throughout, while being permanently adapted to the complexity of human nature and to eventualities (for what, in the world of humanity, could be so stable and unshakable as to undergo no change at all, when our whole condition is in constant movement?), we have deemed it necessary to make certain exceptions to the law. These have been devised, with much lucubration and nicety, to ensure that with their assistance the law may remain absolutely unshaken.

1. We therefore concede to the Sovereignty that if, with regard to the common good and to the advantage of the state, there is a purpose that demands its acquisition of such a piece of immovable property as we have supposed, it shall be permissible for it to receive that from the most holy churches, and from the other holy houses and institutions, with indemnity

preserved to the sacred houses in all respects, and with compensatory payment to them by the recipient of property of value equal to what they have given, or even greater. After all, how could a sovereign object to giving something better, seeing that God has given him much to possess, much to have in his ownership, and no difficulty in giving? – particularly to the most holy churches, in whose case the best limit to giving is limitlessness. So, should such a situation arise, and a pragmatic directive be issued which orders the giving of any such property to the Sovereignty, and which immediately gives in exchange a property finer, more generous and more beneficial, the terms of that exchange are to be secure; and those at the head of the holy houses from which the alienated property comes, and those who serve on such documents, are to be in all respects free of liability, without anxiety over the penalties threatened by Leo of pious destiny, and confirmed by ourselves. Priestly office and the imperial office are not much different from each other; nor is sacred property from ordinary public property, given that all the wealth and subsistence of the most holy churches is forever bestowed on them by acts of sovereign munificence.¹⁶ There would therefore be no reasonable ground for anyone to criticise them for making suitable exchanges with each other.

All other sale, gift, exchange, or perpetual emphyteusis, whether made to the Sovereignty itself or to any other person at all, we entirely abolish; and we also firmly disallow the giving of any security for loans on immovable property. We intend this to hold good for every church and every monastery, hospital, hospice, children's home, religious foundation, old people's home and, in short, every institution founded as a religious act: no-one at all is to be able to receive any such things from them. There will thus be no further need of the constitution of Anastasius of divine destiny, nor of the *decreta*¹⁷ in it, and the procedure mentioned; as we have abolished the root causes of the problem, and prohibited what was taking place, we would have no need to trouble ourselves with it any longer.

3

We do permit the granting of an emphyteusis, whether in the case of the most holy church or of any of the other venerable houses, to the actual recipient and to the same person's two successive heirs. However, they must only be that person's children (male or female), grandchildren of

¹⁶ Repeating the theme found in the preamble to *J. Nov.* 6.

¹⁷ *Decreta* = (imperial) enactments.

either sex, a wife, or a husband – provided that ‘wife’ and ‘husband’ are specifically named. Apart from those, they are not to descend to any other heir; should the recipients have no children or grandchildren, they are to last only for their lifetime. In no other way do we allow an emphyteusis to be made at all on any immovable property, agricultural slave or civic allowance belonging to any church or charity, nor, if one is made, do we allow it to have any validity at all.

1. The constitution of Leo of pious destiny ruled that ecclesiastical property is not to be offered at any discount at all; but we, in another constitution that we have laid down, have ruled that one-sixth only may be discounted on emphyteuses. The procedure we appoint for this discounting is as follows: after an entirely honest and detailed enquiry into the rent for the property being leased out, it is to be fixed at a level yielding the same income to the most holy church as at the outset; and the grant of the emphyteusis is to be made only to such persons as we have stated above. We then permit an accurately calculated one-sixth of the rents. Should the rent be discounted on the ground of misfortunes of some kind, the person wishing to take out the emphyteusis must either do so at the whole rent as thus constituted, or else not take it out at all; property can be let, rather than making such large discounts on emphyteuses.

Should an emphyteusis be granted on one of the very valuable church properties just outside the city – such as we know exist in very large numbers, at this fortunate city, which are bringing in a very low income, or no income at all, despite their high value – the emphyteusis is not to be calculated in relation to the income; instead, the suburban property is to be valued, and the emphyteusis calculated, from the total value, at twenty years’ purchase. At the income thus calculated, the emphyteusis is to be made, not in perpetuity, but for the recipient himself and for two heirs of his, including husband or wife, as we have just stated above.

2. It is the emphyteusis-holders’ duty to be aware that if they should fail to pay the rent on the emphyteusis for two consecutive years (that being the period that we regard as sufficient, on church or charitable-foundation property, for forfeiture of emphyteuses for non-payment, in contrast to the three years applicable to other people), they will in all circumstances forfeit the emphyteusis. If those at the head of holy houses so wish, they will be free to re-possess the estate properties or buildings without heed to compensation for improvements. However, should the recipient of the emphyteusis have caused deterioration in the estate property, suburban holding or building, he is to be compelled to do the maintenance and restoration of its appearance at his own expense; he, his heirs and

successors and his estate are to be under that liability, in addition to that of being charged the full rent owing, unfailingly.

We decree that this statement of ours, to the effect that no alienation of any immovable property belonging to a church or charitable foundation is to be granted to any person of our realm, is to be valid not only for intact buildings, suburban holdings, farmlands and market gardens, but also for ruins, whether ruined by fire, earthquake or any other cause whatsoever – even for those that have been destroyed completely down to ground-level, or as nothing but ruins, containing no construction or any fallen timber at all. Not even on those do we permit there to be alienation, with the sole exception of an emphyteusis, time-limited as we have stated above, and for three such persons as aforesaid. To avoid any fraud even in such a case, two of the leading engineers or architects at the time are to be present at the site. If it is in this great sovereign city, it is to be together with the most God-beloved stewards, five most reverend priests and two deacons, and in the presence of the most God-beloved archbishop; if abroad, two distinguished engineers or architects, or just one, should that be all the city has. With the divine Gospels displayed, the amount payable to the most holy church for an emphyteusis on the property is to be determined by the architects, and a contract is to be drawn up for an emphyteusis on those terms, in the form stated above. The recipient is to build and to make use of the timber, should it contain any, and to hand on the emphyteusis for up to two successors, as has been stated; then, after the death of those three persons, the emphyteusis is to fall back to the most holy church or most holy house from which it has been given. Such a transaction, also, is to stand, as being not in conflict with this law.

3. No validity is to be allowed to the further notion which has hitherto existed about such transactions, to the effect that even after the full time of the two heirs there is licence for subsequent heirs to hold the property in emphyteusis, and always to be given precedence over others; that is nothing but a fraudulent contrivance for producing permanent emphyteuses on ecclesiastical property, or rather for wrongful deprivation of it. Even if something of the kind has taken place, after the two heirs have come to an end there is to be no necessity for most holy stewards to issue an emphyteusis to the next ones.

4

Should anyone wish to receive by way of use, or what is called *ususfructus*, ecclesiastical property belonging either to the most holy great church, or to

any other church or charitable foundation whatsoever in our entire subject territory, he is not to receive it otherwise than under the said procedure, and as directed in the constitution of Leo of pious destiny. He must be well off, and the owner of immovable property. As such, he must forthwith give to the most holy church or holy house from which he is receiving it a property yielding the same kind or amount of income as that which is being given to him, with right of full ownership. Thus, after his death, the property of the church or charitable institution reverts to the most holy house, along with the right of use which was given him, which is not to outlast the recipient's lifetime. It similarly receives the use of the property given it by the exchange. Thus, after the death of the recipient, or after the period for which the use was agreed – not in any case exceeding his lifetime –, rights of both full ownership and use over both properties are with the most holy church.

5

The constitution of Leo of pious destiny determined its penalties almost wholly for cases of sale, whereas we have forbidden not merely sales of immovable property, but also gifts of it, exchanges, perpetual emphyteuses and giving as security. However, we observe that there are persons so risk-inclined that they dare to enter into forbidden transactions; such is the audacity of their attitude that they flout the law by actions that are comprehensively forbidden, and may even bring people to their death. For this reason we have deemed it necessary to assign a specific penalty for each transaction; these are the penalties threatened by the said constitution of Leo of pious memory against stewards, and now applied similarly to a steward, to the head of a hospice, hospital, or children's home, or to the hegumen or hegumene of a monastery or monastic foundation, as ordained before. Therefore, if anyone should dare to purchase any property belonging to a church or charitable foundation, he is forthwith to forfeit its price: the property he has received is to be demanded from him, together with any addition made in the interim, and he is to have no action at all against the most holy church or holy house. Against the most reverend stewards, however, or against the sellers generally, in regard to their personal property, he is to have an action arising from the transaction, to the end that out of fear at least for their own property, if not for the fear of God, they may at least become more hesitant about selling.

1. Should anyone dare to receive a church's or charitable foundation's property as a gift, he is in every case to forfeit what he has been given, and is

to pay from his own property a commensurate sum, in compensation, to the most holy church or holy house from which he received it – to the end that, by having to pay the same amount as the loss he has tried to cause the house by sharp practice, he may feel the effect of his wickedness on what is his own.

2. Should an exchange take place with any persons, apart only, as we have stated above, from the Sovereignty, the recipient of the exchange is to be subject to the double penalty that he loses the property he has been given, which reverts to the holy house from which it came, and that the property he gave in exchange remains with the holy house; the person engaging in such an illegal act forfeits both, rightfully. He thus sustains the penalty both of forfeiting his own, and of failing to gain what he hoped. Here too, an action is preserved to him against those who made the transaction with him, in respect of their own property.

6

If a lender should choose to accept, as real security, immovable property belonging to a church or charitable foundation, consisting for example of houses, suburban holdings, farmlands, market gardens, civic allowances or agricultural slaves, and to give money for it, he is to forfeit his loan, and the most holy church or holy house that borrowed is to keep the money lent, as a gain. The lender then has an action against the person who took out the loan: steward, head of the hospice, almshouse or other institution, hegumen of the monastery, monastic house or other holy institutions. All these provisions hold good also for the hegumens in charge of female monastic foundations or monasteries.

1. Should most holy churches, or other holy houses, come to have any need at all of a loan, solely, of course, for some necessary and unavoidable purpose without which an urgent aim could not be fulfilled, or else for something highly advantageous to the most holy church, it is open to those at the head of them to take one out, but not going further than a general hypothec only; they are not to provide the lenders with a special security.

7

Should anyone actually have the temerity to take out an emphyteusis in perpetuity, which is not allowed, or to take a temporary one that is not in observance of the terms of this law of ours, he too is to forfeit the emphyteusis, and what he has paid is to remain with the holy house. Even

after forfeiting the emphyteusis, he is permanently also to go on paying the same amount as he would have been going to pay had the emphyteusis been undertaken legally; nothing from the charitable property given him by way of emphyteusis, ineffectually, is to remain with him.

1. All this is to be observed, subject to the penalties stated. Notaries are not to have the temerity to serve on such contracts, for fear of permanent exile, with no return, ever, even if a divine directive should grant it; and office-holders are not to have the temerity to dictate such contracts, nor to accept them if they are made, nor to confirm them by an entry in the records. Otherwise they, too, will suffer forfeiture of their office, rank and property, in accordance with the constitution of Leo, . . .

8

. . . the same penalties also being observed against those who either pawn holy vessels, contrary to our law, or sell them, or melt them down for alienation: we decree that they too deserve an equal or even greater punishment, inasmuch as they are daring to commit impiety over things that, once consecrated to God, are sacred. This is, exceptionally, not to be the case should the action we have mentioned be taken for the purpose of rescuing prisoners of war; there, by means of the alienation of inanimate treasures, human souls are being rescued from death and imprisonment.

Be it noted that a similar procedure is also to be observed in the case of alienation of civic allowances, as we have repeatedly stated, since we have learnt that such allowances exist not only for this sovereign city but also for Alexandria the Great and for Theoupolis;¹⁸ there may be something of the kind in other provinces, as well. Should there be such a holding elsewhere, this law is to extend its application, and be observed there as well.

9

As it is likely that some, to evade this law, may try to obtain pragmatic directives from us allowing them to take some such action, that is a thing we also prohibit for any person great or small, whether he hold some office, or be a member of our court, or anyone else, a member of the general public. We decree that absolutely no-one is to have licence to claim the protection of any such pragmatic directive, nor thereby to receive any of

¹⁸ Theoupolis = Antioch. For Antioch in late antiquity, see Liebeschuetz (1972) and Foss (2001).

the immovable property belonging to the most holy churches, monasteries, charitable foundations or holy institutions. Should the Most Illustrious *quaestor*¹⁹ dictate any such directive, he is liable to a fine of fifty pounds of gold, and the Most Illustrious office-holders, or any others, who accept the certification of any such divine directive, are liable to the same fine. Should notaries draw up any such document, they are to fall under the constitution of Leo of pious destiny; and the most God-beloved bishops, or most reverend stewards, are safely to brush aside any such divine pragmatic directives – or rather, to endanger themselves, if they accept them: they are to be aware that, should they ignore the law and follow pragmatic directives thus generated, they are putting their priestly office itself at risk.

1. Common, generic legislation for the benefit of all must have greater validity than acts destructive of the common good, resulting from pressure by individuals.

It is to be noted that the only properties to be rented, and leased on emphyteusis, are those they regard as needing something of the kind.²⁰

10

If the most God-beloved stewards, or heads of other institutions, wish to keep any property under their own management, no person in power is to have freedom to compel them to let it out, either for rent or on emphyteusis, even with a divine pragmatic directive.²¹ The person doing so is to be liable to the penalty for sacrilege, and to all the penalties contained in this divine law of ours.

11

We have become aware of a terrible offence being committed in Alexandria and Egypt, and also now in some other regions under our dominion: namely that some are having the temerity to sell, exchange or give away even holy monasteries themselves, in which an altar has been consecrated, the divine liturgy has been celebrated just as it customarily takes place in most holy churches, the divine scriptures have been read, the mystery of

¹⁹ The *quaestor* was the chief legal officer in the Empire: ‘in broad terms, legislation fell to the *quaestor*, legal administration to the master of offices and the *scrinia* [bureaux under him], and the execution of laws to the praetorian prefect’ (Honoré (1978), p. 9).

²⁰ ‘They’ are presumably the bishops and stewards mentioned above.

²¹ Indicating the existence of regimes of direct management on ecclesiastical estates (on which see Sarris (2006), p. 130).

the Holy Communion has been administered and the monastic life has been lived. These monasteries have thus been converted from a sacred character, beloved of God, into the form of a private dwelling. We absolutely forbid this to happen in future. We allow no-one at all to commit this sin, and we declare that what is taking place is in every way invalid. We sentence the recipient to forfeiture of the values; we punish the seller with both forfeiture of the property and loss of the price, which we assign to the most holy church of the locality and to the local monasteries. They are to see to the restoration of the wrongly alienated property to its monastic character. A hypothec secured on it is not to stand, either: that, too, is to be invalidated, and the monastery restored to its sacred ministry.

12

As we have prohibited damaging alienations, so we also forbid damaging acquisitions. Many proceedings before us have arisen out of gifts to most holy churches or most venerable houses of estate properties that are unproductive; or from sales to them, as ostensibly productive, of ones that have actually been unproductive from the outset, with consequent injustice to the holy houses. We therefore forbid those at the head of most venerable houses to take any such step; or else they are to be aware that, should they fail to take fully meticulous care over making their transactions, and should the churches, monasteries, hospices, hospitals or other holy institutions thereby acquire by gift a holding that is unproductive or deleterious, the transaction will be as if not done, and, in any event, the donor will take back the gift that has been fraudulently and deceitfully presented. Moreover, the steward, hegumen or head of the hospice, hospital, almshouse, orphanage or old people's home who entered into such a transaction will, at his own expense, make good to the donor the consequent loss incurred. Should the transaction have been dressed up by a payment of money in addition, that money will accrue to the holy house that received the unproductive gift, and the person who paid it will have an action arising out of it against the person who made the transaction, as we have stated above.

Conclusion

That is the law to be put in place by us about alienation of the property of the church, or of charitable foundations in general. It piously follows the constitution of Leo of pious destiny, but without leaving one aspect

untreated while remedying another. It is to extend over the entire territory covered by Roman law and the jurisdiction of the catholic church. It is to be decisive in its field, and to be in force in perpetuity, observed by the most holy patriarchs of each diocese, by the other bishops, clergy, stewards, hegumens, and heads of hospices, hospitals, orphanages, children's homes, old people's homes and, in a word, all persons at the head of holy institutions, imposing its own force on each, and giving licence to anyone who wishes to prosecute offences.²² Such a person will escape the appellation of vexatious litigant; he will be praised for exposing an illegal act, and for being the cause of pious assistance to holy houses.

Equally, the office-holders of our realm, higher and lower, civil and military, and above all the Most Illustrious prefects of our sacred praetorians everywhere, with those known as 'Admirable',²³ who hold the middle magistracies (that is to say the *augustalis*,²⁴ the proconsuls, and the Admirable *comites*, including the *comes* of the East),²⁵ and those in office below them, that is the provincial governors, whether consular or presidential, and the defenders of the cities²⁶ – in short, all administrative bodies, civil, public and military – are to uphold this law, as being laid down for the common good and on behalf of religion all over the world; and they are to subject contraveners to the penalties we have stated above.

Any legislation of ours or of our predecessors on renting ecclesiastical property, or under other heads, is to remain in its own force, unaltered by our present divine constitution. We allow all its other provisions to stand, within their own sphere, but not anything it contains on the subjects of our present constitution; this law suffices, in addition to that made by Leo of pious destiny, in place of all, to abolish every pretext for alienating property of charitable foundations.

²² In fact Justinian would have to make major modifications to this legislation, even permitting perpetual emphyteusis: see *J. Novs.* 40, 46, 54, 65, 67 and 119. Legal order was restored with the promulgation of *J. Nov.* 120.

²³ 'Admirable' = those accorded the title of *spectabilis*: i.e. the second-highest senatorial grade (on which see Guiland (1967)).

²⁴ The *augustalis* or 'Augustal Prefect' governed Alexandria and Egypt (until the provincial re-organisation recorded in *J. Edict* 13). The alienation of ecclesiastical property in Egypt, which Justinian had singled out for criticism in c. 11 of the present law, would remain common practice in the region: see Steinwenter (1958), pp. 32–4.

²⁵ *Comes/comites* = count/counts. The 'Count of the East' governed the diocese of the East (*Oriens*) and was based at Antioch. He was answerable to the Praetorian Prefect of the East, as too were most of the other provincial governors bearing the title of either proconsul or 'count' (*comes*) referred to in the novels and granted *spectabilis* rank: see, for example, *J. Nov.* 30 and *J. Nov.* 27. For further discussion, see Stein (1949) 2, pp. 463–80 and 747–56.

²⁶ 'Defenders of the cities' = those holding the office of *defensor civitatis*: see *J. Nov.* 15.

Accordingly, your beatitude and your successors in high priestly offices are to take pains to put our instructions into practical effect.

[in Latin] May the Divinity preserve you for many years, most holy and religious father.

A copy has been made for the most holy archbishops of Rome, Aelia,²⁷ Alexandria and Theoupolis; for John, for the second time Most Illustrious prefect of the sacred praetorians of the East, ex-consul, patrician; and for Dominicus, Most Illustrious prefect of the *praetoria* of Illyria.

Given at Constantinople, April 15th, consulship of the Most Distinguished Belisarius

535

²⁷ Aelia = Jerusalem.

8 | Constitution on appointment of governors without payment of any kind¹

The same Sovereign to John, for the second time prefect of praetoria,² ex-consul, patrician

¹ This law, dating from 535, constitutes a cornerstone of Justinian's programme of provincial reform. In it the Emperor prohibits the purchase of gubernatorial office (paralleling the prohibition on the purchase of episcopal office in *J. Nov.* 6). Such purchase of office had been legislated against by emperors in the fourth century, but had been expressly accepted by Theodosius I in a law dating from 394 (*Codex Theodosianus* 2.29.2) which Justinian had included and thus ratified in his recent codification (*Codex Iustinianus* 4.3.1: see discussion in de Ste Croix (1954), p. 39). The purchase of office, Justinian now decided, was having a destabilising effect on conditions in the provinces, as it effectively incited governors to attempt to recoup the sums they had paid for their posts by illicitly extorting money from their newly acquired provincial subjects. The Emperor here also attempts to make governors less prone to the bribes and blandishments of provincial aristocrats by substantially increasing their stipends, thereby rendering them more dependent on (and hopefully more loyal to) the Emperor and the central administration. Procopius claims that the purchase of office nevertheless continued under Justinian; it is alluded to in the legislation of Tiberius II; and it remained a cause of complaint at the end of the sixth century in the letters of Pope Gregory the Great (see Procopius, *Anecdota* 21. 16–18, *J. Nov.* 161, Gregory *Epist.* 5 38 and de Ste Croix (1954), p. 48). It is possible (but by no means clear) that this law also sought to dismantle what may have effectively amounted to a system of tax farming whereby local aristocrats had been encouraged to bid for post as tax-collectors (*vindices*) in the provinces (see Sarris (2006), pp. 158–9, John Lydus, *De Magistratibus* 3.49 and Procopius, *Anecdota* 21. 9–13). At the same time, it 'introduces a complicated series of changes to the provincial organisation of the dioceses of Asiana, Pontica and Oriens' (Jones 1964, p. 280) which would be paralleled in Egypt in *J. Edict* 13 and in Thrace in *J. Nov.* 26. Essentially, in this law and the associated *J. Novs.* 20, 23–31, 102, 103, *J. Edict* 4, and *J. Edict* 13, Justinian sets about dismantling the three-layered system of provincial administration inherited from the Diocletianic empire (consisting of prefectures divided up into dioceses, divided up in turn into provinces), and instead begins to reconstruct the administration of the empire on more of a two-layered basis focused on prefecture and (often larger) province. As part of this programme of reform, diocesan *vicarii* were turned into straightforward governors of the provinces in which they were posted (whilst maintaining their rank as *spectabiles*) whilst other provincial governors were promoted to equal rank and acquired greater judicial authority (on which see *J. Nov.* 20 and *J. Nov.* 23). See Van Der Wal (1998), p. 20, note 42 and Stein (1949) 2, pp. 463–80 and 747–56 (including discussion of the subsequent reversal of much of this). In the documents appended to the law, the Emperor also attempts to enlist the aid of local bishops in supervising the activities of governors on the emperor's behalf. For further discussion of provincial re-organisation, see Haase (1994a) and the admirably clear exposition in Kelly (2004), pp. 71–85.

² 'Prefect of *praetoria*' = Praetorian Prefect (of the East): the chief financial minister of the empire with primary responsibility for the collection of the land tax (see Haldon (2005), pp. 43–5).

Preamble

It falls to our lot to spend every day and night considering, with all vigilant care, how some benefit pleasing to God might be bestowed by us upon our subjects.³ We take this vigilance seriously, so much so that we exercise it all day, using nights just as much as days, on such plans as will ensure our subjects' welfare, and their freedom from every care; we take upon ourselves their concerns on all matters. We proceed by means of the most searching and probing enquiry, in our endeavour to find actions that will bring assistance to our subjects, and free them from every burden and all extraneously imposed expenditure, apart from that of the public taxation-register, and their fair, statutory contribution, because we find that for some time now (though not in the past) a great deal of injustice has made its way into these matters, with the effect on our subjects of driving them forcibly into poverty; there is a risk of their being reduced to the most complete destitution, and to inability to make the normal, statutory payments of public, genuinely dutiful taxes due by the public register, without great duress. Sovereigns, followed understandably by the Most Illustrious men who hold office under them, have for some time now been wishing to derive some income from promotions to office; under the unjust conditions that have resulted, how could taxpayers have been capable of meeting extraneous exactions, as well as their statutory, dutiful tax-payments?⁴

1. We have thus taken thought as to what we could possibly do to change everything that is injurious in our provinces for the better, by a single action common to them all; and we find that that will definitely be the result, if we put the provincial governors⁵ – all who hold civil offices in the provinces – in the position of having clean hands, by forgoing every payment made to them and being content with what they are paid from the public treasury. The only way for this to come about would be for them to take over their position free of charge, making no payment whatever,

³ This motif of the 'sleepless emperor' is parodied by Procopius in his *Secret History* (*Anecdota* 12.20).

⁴ The law provides evidence for growing fiscal pressure on the East Roman state associated with mounting military expenditure to both East (where the emperor was investing in the empire's defensive infrastructure) and West (where the Italian campaign was almost underway): see Sarris (2011a), pp. 145–52 and Maraval (2016), p. 229. The 'Most Illustrious men' (Greek ἐνδοξότατοι) referred to were imperial civil servants who were accorded the highest senatorial status (and the epithet of *illustrissimi* or ἐνδοξότατοι) by virtue of the governmental offices that they held (see Sarris (2006), p. 75). These epithets were thus deployed as technical terms of rank used to designate members of what has been described as the '*haute noblesse*' of East Roman society (Banaji (2007), p. 253).

⁵ 'Governors' (Greek ἀρχοντες) = Latin *praesides*: see Jones (1964), pp. 527–9.

even by way of what are called *suffragia*,⁶ either to office-holders or to anyone else at all. We have taken the view that, despite the considerable reduction of revenue to the Sovereignty, there will be a great improvement for our taxpayers by their being protected from payments to office-holders; and both the Sovereignty and the public treasury will be better off from having subjects who are well off. The gain in prosperity from the introduction of this system, alone, will be great beyond words. Is it not clear to all that the person paying money and purchasing his office in this way, is not just paying what has been devised as the so-called *suffragia*, but will be laying out more, quite apart from that, on courting the favour of others: those who are either conferring the office, or procuring it? And once one office has been awarded corruptly, the person who has begun by giving a bribe will inevitably be going the rounds of numerous hands. He may then be unable to find the money for this from his own resources, but only by taking out a loan; and to enable himself to do that, he will be out of pocket, and start thinking to himself that it is acceptable to make enough from his governorship to clear his debts, both capital and interest, plus the losses he has incurred from the very fact of having got into debt. Meanwhile, he will start incurring expenditure on a more lavish scale, in keeping with his own position and that of his staff; and he will also be putting aside some funds for the future as well, when he may no longer be holding office. What is being exacted from our taxpayers will thus be three times – or, to tell the more exact truth, ten times – more than what he pays. As another result, the public treasury will be impoverished, because the amount that should have been brought in to the public treasury, had the office-holder's hands been clean, has been taken by the office-holder to look after his own interests. He will also have left our taxpayer destitute, putting on us the blame for the destitution he has caused; and how many other impious things happen which are credibly attributable to these people's thievery? Intent on gain, holders of provincial offices often acquit the guilty, letting them buy off their crime, while condemning the innocent so as to do favours to the guilty.⁷ And this they do not just in financial cases, but also in criminal ones, where it is a person's life that is at stake. People are

⁶ In the early days of the Roman Republic, the Latin word *suffragium* had signified the vote of the free citizen, but gradually came to mean the influence or patronage exercised by the powerful. By the reign of Anastasius, it had come to mean 'not only the influence which the great man exercises but also the actual sum of money or other bribe given him in return for exercising it' (de Ste Croix (1954), p. 47). The Greek text uses the Latin word in a Hellenized form (on which see Avotins (1992), p. 195). The law makes it clear that emperors themselves (or their representatives) had been collecting such payments.

⁷ This was already a problem in the days of Cicero: see de Ste Croix (1954), pp. 42–4.

deserting their provinces, and they all – priests, city councillors, civil servants, property-owners, townsfolk, agricultural workers – come pouring over here in distress, quite rightly complaining of the office-holders' thefts and injustices.⁸ Nor is this all: riots in cities, and civil disturbances, are in large part caused, from start to finish, by money.⁹ In sum, all the troubles stem from one and the same cause: the office-holders' demands for money are the beginning and ending of every iniquity. This also shows the admirable and complete truth of the saying in the divine scriptures: 'Love of money is the mother of all evils',¹⁰ particularly when it becomes inherent in the souls of officials, not just of private persons. Who would not steal with impunity, who would not go raiding scot-free, when he looks at officialdom, sees it selling everything for money, and so gains confidence that whatever enormity he may commit, he will buy it off with a bribe? That is why there are murders, adulteries, break-ins, beatings, abductions of girls, disorder at public assemblages, and contempt of the laws and of the authorities: everyone regards them as openly venal, like some vile slave. It is beyond us either to conceive or to describe all the problems that arise from the thievery of provincial office-holders; and no-one has the courage to rebuke them openly, because they at once defend themselves with the fact that they paid for their office.

1

After first considering all this for ourselves, then taking our God-given and most pious consort into consultation, and also putting the matter before your excellency and adopting some of your advice, we have arrived at the following divine law.¹¹ By it, we decree that no office, whether proconsular or what has hitherto been called *vicaria*, nor the *comes* of the East, or any other office whatever either consular or gubernatorial, known as *consulares* and *correctoriae*¹² – these being specifically mentioned in the

⁸ Here the law re-iterates a theme of Justinian's legislation: the desire to limit the flow of litigants to Constantinople.

⁹ Riots caused in particular by circus factions were a major problem in the sixth century in both Constantinople and beyond: see Greatrex (1997).

¹⁰ 1 Tim. 6:10: love of money is the root of all evils.

¹¹ Note the explicit reference to the emperor taking advice from his wife, the Empress Theodora, as complained of by Procopius in his *Secret History* (*Anecdota* 10. 13–14).

¹² Different provinces had different ranks of governor. In the Eastern Empire prior to Justinian's provincial reforms, there were two provinces (Achaëa and Asia) that bore 'senatorial' status, meaning that originally their governors had been meant to be proconsuls. As a vestige of this, prior to this law, such proconsular governors, along with the 'Count of the East' (*comes orientis* – on whom see note 18) had been accorded the

schedule attached to this divine law of ours, which are the only ones we are bringing under this law – is to pay any *suffragium*, or to make any payment whatever in respect of patronage for offices, to any office-holder, any member of governors' staffs, or any other person. He is to receive his office without charge, furnishing only moderate sums to defray the codicils and papers issued for each. As clarification, we have appended to this divine law a schedule showing the correct amount for each governor to provide, either to our divine *laterculum*¹³ or to your excellency's court, for codicils, warrants or letters of instruction; it will thus be reduced, and not very noticeable for him.

2

We have, however, decided that the *vicarius* of Asiana,¹⁴ who is also the governor of Phrygia Pacatiana, shall no longer be called by that title, but shall in future be named *comes* of Phrygia Pacatiana, and receive from the public treasury the same amount in *annonae* and *capitationes*¹⁵ as he had been receiving for each office, with no reduction in those. He is not to have two sets of staff under him; the two sets of staff, the *vicaria* and that of governor, are to be combined into one, which is to be *comitiana*, and to

second senatorial grade of *spectabilis*, which rendered them of equal standing to the 'vicars' (*vicarii* – meaning deputies) who were otherwise the supreme administrators of each diocese into which provinces were grouped under the system of government introduced by the Emperor Diocletian (r. 284–305), and to whom these governors were thus not subordinate (see Jones (1964), pp. 45–8 and 143 and Van Der Wal (1998), pp. 20, including note 42 and 22, note 53). *Correctores*, by contrast, were governors who bore the lowest senatorial rank of *clarissimus* (see Van Der Wal (1998), p. 22, note 53). Justinian is thus distinguishing here between two different classes of governor (the 'consular' and 'vicaria', i.e. *spectabiles*, and the *clarissimi*) whilst emphasising that they were subject to the same regulations with respect to *suffragia*. For the Greek novel's terminological recasting (or mangling) of the Latin *consularis*, see, once more, Van Der Wal (1998), p. 22, note 53.

¹³ *Laterculum* = an official register of all public officers and officials. Here it is apparently used to mean the office itself in which the register was kept. *Codicillus* = a certificate of appointment issued by the emperor. 'Letters of instruction' = Greek προστάγματα (equivalent to the Latin *mandata principum*), i.e. the instructions issued by emperors to governors: see *J. Nov.* 17 and Berger (1953), pp. 574, 393 and 537.

¹⁴ For Asia and Pontica, see Kelly (2004), p. 72.

¹⁵ '*Annonae* and *capitationes*' = stipends for men and fodder allowance for mounts given by way of remuneration (see *J. Edict* 13, note 15 and Lee (2005), pp. 119–20). These could be issued in coin or kind, but commutation into payment in coin had become increasingly common especially since the reign of Anastasius (491–518). In the reign of Justinian, each unit of *annona* was reckoned at five *solidi* (with basic pay for a soldier standing at four *annonae*), whilst each unit of *capitum* or *capitus* was reckoned at four *solidi* (see detailed discussion in Treadgold (1995), pp. 118–57).

carry that title. The liability for the public revenues will rest on him and all of them, equally: a single, entirely undivided staff has been established, with all serving as one unit. However, even so, because of the double responsibility, it receives the *annonae* and *capitationes* that each staff had been receiving hitherto. The hitherto *vicarius*, now the Admirable *comes* of Phrygia Pacatiana, is not to be governor of any other province: he has no connection with the other provinces of the Asiana diocese. His title is ‘Admirable *comes* of Phrygia Pacatiana’, and he is to be content with Phrygia Pacatiana alone.¹⁶

3

Our decision is exactly the same for the other former *vicarius*, that is the *vicarius* of the Pontic diocese. For the future, there is to be just one person, not two; named *comes* of the First Galatia, he is to command the troops as at present, and to receive the *annonae* of each office, though not outside the First Galatia. We are granting him no authority at all in any other Pontic province, but only in the First Galatia, with the staff being a similarly combined one; as stated, it is to be thought of, and counted, as a single unit, which is to be comital, and to carry that title. No-one at all in it is to have any higher status in respect of the others. It is to be a single staff under a single office-holder, the governor of a single province; and the whole staff will be similarly liable for fiscal matters, along with their own office-holder.¹⁷

¹⁶ The vicariate of Asiana is thus abolished and the salary of the former vicar is added to that paid to the governor of Phrygia Pacatiana, who is given the (military) title of *comes* (count) and accorded full military as well as civilian authority so as to intensify his power and authority. Justinian thus reverses the separation of military and civilian office that had characterized the Diocletianic reform of Roman government in the third and fourth centuries and anticipates the concentration of imperial authority in the provinces in the hands of the general or στρατηγός that would characterise Middle Byzantine administration: see Jones (1964), pp. 280–3 and Brubaker and Haldon (2011), pp. 734–9. For the provincial divisions and regions of late Roman Asia Minor, see Feissel (1998a).

¹⁷ The diocese of Pontus is now re-organised on the same principles: the vicariate is abolished and its salary added to that of the governor of ‘the First Galatia’ (= *Galatia Prima*), who is given the title of *comes*. The provinces of Honorias and Paphlagonia on the one hand, and Helenopontus and Pontus Polemoniacus on the other, are amalgamated and placed under two new governors accorded the titles of *praetor* and *moderator*, who receive both the salaries of the old governors and full military authority. In Pisidia and Lycaonia military and civil authority are again combined in the hands of governors styled *praetors*, who also receive higher salaries. In ‘the First Galatia’ (= *Galatia Prima*) the offices of governor and *comes* are combined and a new pro-consular governorship established with especially generous remuneration. On these new arrangements, see Jones (1964), p. 280. For the highly antiquarian and ‘Romanizing’ nature of the titles accorded

4

We give no permission at all for any office-holder, whether civil or military, to send out what are called ‘deputies’ to the cities of the province in which they hold office. They are to be aware that, should they do any such thing, they will themselves forfeit their office, whatever happens, for daring to put others in their place.

5

We have just the same to say about the Most Distinguished *comes* of the East and the Most Distinguished governor <of the First Syria >. There, too, we are making both into a single office, with the title of ‘Admirable *comes* of the East’, at the head of a single staff, which is to be comital, and to carry that title. He is to be governor only of the First Syria and Cyrrhestice, and to have the stipends of both offices. We are putting him, too, on the same footing as the *vicarii*, so that he, like them, along with the staff under him, is liable both for the collection of taxes and for the state of civil and fiscal affairs.¹⁸

6

It is our express wish that everyone should be subject to the governors of our provinces: civilians, because their authority is specifically for all suits and all financial and criminal cases, and those in the army, who are under their own officers, also being, nevertheless, subject to them in fiscal and criminal matters; but also, that provincial governors should be empowered to disallow emissaries from here, from whichever court they come, and whatever decisions they are executing, from receiving any *sportulae*¹⁹ in excess of those specified by our divine constitution. They are to be aware

to the new governors, see Maas (1986), Pazdernik (2005) and especially Roueché (1998), who argues that such titles were meant to advertise the emperor’s wish to ‘restore the kind of control that the earlier Romans were perceived as having exercised’ (pp. 88–9). For these provinces and regions, see Mitchell (1993), vol. 1.

¹⁸ In the diocese of the East (= *Oriens*) the reforms follow the same principles: the existing post of Count of the East (*Comes Orientis*), who acted as *vicarius* for the diocese of the East (*Oriens*), is abolished and his salary and title are granted to the governor of the First Syria (= *Syria Prima*), on which see Todt and West (2014), p. 372; in Isauria, military and civil command are unified; and in Arabia and Phoenice Libanensis (on which see *J. Novs.* 102 and 103) the governor’s salary is increased and his title changed to that of *moderator*. On these reforms, see Jones (1964), pp. 280–1.

¹⁹ *Sportulae* = fees.

that if they should be remiss over this, they will themselves pay our taxpayers for all loss incurred in consequence. We also grant them licence to bring the facts of this to the knowledge not merely of the office-holders from whom the emissaries come, but also to ourselves, so that on becoming aware of it, we may take the appropriate proceedings in the matter. Further, should they themselves discover that any of them, in the arrogance engendered by their rank or their office, are committing injustices on our taxpayers, we grant them licence both to investigate the crimes and to deprive of their office those found to be guilty – thus fulfilling our role in their provinces, just as has been declared in ancient law.

We are barring them from any unjust gain; but equally, we decree that if they have discharged their offices cleanly, they are to enjoy all honour, respect and dignity.

7

That, then, is how we have drawn the distinctions between offices; now for the proper procedure for a person taking up his office here. With God in mind, and in our presence – or, if we are too busy, in the presence of your excellency and of those who will at the time be adorning your high office and those of the Most Illustrious *comes* of the sacred *largitiones*,²⁰ the Most Illustrious *quaestor* of our divine Palace, and the Most Illustrious *comes* of our divine *privata* everywhere, and also in the presence of the holder at the time of the office of Most Magnificent *chartularius* of our divine bedchambers, who works on these warrants at our court – he is to take an oath that he is neither providing anyone at all with anything whatsoever either as gift or for patronage, nor has promised to do so, nor agreed to send anything from his province, for patronage, either to the Most Illustrious prefects, or to others holding office, or to their staff or anyone else. Just as he is receiving his office without payment, and is also receiving his stipends from the public treasury – those being all that we do permit him to receive – so, equally, he will keep his hands clean in holding it, and be accountable for it to God and to us. Your excellency is to know, as are those who will come to hold your high office after you, that if either they

²⁰ The *comes sacrarum largitionum* was in charge of bullion from and the administration of mines, the minting of coinage, state-run workshops, and military donatives (see Haldon (2005), p. 45 and Delmaire (1989), pp. 25–124); the *comes rerum privatarum* was in charge of the *res privata* or imperial estates (see *Codex* 1.33 and *J. Nov.* 30, note 36); the *quaestor* of the Palace was the chief legal officer (see *J. Nov.* 7, note 19); the *chartularius* of the *sacrum cubiculum* was a high-ranking courtier and imperial attendant (on whom see Avotins (1992), p. 228).

themselves or those with powers comparable to theirs, or your staff, should have the temerity to accept, from those who come to enter on the stated offices, anything beyond what have been fixed by us as their fees (which we have determined as being what we consider adequate payment on their own), the penalty will be no light one: the highest office-holders who have the temerity to accept anything from those entering on offices, or who allow their own staff to do any such thing and do not attend to a case reported to them, will not only pay back four times the whole amount they have received, but will incur severe displeasure, and be at risk of endangering their tenure of office. Their officials, and the staff under them, should they try to obtain any more than has been granted by us, will also be subject to a fourfold repayment to those on whom they have inflicted loss; they will forfeit their office as well as their property, and they will also be subjected to the punishments that befit their crimes.

8

Those taking office in this way, without cost, must make it their particular object first of all to attend vigilantly to the public taxes, pressing for payment those who are non-compliant and need compulsion, with all vigour, making no relaxations at all over this, and with absolutely no thought of profiting by doing so, while conducting themselves in a paternal manner towards those who are compliant; and secondly, to ensure that our subjects are in all respects inviolate: they must take nothing for themselves from any of them, and they are to be fair in legal cases and fair in public matters, proceeding against crimes, but keeping the innocent clear in all respects, while imposing on the guilty the punishment conformable with the law. Their rule over the subjects should be like that of fathers over sons: loving ones, if they are innocent, but being seen to chasten and punish them if they are guilty, and observing entire fairness towards them in their dealings, both public and private. Nor is it they alone who are to behave so: they are also to take, both as their assessor²¹ at any given time, and all those on their staff, such persons as to avoid giving any impression that, while apparently innocent themselves, they are nevertheless committing criminal acts of theft through the agency of others; that is to take on accomplices in crime, a yet more disgraceful act.

It will thus be possible for your excellency to send out to positions of authority persons who are more high-minded, and who understand fiscal

²¹ The *assessor* was a legal secretary or adviser: see *J. Nov.* 60.

matters: city councillors, we mean, and others who have given a good account of themselves in practice, as being fit for office. If someone should come to take up office by our fiat and with your excellency's approval, who has given evidence of good character and is receiving his office without payment, and who has been involved in nothing at all in his province that is disreputable, or is a means of amassing what he has paid in bribery or of making money out of it, but whose sole aim has been to recommend himself to God and to us, to enjoy a good reputation, and to hope for great rewards – then, who could fail to be satisfied, and to regard him as being completely honourable?

1. However, should anyone act otherwise, he is to know that he will stand trial for theft, even whilst still holding his judicial office; and that, should he be found to have paid money to receive his office, or to have taken money from it – both are equally culpable –, he will undergo confiscation and exile, and retribution in the form of physical torture. He will also be subjecting to serious troubles the person who received money from him, as we have just said. To keep those under our rule safe from extortion, and prosperous, what we demand from provincial office-holders is to have clean hands.

Those, then, are the penalties that will be imposed by law and by the authorities on any holders of the stated offices, should they act in any such way. We grant licence to the provincials, also, that should the holder of the office commit any unjust act during his tenure, and inflict any extortion or abusive treatment on our taxpayers, the most God-beloved bishop and the leading men of the province are to send petitions to us, listing the offences.²² On being informed of penalties for them, we will send someone out there to investigate his offences, so that he will undergo the penalties for them in the place where he committed them; with this example in view, no-one else will have the temerity to act in such a way.

9

In accordance with previous constitutions, the incumbent of an office is obliged to remain in his province for the fifty days after he has laid down his office, appearing in public and receiving suits from anyone. Should he be caught absconding, like some utterly despicable slave, before completing the fifty days, we grant licence to the taxpayers to detain him in the

²² For Justinian's use of bishops in this way as his 'eyes and ears' in the provinces, see Sarris (2006), p. 210 and Rapp (2005), pp. 288–9.

province, and to exact from him in full anything they have paid him that counts as theft, until he repays everything he has been found to have stolen. This must, however, be in the presence of the most God-beloved bishop, who must examine the case on the basis of written documentation. The provincials themselves are also to have licence, or rather, in fact, obligation, to report to us any thievery that they may have observed on the part of their governors; thus informed of any case in which a culprit has in fact been selling justice for cash, we shall subject him to the stated penalties – in addition to his being liable to retributions from heaven for breaking the oaths under which he received his office. Even if he should, for whatever reason, succeed in escaping from the province without having completed his fifty days, he will then be arrested, wherever he proves to be living, and taken back to the province of which he was governor; and he will repay fourfold any amount he is found to have taken.

10

It must, of course, be observed that it is only in a case of theft, not for any other cause, that our subjects have licence to take such action in respect of their rulers; we are not granting them licence to take any action against one who may have been found to be somewhat severe towards those who are non-compliant over the tax-exaction, or over the prosecution of offences. Quite the contrary: we shall in fact subject them to the sharpest of all penalties, if they have the temerity to assail governors who have clean-handedly applied themselves to levying the taxes with all due diligence, once they lay down their office, rather than letting them leave their provinces in complete acquiescence.

Those who after this law become Most Distinguished governors of the subject provinces must have taken into consideration, along with the high renown they will win from such behaviour, what highly disagreeable consequences they will encounter if they have the temerity to do their best to break this law. Suppose they were themselves to be punishing those convicted of minor thefts with subjection to unremitting torture until they paid back what they had stolen, while personally remaining unpunished for major thefts, without a blush at the example they were setting their subjects? It would be an enormity! Whereas, if they disdain such behaviour, they can prove themselves honourable and liberal, earning universal applause, and, from us, high approbation and hope.

1. So that we may uphold their honourable position, and that they may requite us with probity and loyalty, we do not permit the Admirable

duces,²³ or anyone else, to subject them to any encroachment or injustice, or to take any part in civil affairs at all.

The whole subject population is to know that our motive in framing the present law is for their assistance, and for them to enjoy life in continued prosperity and complete freedom from oppressive impositions, instead of being compelled to abandon their provinces, and suffer hardship in a foreign country. We dedicate the law to God, and to the present most hallowed days of his great general festival, purposing that all may be able to receive their rulers as fathers, rather than as thieves and enslavers with designs on their property.²⁴

2. You too, our taxpayers, in the knowledge of the great care we have taken of you, must pay your public taxes with unfailing compliance, needing no compulsion from your rulers. You must evince such compliance as to show in actual practice that you are also requiting us for such generosity with compliance on your own part; in return for your compliance, you will deservedly receive every earnest consideration from your rulers. You will realise that it is on them that the entire liability for the taxes rests, and that it is an acknowledged fact that they take up office at their own risk; in that realisation, you will by all means avoid non-compliance, and will not evince an attitude so disobedient as to require from them the vigorous action which the inexorability of the tax-exaction compels them to take. You, our subjects, are aware that military expenses and the harrying of enemies call for a great deal of attention, and cannot be managed without money; they admit of no delay, and we do not choose to allow Roman territory to be diminished. We have regained the whole of Libya, and subjugated the Vandals; and there are yet many greater things than these that we hope to receive from God and to achieve, for which purposes it is proper that we should collect the public taxes unfailingly and with compliance, by the set dates.²⁵ Thus, should you respond to your rulers with compliance, and should they have no difficulty in effecting delivery of the taxes to us promptly and straightforwardly, we shall both congratulate

²³ The *dux* was the head of a military district or frontier commander (see Southern and Dixon (1996), pp. 59–65, Greatrex (2007) and Treadgold (1995), pp. 91–2 and 97–8).

²⁴ It was a common trope of late antique *encomia* addressed to governors to invite them to follow the Homeric example of Odysseus as king of Ithaca and rule ‘gently as a father’: see *Odyssey* 2.233, Libanius *Oratio* 46.3 and Brown (1988), p. 40. The ‘general festival’ referred to is Easter.

²⁵ Africa has been conquered and the Italian campaign is effectively underway. Justinian here draws an explicit connection between the efficiency of imperial tax-collection and the empire’s military effectiveness. For the resultant connection between military pressures and internal reform, see Sarris (2011a), pp. 145–52.

your rulers on their zeal, and welcome your attitude; there will be in all respects a fine, harmonious concord between rulers and ruled.²⁶

11

Therefore, let all people alike send up hymns of praise to our great God and Saviour Jesus Christ for this very law, which will grant them safe residence in their homelands and secure possession of their property, in enjoyment of justice from their rulers. Moreover, a further reason for our enacting it is to be able to bring ourselves closer to the Lord God, and commend our reign to him, as a result of the justice contained in the law, so that we may not be seen as allowing any unjust treatment of the people whom God has entrusted to us; and in order to show mercy to them consistently, in keeping with his goodness.²⁷ May it thus be consecrated to God, as far as in us lies; for not one thought do we overlook that occurs to us, which is of value for the guardianship of our subjects. It is our intention to put an end to all such illiberal, slave-like thievery, and to keep our taxpayers well treated by those who hold provincial governorships over them; the reason why we have thought it important to give them their offices free of charge is so that they will also be unable, for their part, to offend by plundering the body of their subjects, on whose behalf we are taking all this trouble. We do not see fit to copy our predecessors as Sovereigns, who offered offices in return for cash, and thus did away with their own freedom to inflict just penalties on unjust governors: they put themselves in a position in which they should justly have hidden their faces in shame at the payments they were taking, and were for that very reason incapable of rescuing their own taxpayers from bad governors, or, for the cause stated, of chastising the governors themselves into behaving properly. For our part, what we regard as sufficient revenue for the Sovereignty is simply the bringing in of the public taxes in full, without seeking to add anything beyond that, which would destroy our subjects' entire livelihood.

12

In order to make our aforesaid aim clear to all, we have thought it necessary to encompass it in even weightier and stricter legislation, as follows:

²⁶ The 'harmonious concord' between *imperium* and *sacerdotium* evoked in *J. Nov.* 6 is here paralleled in that aspired to between Emperor and subject.

²⁷ It is striking that even the Emperor's administrative reforms are presented in such religious and providential terms. The language and tone resembles that of the Church liturgy.

We decree that the Most Distinguished governors of subject provinces, taking office free of all money payment and being mindful of the oaths they have taken, are to have from us the additional right that no-one is to have any special plea²⁸ against them at all, whether in respect of violent crime on anyone's part, or of prosecutions and injustices arising therefrom, or of public uprisings, or of demands for payment of the public taxes; all alike are to be subject to their jurisdiction, and they are not to wait to receive instructions from higher authorities, nor to report to them: they are to be satisfied with this law of ours, by which we are providing them with complete powers. No-one has any licence at all to make use of any privilege in respect of the stated causes, nor to succeed thereby in offending with impunity, because office-holders who are refraining from all bribe-taking will not put anything else before the fear of God, the law and ourselves; with that in view, they will uphold justice for their subjects, and all their judgments and actions will be in accordance with our laws.

1. In such matters, we also put under their command the troops in their provinces. There, too, they need no special instruction either from us or from our office-holders, but can make use of the present law, and show it to them. Thus the troops are to support them in exercising the right of their office, and to realise that if they should fail to do so, they will forfeit their stipends and even their military status, and imperil their person.

Thus, we shall have no need of any other official at all, and shall not have to send out any bandit-hunters, so-called *biocolytae*²⁹ (really, robbers), or disarmament-officers; these may have plausible-sounding pretexts, but their own actions are the worst of all. As provincial governors represent individual office-holders at the highest level, and suffice in place of any other official for their provinces, giving judgment to the best of their ability

²⁸ Special plea (Greek παραγραφή) probably translating the Latin *praescriptio fori* = a formal objection to a claim on the basis that the prosecuting party or tribunal did not possess jurisdiction by virtue of the fact that the defendant had been granted the privilege of only having to appear before a special or higher court (see Garbarino (2000)).

²⁹ βιοκωλύται were individuals charged with the suppression of violence, and are represented in the Justinianic sources as taking two forms. Those referred to here were essentially locally raised *gendarmes* and irregulars whom Justinian identified as a cause of provincial disorder alongside the private armed retinues of aristocrats and magnates and thus sought to suppress. At the same time, however, he accorded the title of βιοκωλύτης to high-ranking members of provincial society whom he charged with responsibility for the maintenance of law and order. Such βιοκωλύται are attested in the epigraphic evidence (see Feissel (2009), pp. 111–12). For the sometimes blurred line between bandit-hunters and bandits which appears to have informed Justinian's thinking with respect to this provision, see Lanata (1984b), pp. 7–24.

on the basis of our laws, who would have the temerity to claim either a special plea³⁰ or anything of the kind against them?

13

We also forbid the Most Illustrious general of the East,³¹ and all our office-holders, to send out bandit-hunters, *biocolytae*, disarmament-officers or any such people to the provinces. Those who have the temerity to adopt those roles henceforth, after this law, are to be aware that they will be arrested and imprisoned by the provincial governors; the case will be reported to us, and they will be liable to extreme peril. Those who issue them with such commissions will be liable to a fine of thirty pounds of gold, and will also experience still graver and more vigorous displeasure from us.³²

Accordingly, provincial governors, having been deemed worthy by us of such great power, must exercise it in such a way as to be justly and lawfully feared by all. They must know that if they exercise the freedom we have given them in a way that is bad, and unworthy of the authority entrusted to them by us, they will be subject to the penalties we have stated above, undergoing them even while they hold office; and once they have laid that down, they will experience yet greater perils, because we do not give them licence to withdraw from the province they have been governing before the statutory fifty-day period has elapsed, whether on account of *revocatoriae*,³³ or in order to escape, or for any other cause whatsoever. They are to be aware that, as we have just said above, whether they should have come to be in this fortunate city or in any province whatsoever, they will be taken back again to the province which they have governed, and undergo the penalties we have just stated above.

14

They will take their oath here, in accordance with what was said above. However, should the warrants of office be being sent to some who are already out in the provinces, they will have the oath put to them in the

³⁰ Special plea = *praescriptio fori* (see note 28).

³¹ 'General of the East' = the *magister militum per orientem*, who was in supreme command of the army serving in the eastern provinces (see Lee (2005), p. 117).

³² 1 lb weight of gold = 72 *solidi*.

³³ Governors were obliged to remain in the provinces in which they had served for a fixed period of time after relinquishing office so that they could answer any accusations made against them by their erstwhile subjects. *Revocatoriae* appears to refer to documents annulling the office-holder's letters of appointment.

presence of the most God-beloved bishop of the metropolis, and of its leading citizens; that done, they will take over the affairs of their office. Your excellency will, of course, take care that the recipient, whether he be taking office in this city or whether the warrants for it have been sent by your excellency to him in the province, will in person provide the public treasury with security, in such form as you yourself would clearly approve, for the impeccable collection of the taxes.

This, our law, is to be laid down for all those who will henceforth be taking up the offices to be expressly named by us. Offices already taken up are to be subject to the laws previously enacted: no penalty prescribed in this law of ours is to be imposed on those holding office hitherto, unless they are themselves detected in acts of theft after this law's promulgation.

Conclusion

On being informed of all this, your excellency is to cause it to become public in all the subject provinces, making use of proclamations in the customary form to all governors of provinces, so that in the knowledge of our earnest concern for our subjects, and of what we have in mind for the appointment of office-holders, they may realise what great benefits we have imparted to them, unsparing of our sovereign care for their happiness.

Given at Constantinople, April 15th, consulship of the Most Distinguished Belisarius

Edict laid down for most God-beloved bishops and most holy patriarchs everywhere:

In our care for the realm entrusted to us from God, and in our earnest desire for our subjects to live amid full justice, we have laid down the subjoined law, which we have thought good to make known to your holiness, and through your holiness to all in your province. Be it therefore for your reverence, and for the other bishops, to observe these provisions; and should there be any contravention by office-holders, to inform us, in order that no part of our holy and just enactments should be disregarded.

We are taking pity on our subjects, because, in addition to their payment of public taxes, they had also been suffering serious injustices by reason of thievery on the part of governors, resulting from the sales of provincial governorships. That being so, should you neglect to denounce contraventions, despite the pains we have taken to abolish such injustices by means of the subjoined law, let our own conscience be clear before the Lord

God; but you will be rendering account before him for others' injustice, if any harm is done to your people through our not having been informed. You are there in the province, and must strive, on their and others' behalf, to make known to us both those whose government is as it should be, and those who are contravening this law of ours, so that we may have knowledge of both, to reward and to punish them respectively. Once the law has been advertised to the public and is known to all, it is then to be taken indoors and deposited in the most holy church along with the holy vessels, as being, like them, dedicated to God and laid down for the welfare of mankind, created by him.³⁴ Moreover, you would do better, and more in the best interests of the local population as a whole, to have it mounted in written form, carved on boards or on stone, in the porticoes of the most holy church, thus making it available for all to read and possess the enactments.

1

Given that we have taken the probity of office-holders into such consideration, it is obvious that, a fortiori, we shall not allow defenders to take or give any payment whatever.³⁵ For the letters of instruction³⁶ issued to them in the court of the Most Illustrious prefects, they will pay four *solidi* if the cities are larger, three in the case of smaller ones, and nothing beyond that; and they will receive nothing whatsoever from anyone, except for any authorised income coming to them from the public treasury. Should they be receiving nothing from the public treasury, they are to earn no more than what is declared in our divine constitution. Otherwise, should they themselves, or their *chartularii*,³⁷ as they are called, or anyone else on their staff, be convicted of taking payment, they will repay fourfold what they received, and be dismissed from their post; further, they will be penalised with perpetual exile and chastised corporally, and will make way for good men to replace bad ones by taking over their post. It is you who will be on the watch for this also, preventing contraventions and passing information, so that no misdeed shall escape notice or go unpunished by doing so, and

³⁴ Note the sacralisation of imperial commands.

³⁵ The Greek word ἐκδίκτοι is here translated with 'defenders': the emperor is referring to 'defenders of the cities' (*defensores civitatum*) who were meant to act as patron to the poor of the city against the ruses of the powerful: see Jones (1964), pp. 144–5 and *J. Nov.* 15.

³⁶ 'Letters of instruction' (Greek προστάγματα) = Latin *mandata principum*, on which see *J. Nov.* 17.

³⁷ *Chartularii* = secretaries.

so that equity and justice shall flourish in their entirety for our subjects. If those hitherto in office do not abstain from all thievery after the promulgation of this law, they are to know that they, too, will be subject to the penalties in this law.

[This edict for the bishops]

Given at Constantinople, April 17th, consulship of the Most Distinguished Belisarius

Copy of edict addressed to Constantinopolitans, as follows:

The law recently laid down by us shows how much consideration we have taken for all our subjects. We have addressed it to our Most Illustrious prefects; but it is also appropriate for you yourselves to know of the consideration we have for all people. For this reason, we have also advertised the law itself in the form of an edict, so that you can justifiably send up hymns of praise to our Lord God and Saviour Jesus Christ, and to our own Sovereignty, for our having made every effort in your interest.³⁸

Memorandum of the amount due from the undermentioned governors by way of fees; no office-holder to dare either to receive or to give anything in excess of the sums stipulated.³⁹

1. From the Admirable <i>comes</i> of the East, as under:	
in our divine <i>cubiculum</i> ⁴⁰	63 <i>solidi</i>
to the <i>primicerius</i> of the Admirable notary tribunes, with the four <i>scrinia</i> of the divine <i>laterculum</i> ⁴¹	50 <i>solidi</i>
to the assistant of the above	3 <i>solidi</i>
to the office of the Most Illustrious prefects, for letter of instruction ⁴²	80 <i>solidi</i>

³⁸ The law was advertised in the city of Constantinople presumably as a piece of political propaganda advertising the priorities of the emperor.

³⁹ This schedule effectively sets out the permitted entry fees payable for coming into office.

⁴⁰ The *sacrum cubiculum* (sacred bedchamber) comprised the body of eunuchs who surrounded the emperor as a sort of administrative entourage. Its members controlled access to the person of the emperor and were charged with a range of duties including the administration of the imperial estates of the *res privata*: see Jones (1964), pp. 566–71.

⁴¹ The *primicerius* of the notaries and tribunes was a high-ranking officer of the praetorian prefecture who maintained the list of major imperial office holders (the *laterculum maius*); the *scrinia* were the administrative sub-divisions or offices seemingly charged with maintaining that list: see Jones (1964), pp. 574–5.

⁴² ‘Letter of instruction’ (Greek πρόσταγμα) = Latin *mandatum principis*.

(cont.)

2.	From the proconsul of Asia, as under:	
	in our divine <i>cubiculum</i>	63 <i>solidi</i>
	to the <i>primicerius</i> of the Admirable notary tribunes, with the four <i>scrinia</i> of the divine <i>laterculum</i>	40 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	80 <i>solidi</i>
3.	From the Admirable <i>comes</i> of Phrygia Pacatiana, as under:	
	to the three Admirable <i>chartularii</i> of our divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	50 <i>solidi</i>
4.	From the Admirable <i>comes</i> of the First Galatia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	50 <i>solidi</i>
5.	From the <i>vicarius</i> of the Long Wall, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
	All the consular offices or <i>consulariae</i> :	
6.	From the governor of the First Palestine, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
7.	From the governor of the Second Palestine, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
8.	From the governor of Phoenice Libanensis, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
9.	From the governor of the Second Syria, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
10.	From the governor of Theodorias, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>

(cont.)

	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
11.	From the governor of Osrhoene, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
12.	From the governor of the First Cilicia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
13.	From the governor of Cyprus, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
14.	From the governor of Pamphylia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
15.	From the governor of Bithynia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
16.	From the governor of the Hellespont, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
17.	From the governor of Lydia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
18.	From the governor of Phrygia Salutaris, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>

(cont.)

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| 19. | From the governor of Pisidia, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 20. | From the governor of Lycaonia, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 21. | From the governor of Justiniana Nova, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 22. | From the governor of the Second Armenia, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 23. | From the governor of Greater Armenia, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 24. | From the governor of the First Cappadocia, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 25. | From the governor of the Second Cappadocia, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 26. | From the governor of Helenopontus, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |
| | to the assistant of the above | 3 <i>solidi</i> |
| | to the staff of the Most Illustrious prefects, for letter of instruction | 40 <i>solidi</i> |
| 27. | From the governor of Europa, as under: | |
| | to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i> | 9 <i>solidi</i> |
| | to the <i>primicerius</i> of the Most Distinguished notary tribunes | 24 <i>solidi</i> |

(cont.)

	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
28.	From the governor of Thrace, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
29.	From the governor of Rhodope, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
30.	From the governor of Haemimontus, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
31.	From the governor of Caria, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
32.	From the governor of Lycia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
33.	From the governor of the First Augustamnica, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	24 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	40 <i>solidi</i>
	All the <standard> gubernatorial offices or <i>correctoriae</i> . ⁴³	
34.	From the governor of Libya, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
35.	From the governor of Egypt, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>

⁴³ '*Correctoriae*' = pertaining to those governors styled *correctores*.

(cont.)

	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
36.	From the governor of the Second Egypt, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
37.	From the governor of the Second Augustamnica, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
38.	From the governor of the Third Palestine, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
39.	From the governor of Arabia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
40.	From the governor of Euphratesia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects for letter of instruction	36 <i>solidi</i>
41.	From the governor of Mesopotamia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
42.	From the governor of the Second Cilicia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
43.	From the governor of the First Armenia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
44.	From the governor of the Second Galatia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>

(cont.)

	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
45.	From the governor of Honorias, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
46.	From the governor of the Islands, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
47.	From the governor of the Second Moesia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>
48.	From the governor of Scythia, as under:	
	to the three Admirable <i>chartularii</i> of the divine <i>cubiculum</i>	9 <i>solidi</i>
	to the <i>primicerius</i> of the Most Distinguished notary tribunes	15 <i>solidi</i>
	to the assistant of the above	3 <i>solidi</i>
	to the staff of the Most Illustrious prefects, for letter of instruction	36 <i>solidi</i>

49. From the defender of each city,⁴⁴ if metropolitan,⁴⁵ 4 *solidi* to the department of the Most Illustrious prefects, for the letter of instruction; if other, 3 *solidi*; nothing beyond that. We intend defenders neither to pay anything to the office-holders or anyone else, nor to be paid anything except for any fees provided for them from the public treasury; they are to know that if it is reported to our Majesty about any of them that he is contravening our decrees, he will repay fourfold whatever he received, and also be dismissed from his post and live in perpetual exile. On any such occasion, provincial governors themselves, should they have carelessly overlooked thieving by the defenders, will also be subjected to no less a penalty.

Given at Constantinople, April 15th, consulship of Belisarius

535

⁴⁴ 'Defender of each city' = the *defensor civitatis*. See *J. Nov.* 15.

⁴⁵ The 'metropolis' was the capital city of each province.

[In Latin only:]

Such an exemplar has been written for Dominicus, Most Illustrious prefect of *praetoria* in Illyricum, but with additions, as under:

They are to be put to the oath in accordance with the schedule⁴⁶ to the oath designed for this, a copy of which has also been addressed to your excellency. Those taking up offices are to receive codicils from us here, under your excellency's direction, in the presence of the God-beloved bishop of their city of residence, of others in the city who are members of your excellency's court, assembled, and of your whole staff; it is in their presence that they are both to receive their codicils and to swear the aforesaid oath. We most particularly instruct that this is to take place in the presence of the city councillors, who deserve to enjoy very conscientious care both from your excellency, and from those who shall assume the said office: neither are you yourself to make any profit out of them at all, nor are you to permit them to suffer injury at the hands of any^{*} of those who practise such iniquity. Thus they are to attend to our most successful army, and fulfil the other functions of city councillors; there must be no attempts at evasion, such as could be attributed to slackness on their part.^{*} There is nothing that commends your excellency to us so much as care taken over the councillors of each and every city; we wish that care to be bestowed on them by both your excellency and your successors in office in due course.

- Here [S/K, p. 89, lines 17–21] the printed text is unintelligible as it stands. This translation depends on several emendations, to read as follows: . . . eorum qui hac utuntur iniquitate, quatenus et felicissimo nostro advertant exercitu et reliquis curiales adimpleant functiones, quia non oportet tales temptari fallacias ut possint ad illorum referri tarditatem.

Accordingly, at your presentation of codicils to those taking up offices from you, as it were in your presence, we wish your eminence to give them the following instruction: that they are to confer every favour on the city councillors, without taking anything from them; to prevent losses from being inflicted on them by others; and to realise, through you, that should they act otherwise, they will be subject to the most serious penalties. As we wish you to spare the city councillors, so also we decree that you are to chastise and restrain the avarice of defenders, and not let them have the

⁴⁶ 'Schedule' = Latin *indiculum*: in legal terms, a note appended to a document, especially in the form of a list. For the provinces referred to in the schedule appended to the law, see Map 3.

temerity to receive anything from our subjects except what the public treasury provides to them; or, if they have no remuneration from the treasury, the amount determined by irreproachable antiquity, so that their payment comes from a willing, rather than unwilling, public, and will not be excessive, but what is adequate for a modest way of life. They are to know that should they take anything beyond this, they will not only be subjected to a fourfold fine, but will live in perpetual exile, after first suffering corporal punishment, consisting of a beating.

[In both languages:]

Oath taken by those taking up office.

‘I swear by Almighty God, by his only-begotten Son Jesus Christ our God, by the Holy Spirit, by the holy, glorious Mother of God and ever-virgin Mary, by the four gospels which I am holding in my hands, and by the holy archangels Michael and Gabriel, that I will maintain a clear conscience and true service to our most divine and pious lords Justinian and Theodora, consort in the same Majesty, in respect of the office conferred on me by their Piety; and in the office granted me by them I will loyally, without guile or any subterfuge, undertake every labour and toil on behalf of their sovereignty and realm. I am in communion with God’s holy catholic and apostolic church, and in no way and at no time will I oppose it, nor, as far as is in my power, will I allow anyone else to do so. I swear, with the same oaths, that neither have I given, nor will I give, nor have I either promised or agreed to send, nor will I send, anything at all to anyone on account of the office given me, or for patronage, nor yet for imperial *suffragium*; nor to the Most Illustrious prefects, nor the other all-praiseworthy men who hold offices, nor their staffs, nor to anyone else at all. But just as I have received my office without payment, so I will be found clean in respect of our most pious lords’ taxpayers, and will be content with the stipends allotted me by the public treasury. First of all, I will make it my object to attend vigilantly to the revenues. I will press exactions with all vigour on those who are non-compliant and need compulsion, not making any concession and without any thought at all of gain from doing so, nor making any undue demand on anyone out of enmity, nor any concession out of favour; but towards those who are compliant I will conduct myself in a paternal manner. As far as is in my power, I will keep our most pious lords’ subjects inviolate in all respects. I will be fair to both sides in legal cases and in public affairs, not favouring either side unjustly, but pursuing all offenders, and upholding complete fairness in accordance with what appears to me as just. I will keep the innocent inviolate, while imposing on the guilty the penalty laid down by the law. I will observe complete justice,

as stated, in both public and private transactions, even if I find that the public treasury loses by it. It is not I alone who will act thus: I will be conscientious in making similar appointments for my assessor on each occasion, and for all my staff, so as to avoid theft and crime on the part of my staff, while myself remaining clean. If any such behaviour is discovered on the part of a member of my staff, I will put right what he has done, and dismiss him.

If I do not observe all these things as I have said, may I enjoy here and in the age to come, at the fearful judgment of our great Lord God and Saviour Jesus Christ, <nothing good>,* and may I share the lot of Judas, the leprosy of Gehazi, and the dread of Cain, as well as being subjected to the penalties contained in their Piety's law.⁴⁷

* Conjecturing that μηδένοϛ ἀγαθοῦ has dropped out after Χριστοῦ [S/K, p. 91, line 10].

⁴⁷ Biblical references: Judas' suicide by hanging Matt. 27.5; Gehazi's leprosy 2 Kings 5.27; Cain's dread Gen. 4.13–14.

9 | Church of Rome to have a period of prescription of 100 years¹

[Latin only]

*The same Emperor to the most blessed and most holy John, archbishop and patriarch of Old Rome*²

¹ Issues of land tenure in the Roman world were complicated by the fact that Roman law distinguished between ownership (*dominium*) and possession (*possessio*) and permitted individuals and institutions rights in the lands or properties of others (*iura in re aliena*) such as those granted by right of usufruct or varieties of lease (especially those of *emphyteusis* or *superficies*). In general terms, the difference between ownership and possession (which later Byzantine jurists attempted to elide) can be understood as the difference between being entitled to a piece of property and actually having it. More specifically, ownership consisted of the ultimate residual right in a piece of property such as remained when all others (such as those granted by lease) had expired. In that sense, ownership was a right, whereas possession was a fact. Given this distinction, ownership of land in the Roman sense of the word could only be provable or enforceable if there existed either a system whereby title to land could be officially registered, or a practice of prescription such as allowed possession to become ownership after a certain length of time. This helps to explain both the significance in late Roman society of the administrative institution of the civic archive (*gestum municipalium*) at which land ownership could be registered, and the legal institution of *longi temporis praescriptio* whereby, after a certain period of time in possession of a piece of land or property, one acquired full title to it. In particular, according to *Codex* 7.39, the possession of land for forty years enabled one to claim full and unchallengeable title to it (Berger (1953), pp. 645–6). In 530, however, Justinian had granted churches, charitable institutions, city councils and the imperial government dramatically increased rights with respect to the reclaiming of property held by others, by insisting on a period of prescription of one hundred years before their claims were extinguished (see *Codex* 1.2.23). In the present measure, that privilege is expressly extended to the Church of Rome, estates belonging to which were soon to pass into direct imperial control by virtue of Justinian's imminent military intervention in Sicily and southern Italy, where many of the Church's properties were concentrated. The measure thus makes sense in the context of Justinian's wish to ensure the backing of the Papacy for the military campaign that he was about to initiate. Procopius was a bitter critic of the reform of 530 which, he claimed, was used by the church in Emesa in Syria to lay claim to properties on the basis of falsified documents (*Anecdota* 28). Justinian was obliged to reverse the law with respect to the properties of the imperial Church as a whole, including Rome, in *J. Nov.* 111 of 541 and *J. Nov.* 131 c. 6. The rights accorded by the present law were, nevertheless, asserted, however, at the end of the sixth century in the correspondence of Pope Gregory the Great (who appears conveniently unaware of their subsequent repeal) and by Pope John VIII in 873 (see discussion in Loschiavo (2015), pp. 104–5). On this law, see also Kaiser (1999) and Loschiavo (2007).

² 'Old Rome', i.e. in contrast to Constantinople, or 'New Rome'. Pope John II was Bishop of Rome from 533 to 535.

Preamble

It has fallen to the lot of the elder Rome both to have been the originator of laws, and to have the high honour, as all are well aware, of being the seat of the chief pontificate.³ Hence we too have thought it necessary to enhance the glory of the homeland of law, and source of the priesthood, by a special law of our Divinity, so that the force of a most salutary law shall extend from it to all catholic churches situated even as far as the waters of Ocean; and so that it shall be a law especially consecrated to the honour of God, pertaining to the whole West, and also to the East, where there is property to be found situated that either now belongs to our churches, or is subsequently to be acquired by them.⁴

1. Whereas ancient laws circumscribed *exceptiones temporales*⁵ within limits of thirty years, or, if there had been a hypothec, allowed them only slightly longer spans, we are granting that most holy churches are by no means to be barred by such spans of time as these, particularly in cases where they have suffered injury, or are owed some debt. Instead, we enact that the only *exceptio temporalis* which may be brought against them is the passage of one hundred years, so that ecclesiastical rights are to remain intact throughout the time aforesaid, and so that no *exceptio* other than that of one hundred years can oppose them – that being recognised as, in general, the limit of a long-lived person's lifespan.

2. Your holiness is therefore to possess this law for the benefit of all the catholic churches of all the West, to be extended also to Eastern regions in which your most holy churches possess any property; so that, as a worthy offering to Almighty God, it may be a safeguard of divine properties, and so that unjust persons shall be left no impious protection, or scope for sinning, even wittingly, with impunity; but so that an innocent person who is truly guiltless may be kept safe and not defend himself by unscrupulous allegation, using time as a pretext in place of purity.

3. What therefore our Eternity has dedicated, in honour of Almighty God, to the venerable see of the chief apostle Peter, this all lands and all islands of the whole West, reaching as far as the very recesses of ocean, are to keep, and by this to remember for ever the careful concern of our Majesty.

³ The primacy of honour of the Bishop of Rome had been formally and finally acknowledged at the Council of Chalcedon in 451.

⁴ For the property of the Roman Church, see Brown (2011), pp. 479–527.

⁵ *Exceptiones temporales* (or *exceptiones dilatoriae*) = a defence or contested claim valid only for a limited period of time (Berger (1953), p. 461).

4. We grant the prerogative of such a law, as has been said above, not just to the Western parts of the Roman church, but also to Eastern parts in which there are, or shall hereafter have been, ecclesiastical holdings belonging to the city of Rome.⁶

5. It is, of course, for all Christian and orthodox office-holders, higher and lower, to uphold this constitution of ours; and, for those who nevertheless disobey it, to be always in fear of the vigour of the law, in addition to divine penalties, and to quail at a penalty of fifty pounds of gold; this law exercising its validity not only in cases hereafter arising, but also in those that have already been brought to court.

Accordingly, your holiness, on receiving this present law of our Clemency as a most pious or most holy oblation which we dedicate to God, is to deposit it among the most sacred vessels; it is both to be safeguarded by you, and to safeguard all ecclesiastical property.

Given at Constantinople, April 14th, consulship of Belisarius

535

⁶ The imperial authorities were keen to secure the support and co-operation of the Roman Church in the re-conquest of Sicily and Italy, which was about to begin (see Maraval (2016), p. 229). Despite differences of theology, the Papacy had maintained broadly cordial relations with the Ostrogothic regime in Italy, especially during the reign of Theoderic (who had died in 526): see Sarris (2011a), pp. 102–9.

*Emperor Justinian Augustus to Hermogenes, Most Illustrious magister of the sacred officia, ex-consul, patrician*²

Preamble

Among all the other matters that we have put into due order, we have also thought not to leave out of our concern those touching our Admirable *referendarii*; the more so, in that they are more useful to us than many others. Formerly, they had constituted no very large number; but we have created more of them than before, so as to be able through them to give assistance to a large number of people, by being easily informed of each individual case.

1. However, some have evidently been making excessive demands on our generosity by belabouring us with numerous petitioners, and submitting numerous supplications. The consequent repeated additions to the number have thus brought a position of such high dignity into a state of inappropriate excess. There has been no end to these requests, until, as a result, there is a total of fourteen of them. The position is one to which we rightly attach high importance, and we wish to avoid its proper dignity being diminished by overflowing into an overlarge number; for that reason, we have resolved to restrict their number to a specific limit. This is not in such a way as to deprive existing *referendarii* of what has been granted them – an action unbecoming a sovereign’s magnanimity, especially as they have satisfied us and given honourable service –; we are absolutely not

¹ *Referendarii* (referendaries) were judicial clerks and messengers employed on behalf of the emperor and recruited from the ranks of the tribunes and notaries of the praetorian prefecture. In this law Justinian reduces their number from fourteen to eight, seemingly so as to limit the flow of litigants and petitioners to the imperial court (a consistent aim of his legislation: see Jones (1964), p. 575). Procopius criticises the *referendarii* for the way in which they manipulated and controlled access to the emperor (*Anecdota* 14.11).

² For Hermogenes, the *magister sacrorum officiorum* (the effective head of the empire’s central administration: see Haldon (2005), p. 41), see *PLREIII*, pp. 590–3 (Hermogenes 1). His lengthy career in imperial service began under the Emperor Anastasius, during whose reign he served as legal adviser (*assessor*) to the general Vitalian on the Persian front before being sent to the Balkans (see Procopius, *Wars* 1.13.10). He was appointed *magister officiorum* by Justinian early in his reign, and was repeatedly sent to represent the emperor in diplomatic negotiations with the Persians (see Procopius, *Wars* 1.16–22). Praised in the *Chronicle* of John Malalas as a ‘wise man’ (John Malalas 18.34), he appears to have died in 536.

choosing to dismiss any of them at all from our employment. Instead, we decree that they are to remain as they are, but that no-one is to be added at all until their number has been reduced to eight men, eight being their permanent establishment. It is not to be increased in any way or at any time; but they are to make it their aim to be always vying with each other in loyal service to us and to the Sovereignty. No-one is to have licence even to make any such request in future; he is to be aware that he will not have requests granted, but, for merely making the request, he will be subject to a fine of ten pounds of gold, as well as forfeiting his own appointment. In numbers, we wish them to be reduced to the stated limit; but in justice and the other virtues, we wish them to increase, and to be more conspicuous. There could be no dignity in numerical proliferation; out of many, it is only a few who keep the virtuous life. They are now, therefore, to remain at that figure, as we have just stated.

Conclusion

Your excellency is to be aware of this and to uphold it, on no occasion permitting any contravention of what we have decreed, but exacting the threatened fine from any who do act otherwise, for desiring what may not be requested and cannot be granted. In this matter also, this law of ours is to be one that rejects proliferation, and replaces it by a virtue conspicuous only in a few; above all, in men who come of good family, and who have devoted their lives to the supplications of petitioners, and the succour that they receive from us.

Accordingly, your excellency is to take pains to put these decisions, manifested by this divine law, into practical effect.

*Given at Constantinople, April 15th, consulship of the Most Distinguished
Belisarius*

11 | Archbishop of Justiniana Prima: archbishop's privileges¹

[Latin only]

The same Augustus to Catellianus, most blessed archbishop of Justiniana Prima

In our desire for numerous different ways by which to enhance our own homeland, in which God granted that we should make our original entry into this world which he himself created, we wish also to make very large augmentations in its priestly eminence. Thus the most holy primate of the First Justiniana, our homeland, is to be not merely a metropolitan, but in fact an archbishop, and is to have certain provinces under him: Dacia, both Mediterranea itself and Ripensis; also the First Moesia,² Dardania, the province of Praevalitana, the Second Macedonia and the part of the Second Pannonia which is under the city of Bacis.³

1. In ancient times, the seat of the prefecture had been at Sirmium, which had been the capital of Illyria for civil and ecclesiastical matters alike, as a whole. Later, however, when the Sirmium region was devastated in Attila's times, the praetorian prefect Apraemius had left the city of Sirmium for Thessalonica, as a refugee.⁴ The priestly honour had then also followed the prefecture itself; and in the shadow of the prefecture, rather than by his own authority, the bishop of Thessalonica earned a certain prerogative.

¹ Justinian is reputed to have been born near the city of Naisus (Nis) in Serbia. In 535 he elevated the village in which he was born to the status of a city, naming it *Justiniana Prima* in honour of himself. In this law he establishes the city as an archbishopric and refers to the re-location of the headquarters of the Balkan prefecture of Illyricum from Thessalonica to the new foundation. For further discussion of the political and military context to this law, see Sarantis (2009), p. 24, Sarantis (2016), pp. 149–60, Maksimovic (1984) and Turlej (2016). Justinian's penchant for naming things after himself is criticised by Procopius in the *Secret History* (*Anecdota* 11.2).

² 'Moesia' correcting the 'Mysia' erroneously found in the text.

³ The general opinion is that this refers to Bassiana which lies near the village Petrovci in the district of Srem, the low-lying area west of Belgrade between the rivers Danube and Sava. It was thus located in the province of the Second Pannonia (*Pannonia Secunda*), traditionally centred on the old imperial residence of Sirmium (Sremska Mithrovica), which at this point was under Gothic occupation. We are indebted to Professor John Wilkes for this information.

⁴ Apraemius: a Latinisation of the Syriac Ephrem. The Hunnic invasion (led by the infamous Attila) which obliged the imperial administration to re-locate from Sirmium to Thessalonica took place in 441.

2. At the present time, our realm has grown larger, under God, and both banks of the Danube are now populated with cities of ours.⁵ Because Viminacium, as well as Recidiva and Litterata, which are on the far side of the Danube, have been once again made subject to our rule, we have deemed it essential to locate in our own homeland, close to Pannonia, the Most Illustrious prefecture itself, which used to have its seat in Pannonia – the Second Pannonia being no long way from Dacia Mediterranea, whereas there are great distances separating the First Macedonia from the Second Pannonia.

3. It was disadvantageous for our realm that people constantly involved in the exertions of warfare should be making their way to the First Macedonia over such distances and such difficulties; for that reason, it seemed to us essential to move the prefecture itself further inland, so that* the provinces lying near it should more easily feel the benefit of its care.⁶

* Reading *ut* for *et* [S/K, p. 94, line 20].

4. Therefore, your beatitude and all most holy primate archbishops of the aforesaid Justiniana Prima are to have the prerogative, with all licence to impart their own authority to others, and to appoint them; in the above-mentioned provinces they are to hold primacy of honour, primacy of rank, the supreme priesthood and the supreme position. It is by your eminence that they are to be appointed, and it is you that they are to have as their sole archbishop; no involvement with them is to be retained by the archbishop of Thessalonica. You yourself, as with all the primates of Justiniana Prima, are to be their judges and arbitrators. They themselves are to settle, and put an end to, any difference that should arise between them, and to keep them in order; no-one else is to have suit brought before him, but all the aforesaid provinces are to recognise their own archbishop and acknowledge his appointment. Either in person, or on his authority, or by clerical delegates, he is to have all power, all priestly rank, and licence to appoint.

⁵ Emperors since Anastasius had made a concerted effort to restore control over the empire's Danubian frontier, which had been lost in the fourth century by virtue of both Gothic and then Hunnic and associated invasions: see Sarris (2011a), pp. 171–3 and Sarantis (2009).

⁶ The period from 535 to 539 witnessed major military investment in the Balkans as Justinian attempted to secure the land-route to Italy and buttress the region against the burgeoning power of Slavs, Antae and Gepids. See Sarris (2011a), pp. 145–52 and 170–81, Sarantis (2009), and Procopius, *Buildings (De Aedificiis)* 4 where he catalogues the buildings and fortifications constructed by the imperial authorities in the region.

5. We also wish a bishop to be ordained by your holiness in Aquae, which is part of the province of Dacia Ripensis, so that in future it is not to be under the bishop of Meridium. The bishop of Meridium is to stay in Meridium, and no involvement is to be retained by him with Aquae; whereas the bishop of Aquae is to have the city aforesaid, with all its fortresses, territories and churches, to enable him to drive the wickedness of the Bonosiaci out of that city and land, or else to convert them to the orthodox faith.⁷

6. So that your beatitude should know what our Divinity has directed, we have despatched the present law to your venerable eminence, with the purpose that the church of our homeland may have such a benefit in perpetuity, to the glory of Almighty God and in everlasting remembrance of our Divinity.

7. When it falls to the holder of your high office to depart this life, we decree that the archbishop should at that time be appointed by his venerable council of metropolitans, as befits the elevation in the churches of an archbishop respected by all. No involvement is to be retained in the hands of the archbishop of Thessalonica in this matter, either.

Your beatitude is therefore to make no delay in bringing into effect, without fail, what our Eternity has decreed.

Given April 14th

535

⁷ *Bonosiaci* were followers of a certain Bonosus who was an 'adoptionist' heretic (i.e. a Christian who believed that Christ was the adopted son of God and thus fully human rather than being God incarnate). They are referred to in the letters of Pope Gregory the Great at the end of the sixth century (*Ep.* 11. 67).

12 | Illicit marriages¹

Emperor Justinian Augustus to Florus, Most Illustrious comes of the divine privata everywhere²

Preamble

We regard as inadequate the laws laid down by previous sovereigns on illicit marriages: they leave unpunished those who contract illicit marriages, while depriving their offspring, innocent though they are, of their fathers' possessions – as if the guilty had to be unimpeachable, and the unimpeachable had to be punished as guilty.

¹ This law serves to protect the interests of children born of illicit or incestuous marriages whilst increasing the penalties on those contracting such relationships. It thus conforms to the general tendency within Justinianic law towards greater concern for children as well as women (see Krumpholz (1992), pp. 117–204). It is interesting that the law assumes that women are more likely to be ignorant of the law than men, and allows them to use this as a defence in the context of having contracted an illicit marriage, in spite of the general Justinianic opposition to defences based on such ignorance (see also *Digest* 48.5.39.1–2 and Beaucamp (1990), p. 89). Roman law maintained a series of strict regulations as to whom one could and could not marry, and illicit marriages were typically punishable by *infamia* (essentially public shaming which incurred legal disabilities Berger (1953), p. 500). In Justinian's day, the main prohibitions were against bigamy or polygamy; the marriage of monks or ordained priests; marriage between Christians and Jews; between an adulterous wife and her lover; and between blood relatives (essentially defined in terms of lineal ascendants and descendants, siblings, and first cousins). One was also forbidden to marry the ascendant or descendant of a former spouse or a former brother- or sister-in-law. Adopted children were treated as blood relatives. The prohibition on marriage to first cousins was an innovation of the Christian Church which ran counter to engrained tradition (see Goody (1983), pp. 103–57). The children of illicit marriages were deemed illegitimate.

² For Florus, see *PLREIII*, p. 490 (Florus 1). Florus was in charge of the imperial estates (known as the *res privata*) to which, since 529, properties escheated and fines imposed by the government had been awarded and which were regarded as the private property of the emperor (on which see *Codex* 1.5.15; 10.30.4.6; 11.61; *J. Nov.* 30, note 36 and Delmaire (1989), p. 414). It is possible that he was the grandfather of the poet Paul the Silentiary, whose family, according to the historian Agathias, was both wealthy and famous (Agathias, *Histories* 5.9.7), and who was the author of an *ekphrasis* on Justinian's re-construction of the dome of Hagia Sophia after its collapse in 558 (which was effectively a piece of pro-Justinianic propaganda: see discussion in Bell (2009), pp. 189–212).

1

This is what we therefore decree for the future, should anyone contract a marriage that is illicit and contrary to nature, which the law calls *incestus*, *nefarius* and *damnatus*.³

Should he have no children from a previous marriage that was legitimate and blameless, he is at once to be subject to forfeiture of his own property, together with having no benefit from what was settled on him as dowry: all that is to accrue to the crown treasury.⁴ It was open to him to marry legitimately, but he has set his love on what is not legitimate; he is producing intermixed offspring, injuring the families, acting in an impious and unholy way, and lusting after such practices as are rejected even by many brute beasts. For that, his punishment is to be not just confiscation, but also deprivation of office, and exile; and, if of low status,⁵ also physical torture, so that he may learn to behave morally and to remain within the bounds of nature, instead of living licentiously, loving what is out of bounds, and wilfully defying the laws transmitted to us by nature. Should the wife have committed herself to an illicit marriage in full knowledge of the law and in disregard of it, she is to come under the same punishment.⁶

2

However, should he in fact have children, grandchildren or further descendants from a blameless previous marriage, they will at once receive their paternal succession, and, by reason of their father's punishment, gain their independence from him.⁷ They are, nevertheless, to support him and provide the other necessities; despite his contempt of the law, and his impiety, he is nevertheless their father.

³ *Incestus* (literally 'unchaste') = marriage to a prohibited blood relative; *nefarius* and *damnatus* ('sinful' and 'condemned') were essentially synonyms for the same, although in *J. Nov.* 89 c. 15 some attempt appears to be made to distinguish between them.

⁴ 'Crown treasury' = the imperial household or *domus divina*: see Delmaire (1989), pp. 638–9 and *J. Nov.* 30, note 36.

⁵ Citizens of higher status (known in Latin as *honestiores*) were typically spared the most brutal or degrading forms of punishment (see discussion in Garnsey (1970), pp. 221–80).

⁶ In earlier periods, women in illicit marriages had tended to be treated more harshly than men (see Berger (1953), p. 427).

⁷ I.e. they become *sui iuris* (free from paternal power).

3

So much for the time that is to elapse hereafter, subsequently to this present constitution of ours, which is one that will vex nobody – at least, nobody who behaves morally; by committing no offence, they can avoid being brought under this law. As for what is now in the past, though, we are neither letting it pass altogether unpunished, nor bringing it entirely under severe displeasure. Should an illicit marriage that has taken place have been dissolved already, in whatever way, it is to be pardonable; and should this law of ours find anyone in such a marriage, he is to have licence, within two years from whenever this law becomes public, to dismiss the wife thus linked with him, in such a way that she does not return to him any more, nor is she really with him, while apparently being apart – which is a way in which he will perhaps defend his previous liaison. Then, only a quarter of his property will go to the public treasury.

As for his children, we concede their innocence. If they are the only ones, there being no other ones who are themselves legitimately born of another, innocent marriage, they are not to be deprived of inheritance from their father, unless the father should have just cause to hate them, and to exclude them from his succession because of some other lawful ground of offence.

1. If, however, there should previously have been another marriage that was in no conflict with the law, and should there be children from it, three-quarters of the inheritance is to be left to the children who are in all respects blameless and innocent, unless they should have committed some other offence that shows them, legally, to be undeserving of succession to their father; while one-quarter is to be allowed as a bequest to the children who are innocent despite the wrong that has been done them, if they too are clearly blameless in all other respects as far as their father is concerned. The quarter of the father's property that we ordered to be paid to the public treasury is, of course, to be deducted in advance. We also grant them the right to inherit from their parents in the manner we stated above, not only under a will, but also in intestacy. This same principle applies also if, after dismissing the previous wife illicitly united with him, he should marry another wife legally, and have children both by the previous wife and, later, by the legitimate one. In this way, we surpass the past in beneficence.

Be it understood that the wife who has left is given her dowry. However, should he not dismiss his wife within the two years from the publication of this law, he is to forfeit his property, and the wife her dowry; he is to be subject to the stated penalty, and such children will have nothing from their father's property, nor yet from their mother's dowry. Should he have

children born from an earlier, innocent marriage, they will receive the property, apart, of course, from the quarter that goes to the public treasury; they will be independent of his authority but, as we have just stated, will support their father and provide him with sufficient other care. In this case also, the illicit wife's dowry goes to the public treasury.

Should the perpetrator have no children from an earlier, blameless marriage, the secure possessor of his entire property will then be the public treasury, that being the law we have laid down also in the case of those who marry illicitly hereafter; we put the man who does not dismiss his illicit wife, within the time we have stated, on the same footing in all respects as the man who, after this law, takes a wife of an illicit and abhorrent kind.

4

As there has been some controversy in certain provinces over the children who have been legitimised by our constitution, we, as fathers of the law, have deemed it right for us to make an addition to it, and to settle the question at issue, such being our original intention in making the law.

The case arises if a father of legitimate children, whose wife has either departed this world or been legally divorced, should have a relationship with another woman whom he could legally have married, and had children prior to the dowry-contract – provided that he does make one; or even after it, if the only surviving children are those from before that contract, subsequent ones either not having been born, or having been born and then having died. Some have thought that children of the second family could not be legitimate, given that there are also other, pre-existing children by the previous wife, who are lawful and legitimate; but that view has no logically correct coherence. If we, being satisfied with the execution of a dowry-contract, have declared such children lawful and legitimate, and the earlier children are also legitimate, then at the father's death they are all legitimate, both those by the first wife and those from the second; and this is so, even if the latter were born prior to the dowry-contract and there were no additional ones born after the contracting of the dowry, or if one so born has died. The law grants him licence to make dispositions as he wishes as between his offspring, provided that those dispositions do not conflict in some way with the laws that call all children to a certain proportion of the succession. Accordingly, as legitimate and lawful children, they will come into it as both their father and the law direct, whether by will or in intestacy, and will inherit in succession from each other. What else could we mean, given that the phrase 'lawful and legitimate' is sufficient to declare them as

being under their father's authority,⁸ and to give them (even against the terms of the will) what the law gives them; and for them to have all that is due to them under such appellation?

Conclusion

Your excellency, on being informed of these decisions of ours, manifested by this divine law, is accordingly to take pains to put them into practical effect by proclamation to the governors of the provinces. Thus people abroad, also, are to be aware of the care we have taken for innocent, undefiled offspring, while setting our face against unnatural copulations, abhorred by our laws.

*Given at Constantinople, May 16th, consulship of the Most Distinguished
Belisarius* 535

⁸ The Greek ὑπεξούσιος = *in potestate* (i.e. subject to the legal authority of another, in this case the *pater familias*).

Emperor Justinian Augustus to the Constantinopolitans

Preamble

The title ‘Most Distinguished officers of the watch’, a respected one well known to the ancient Romans, has come, we do not know how, to have a different appellation and rank. Our ancestral language called them *praefecti vigilum*,² understanding them originally as being the office of the body that kept watch, leaving nothing uninvestigated; whereas the Greek language, we do not know why, called them ‘prefects of the nights’, as if the office had to get up at sunset, apparently, and go off duty at sunrise. After all, what could be the reason for putting ‘nights’ into the title? If the ground for its gaining this appellation was that this office was the only one that patrolled the city dealing with nocturnal misdemeanours, that is exactly what we see our city prefect’s office doing; so that, as far as this appellation is concerned, there was nothing to prevent that office, too, being given this title. If, on the other hand, their idea is that there is a distinction between the offices, and that the Most Illustrious prefect of this fortunate city is in charge during the

¹ The maintenance of law and order in the burgeoning city of Constantinople was a matter of pressing concern to the emperor. In this law he seeks to address it by creating a new judicial and policing magistracy – that of the ‘praetor of the people’ – directly answerable to the emperor rather than to the Urban Prefect of Constantinople, who was otherwise responsible for the regulation of civic affairs in the capital. As with the titles of the new provincial governorships set out in the contemporaneous *J. Nov.* 8, the emperor here gives an ancient Roman title to a new office of state, thereby sending out an antiquarian message of imperial restoration rather than reform. Both the presentation of reform as restoration, and the creation of the post of *praetor*, are explicitly criticised by Procopius in his *Secret History*, where he presents the praetors as little more than agents of imperial tyranny. On antiquarianism, see Maas (1986), Pazdernik (2005) and Roueché (1998); on this law, see discussion in Franciosi (1998) and Bonini (1976); for Procopius’ criticisms, see *Anecdota* 8.24 (the emperor’s duplicitous character), 20.9–13 (the praetors passing on shares of their peculations to the emperor), 11.37 (describing how the praetors persecuted astrologers), 16.19–20 (their involvement in prosecuting those accused of pederasty) and 18.33 (their execution of members of the circus factions). An interesting account preserved in the anonymous ‘Sayings’ of the Egyptian Desert Fathers records how a Constantinopolitan deacon who abandoned Christianity and took up sorcery was arrested, jailed and interrogated by the *praetor* of the city (see Wortley (2013), N.640, pp. 516–17). For thoughtful discussion of the moral ambiguities of policing activity in this period (including discussion of this novel), see Lanata (1984b), pp. 5–24.

² *Praefecti vigilum* = ‘prefects of the watchers’.

daytime, and the others during the night, they have missed the proper point badly, and – how, we do not know – have corrupted the proper meaning of the titles. Moreover, this appellation with ‘of the night’ in it, and with its connotation of darkness and obscurity, is one that everyone justifiably avoids, regarding appointment to it as a punishment, and thinking of it as something that does not even merit warrants from the Sovereignty.

1

Therefore, on taking what should have been the proper view of the matter, we have concluded that what is needed is a thoroughgoing revival and enhancement of this office, taking as a starting-point the appellation itself: in future, no-one at all is to be called ‘night-prefect’, because they are going to be dealing with all unacceptable actions, by day as well as night.

1. As the title *praetor* was one much favoured by the ancient Romans, we thought we should give the title of *praetores plebis* to those whose duty it is to be guardians of good order, and to be able to quell public disorder. Just as other *praetores*, those of emancipations, guardianships and so on, are in the council of the Senate, so too are these to be, as *praetores* of public order. In our language,³ they are to be called *praetores plebis*; but in this, the common language of Greek, ‘praetors of the people’.⁴ The dignity of a praetor, his nearness to the rank of consul, and his close connection with the law, are shown by the laws that link praetors with the consulate, and give them, by law, the second rank. In antiquity, it was the consuls who presided over the highest council, and the tribunes of the people who governed the people; and just so, now, there are to be praetors of the Senate, who do the duties stated previously, and praetors of the people, who take on their good order and look after their interests.

2. This office was certainly respected in antiquity, and had a distinguished usage in the elder Rome, not just in imperial times, but further

³ ‘Our language’ = Latin. As noted in the Introduction, Latin remained the prestige language of the Roman state. It was also Justinian’s native tongue (see Honoré (1975)).

⁴ ‘People’: the Greek text uses the word for people in the plural (δῆμοι). However, this use of the ‘particularising plural’ is common in late Greek (see discussion in Cameron (1976), pp. 28–39). In Ancient Athens this word was used in the plural to refer to the ‘demes’ or wards into which the city was divided. There is, however, no evidence that Constantinople was divided into such units. In late antiquity, the word was also used in the plural to signify the ‘circus factions’ which were a major cause of disorder in Constantinople at the time (on which see also Greatrex (1997)). In this novel, however, it is simply used as an equivalent to the Latin *populus*.

back as well; and when this great city took on the office it, too, held it in no disregard. Consequently, as we have discovered, it was actually not very far back that this post was occupied by those who had held the highest offices at court; later, though, they did not deign to take it up, and it has gradually come to be seen as so low and worthless as not even to be granted by codicils of ours, but to be at the disposal of the Most Illustrious prefects of this fortunate city, as a position generally taken up by members of their staff, and managed by them in the worst possible way. Yet anyone who considers its mark of antiquity will be very well informed of its former standing, even from its present circumstances: it has its own court and staff, with *commentarienses*⁵ and practically everything else that is assigned by law to the city prefecture.

2

So, as we have carefully researched its whole previous history, we aim to restore it to a more distinguished rank, its former respect and its proper order. We have therefore decided to regulate its affairs, with the aim of obviating numerous thefts on the part of its holders, their complicity with thieves, and the careless, feeble, worthless judgments handed down by them. We take endless trouble that cases should not go untried; and we have taken into consideration that on financial cases, where what is at risk is not the things that matter most, but only money, it is nevertheless holders of the highest offices who sit in judgment, often being also given colleagues to sit with them. How then can it not be appropriate for us to take every care that, when it is the lives of those on trial that are at risk, it should be persons of some worth who are judges, so that they do not ever destroy a life <without due consideration>? A human being is born with only one life; once he has lost it, he cannot recover it.⁶

3

First, then, we decree that no-one at all is to present himself for the said office without having received warrants for the post from us. On no account is anyone to dare to take it up without codicils from the Sovereign; he is to await the Sovereignty and its written mandate. We

⁵ *Commentarienses* = a term for officials employed in record offices (see Berger (1953), p. 398).

⁶ An expression of philanthropy in keeping with the general tone of the novels (on which see Lanata (1989), p. 40).

shall not confer the aforesaid office on any recipient other than a member of the Most Magnificent *illustres*, the Admirable *comites consistoriani*, or the most noble *tribuni* and *notarii* of the *praetoria*;⁷ or else, to those who have held offices and shown themselves to be suitable, and deserving of our attestation.⁸ As holders of the aforesaid dignity and honour, they are to cling to justice, particularly as they are mainly trying cases of murder, adultery, assault, abduction and so on, when it is lives that are at stake.

1. One presiding over prosecutions for such grave charges must be in all respects honourable, beyond reproach, and worthy to hear such cases. He must abstain from all theft, and be clean-handed.

Note that they are also to have an assessor,⁹ a person in good standing. We are not going to leave them without adequate recompense, either: we shall pay them ten pounds of gold per annum for *annonae*,¹⁰ so that they are to be satisfied with that, and are to refrain from any theft or huckstering.

2. There is to be absolutely no paying of money for taking up the office, as has taken place at times, nor is there to be distribution of largesse to anyone.¹¹ One who does pay anyone for the office will be held equally culpable as one who, after taking it up, does not refrain from accepting payment from anyone. This will be made explicit by the oath that will be taken by them.

4

We have discovered that their assistant staff has been including disreputable functionaries such as thief-detectives, *beneficiarii*,¹² cutpurses and a mass of others, every one of whom should more appropriately have been punished, rather than making a living in such ways as these. Even this role of thief-detectives is not such as to do any good; their only purpose in detecting thieves is to chase up some profit for themselves and their

⁷ *Comites consistoriani* = members of the imperial inner council or *sacrum consistorium* (see *Codex* 12.10); *tribuni* and *notarii* of the *praetoria* = military and civil officers of the Praetorian Prefecture (on which see Haldon (2005), pp. 43–5 and Kelly (2004), esp. pp. 32–6 and 71–81).

⁸ I.e. the appointee to the post must bear the highest senatorial rank of *illustris*, or the (by the sixth century) middling or lower senatorial rank of *spectabilis* ('Admirable') or *clarissimus* ('Most Distinguished'), and must hold high military or civilian office (for these senatorial titles, see Guiland (1967)).

⁹ *Assessor* = legal officer or adviser (see *J. Nov.* 60).

¹⁰ *Annonae* = official stipend given by way of remuneration (see *J. Edict* 13, note 15 and Lee (2005), pp. 119–20).

¹¹ Thus bringing the law in line with the legislation against *suffragia* in *J. Nov.* 8.

¹² *Beneficiarii* = low-ranking soldiers released from normal duties (see Berger (1953), p. 372 and Avotins (1992), pp. 41–2, under βενεφικάλιος).

superiors. It is the duty of those who are now going to be brought forward by us to the praetorship of the people to turn their back on all this, in loathing. They are to keep their hands clean, to prosecute all those indicted before them, whether for theft or for other crimes, and to cleanse our city of the animals who commit the thefts. They are to employ sound men to assist in these purposes; and their behaviour towards their own staff is to be correct, so that its members fear their chief, and carry out all their work vigorously and loyally. If only they make up their minds to live upright lives, in a manner that justifies our choice of them, there will be few thieves, burglaries will be soon detected, and the number of criminals will fall, for fear of an office not to be bought off by anyone.

1. They will hear prosecutions, even the most serious ones. They will quell public disturbances, serving under ourselves, not under the Most Illustrious prefect of this glorious sovereign city; yet also earning his full respect, as lower office-holders from a superior. They will be lightening his concerns, by not taking any action unworthy of good men and of approval from the Sovereign.

Should it ever happen, as we pray that it will not, that there is a conflagration in the city, they must be at the scene to help, making it their main task to keep off thieves and looters of the victims' belongings, and, as far as they can, to protect the property of those suffering from the violence of the fire.

Should their conduct of the duties of this office be conscientious, a greater eminence will await them, and a more honourable office; they will come to know how great is the effect of an honourable life – or else, of a life in contempt of honour, with many hands in use for impious purposes, but afterwards in poverty, because, by its nature, nothing so amassed is permanent: wickedly acquired, it is lost at once.

Our purpose is to help our subjects. It is for that reason that we have thought it necessary both to give them this large remuneration, and to bring men whom we have honoured into public view, for their qualities to be seen by the subject population.

As we have said, the Admirable praetors of the people will also have an assessor, worthy of our choice of them.

5

They will have at their disposal a detachment of twenty soldiers, and thirty *matricarii*,¹³ which we are just now establishing, to serve in carrying out

¹³ *Matricarii* = public officials (primarily military) listed on an official roster known as the *matricula* (Berger (1953), p. 578).

their directions, detaining the disorderly whenever necessary, and putting the civic administration into proper shape. They must clearly understand that should they keep themselves free from blemish, they will both have God on their side, and not lack our favour; further, their career in office will be longer, because who would wish to replace a man whose conduct is right and proper?

6

Should someone be referred to them to undergo punishment, even from the court of the Most Distinguished prefect of this fortunate city, they are to enquire strictly into the case, and find out for what offence they are putting the man to death, amputating a limb, or something of the kind. They are also to make enquiries from the Most Illustrious prefect himself, should they so decide, to ensure that they are correct in carrying out the sentence that deprives the person referred to them of life or limb.

1. Just as we have honoured the Admirable praetors of the people with such significant perquisites, by rating them as entitled to warrants issued by our own hand, a stipend, the high appellation and all the rest that is stated above, so we demand from them that they requite us with cleanness on their part, vigilance in all matters, and fair and just reasons for all their actions, with a clean hand. Should they prove to be offending in any way, and either committing theft or tolerating theft by others, or not prosecuting, without fail, and punishing with death those who deserve it, or banishing those whose crimes are less serious from this great city to any place that we direct, they are to know they will answer for that not only to God, but also to us. They will be liable for any resultant injury to our subjects, and will also incur our own displeasure and rapid, dishonourable discharge from their office; the reason for the trouble we are taking, and the heavy expenditure we are incurring, is to ensure that all cases are under proper judgment, and that none of our subjects are exposed to false accusation, loss of money or life, or anything else of the kind.

Conclusion

On becoming aware, by means of this divine proclamation and law, of this our intention, and of our leaving nothing whatever undone which is in your interests, pray, all of you, for our Sovereignty: one that so cares for

you, so makes each individual's concerns its own, and maintains so paternal a care for you all.

To be advertised to our citizens of Constantinople.

Given at Constantinople, October 15th, consulship of the Most Distinguished lord Belisarius, indiction 14¹⁴

535

¹⁴ 'Indiction 14' = the penultimate year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311.

14 | Brothels not to be kept in any part of the Roman realm¹

Emperor Justinian Augustus to the Constantinopolitans

Preamble

The keeping of prostitutes has been seen, by both ancient laws and recent sovereigns, as odious in both name and fact, so much so that numerous laws have been laid down against such offenders. We, too, have not only increased the penalties already enacted against those who commit such impiety, but have also, by further laws, corrected any omissions on the part of our predecessors. Recently, moreover, denunciations have been made to us of impious offences arising in this great city from such causes, a matter we have not ignored; we have become aware that there are people making a dishonest living by devising cruel, odious means of making filthy profits for themselves: they tour several provinces and districts, enticing pitiable young women with promises of shoes and clothes, ensnare them in this way, and then bring them to this fortunate city and keep them imprisoned in their own brothels, providing them with miserably inadequate subsistence and clothing, and renting them out for immoral purposes to any men who want them. They take for themselves any wretched income the women earn by their bodies, and make contracts for them to continue in this impious, unholy service for as long as they themselves decide, even demanding guarantors from some of them.²

¹ Prostitution had been a common and accepted fact of life in the Roman Empire until emperors began to legislate against it from the early fifth century (responding to demands from the Church leadership). In this law Justinian completes the move towards prohibition, showing a concern for vulnerable women (in this instance country girls trafficked to Constantinople) which is reflected more generally in his legislation (see discussion in Harper (2013) and Krumpholz (1992), pp.162–204). Elements of this law are repeated in *J. Nov.* 51 of 537. Procopius records in his *Buildings* that the Empress Theodora acted as patron to a nunnery for reformed prostitutes in the imperial capital known as Repentance (*Metanoia*). In his *Secret History*, however, he accuses the empress herself to have been a prostitute in her childhood and youth and claims that certain of the prostitutes forced to join the nunnery committed suicide as their only means of escape (see Procopius *Buildings* 1.9.2–3 and *Anecdota* 9 and 17.5, critiqued by Brubaker (2005), and *The Chronicle of John, Bishop of Nikiu* c. 90.). For the sometimes severe treatment of women forcibly confined to nunneries for the sake of moral improvement, punitive penance, or educative custody, see Hillner (2015), pp. 338–41.

² The prostitutes were thus bound to their pimps by contracts of surety, using a legal contractual form to establish a fundamentally illegal relationship, indicative of the use of

We learn that this enormity has thus grown to the extent that there are brothels almost throughout this sovereign city and its suburbs across the water, and worst of all, even near its holy places and most venerable houses; and that, in our day, so audaciously is this impious, illegal business being carried on that even when certain persons, out of pity for the women, have made frequent efforts to get them away from this work and settle them in a lawful relationship, their keepers have refused to let them. Some have even taken their impiety to such lengths as to endanger girls not even nine years old, by compelling them to lose their virginity; as a result, people have been paying considerable sums to buy the unhappy girls out, not without difficulty, and arrange a decent marriage for them. This evil has now expanded, in ways too infinitely numerous to be capable of putting into words, to such appalling infinitude that whereas it was previously confined to only a very few areas of this city, it is now the city as a whole, with all its surroundings, that is full of such evils.

We had previously received a confidential report of this; and just recently, after we had charged the Most Magnificent *praetores*³ to look into such activities, they have brought these actual facts before us. As soon as we heard them, we thought it necessary to lay such an activity under God's curse, and rapidly to rid the city of such an abomination.

1. Accordingly, we decree that all, as far as they are able, should be continent, which is the one thing surely capable of commending human souls to God. However, mankind is multifarious; so, at the least, we totally forbid the reduction of women to such vice by guile, deceit and compulsion. There is to be no freedom for anyone to keep prostitutes and confine them in a brothel, or stand them out in public for the purpose of vice; nor to traffic them in exchange for any other item of commerce; nor to make contracts for this purpose, or demand guarantors; nor to take any such action as compels the unhappy women to defile their own chastity against their will; nor to expect that it will be possible to entice them into tolerating that, even against their will, by gifts of clothing, perhaps jewellery, or sustenance. We are permitting nothing of the kind whatsoever to take place, and have considered all such situations to deserve a suitably rapid remedy straight away: we have made provision for anything the women

the written word to intimidate poorer, more vulnerable and less literate members of East Roman society (see discussion in Sarris (2013)).

³ I.e. the post established in *J. Nov.* 13 (see c. 1.1 of which for the existence of numerous praetors operating under the chief one).

may have given as surety for such an abomination to be returned to them, and we have not permitted the impious brothel-keepers to take back from them anything they may have given them. As for the brothel-keepers themselves, we have given them orders to get out of this fortunate city, as having become pestilential corrupters of morality, molesting women, both slave and free, by enticing them into such duress, and keeping them under habituation to utter shame.

We also declare that anyone who in future dares to take a girl against her will, and keep her under duress to live by bringing him in revenue from prostitution, must necessarily be arrested by the Admirable praetors of the people of this fortunate city, and suffer the most extreme of penalties. After all, if we have put those praetors in place to take corrective action over financial crimes, thefts and robbery, how much more shall we tell them to banish theft and robbery of chastity?

Further, should anyone tolerate the presence in his own house of anyone keeping prostitutes, and have someone running a business of that kind, but fail to drive him out of the house on learning of this proclamation, he is to know that he is to be subject to a fine of ten pounds of gold, and that his house will itself be in jeopardy.

Also, should anyone in future dare to make a contract, or to accept a guarantor, for these purposes, he is to know that such guarantee or contract will be useless to him; the guarantor will not be liable, and the contract will be entirely void. He himself will, as we have just said, be subject to corporal punishment, and will be banished as far as possible away from this great city. As for the women, it is our wish and prayer that they should live chastely, and certainly not be reduced against their will to a licentious life of forced impiety.⁴

We are forbidding there to be any keeping of prostitutes, and are punishing any that exists, particularly in this fortunate city and its surroundings, but no less in regions abroad, both those that have been in our realm from the start and those that have been granted to us by the Lord God; most especially, though, in the latter, because we wish to keep the gifts God has made for our realm clean of all such duress, and wish them to be worthy of God's bounty towards us, and to remain so. For we have faith in the Lord God that, as a result of this zeal of ours for morality, there will be a great addition to our realm, with God conferring on us, in return for such actions, everything that is auspicious.

⁴ For Justinian's emphasis on female chastity, see Beaucamp (1990), who discusses this law at pp. 131–2.

Conclusion

Our purpose in making this divine proclamation is that you, our citizens, should be the first to enjoy this moral constitution of ours, so that you may know of our earnest care for you, and the trouble we take over morality and religion, through which we look forward to our realm's being preserved amid all blessings.

Copy written for the Most Illustrious *magister*,⁵ with the following alteration:

So that these provisions should become public to all inhabitants of our realm, your excellency is accordingly, on receipt of this law, to make it public in the whole subject territory, by means of orders of your own; to the end that it should be observed not only within this fortunate city, but in the areas outside it as well, as an offering to God, the Lord of all, in place of any other sweet-scented oblation.

Given at Constantinople, December 1st, consulship of the Most Distinguished Belisarius

535

⁵ Presumably the *magister officiorum*, on whose responsibilities see Jones (1964), pp. 368–9.

[Heading in Latin] *Emperor Justinian Augustus to John, praetorian prefect*

Preamble

Unless we soon also restore the function of the defenders to its proper condition, we shall no longer even be in possession of the true meaning of ancient titles. Different titles, clearly indicative of their function, have been given by antiquity to different roles: this title, ‘defenders’, clearly shows that antiquity put certain men in charge of affairs to defend them, free of all injustice. Thus, the reason for the word we use for them in the ancestral language, *defensores*, is precisely that they were to set victims of injustice free from their troubles.²

Nowadays, however, in many parts of our realm this role of ‘defenders’ has in fact become very downtrodden indeed, and has fallen into such contempt as to be an affront, rather than being placed in any kind of honour. For that reason, those entering on it are undistinguished men, support for them being proffered out of pity, rather than preference; and that is why those who canvass for appointment as defenders, and present

¹ The ‘defender of the city’ (Greek ἑκδικος, Latin *defensor civitatis*) was a civic official charged with defending the interests of poorer provincials against the ruses of the powerful. The post was first introduced in the fourth century, when it was decreed that the praetorian prefect should only appoint as *defensores* former provincial governors, palatine officials and retired barristers (see Jones (1964), pp. 144–5). In Justinian’s day, the post also served as the lowest rank of the judiciary. Justinian’s attempt to strengthen the office must be understood in the context of his desire to restrain the excesses of members of the imperial aristocracy of service, whose illicit patronage and propensity towards tax evasion he expressly targets in much of his provincial legislation of c. 535–539, and against whose ruses he attempted to strengthen the structures of provincial government. At the end of the day, however, this law shares the flaw common to much of Justinian’s reform legislation, that those whose co-operation he needed to put such laws into effect were often the very same people against whom he was legislating. Thus, in this law, he attempts to enlist local notables (including the holders of senatorial rank) as ‘defenders’ so as to restrain the locally powerful, amongst whom they were themselves naturally numbered (see discussion in Sarris (2006), pp. 219–22 and Liebeschuetz (2001), pp. 126–7). By the end of Justinian’s reign, the responsibilities delegated to the *defensor civitatis* had effectively been re-assigned to the figure of the local bishop (see *J. Nov.* 145 of 553). According to the sixth-century Italian bureaucrat Cassiodorus, the concern of the ‘defender’ for his charges was meant to mirror that of a patron for his clients (*Variae* 7.11). For further discussion of this office, see Mannino (1984) (who discusses this law at pp. 187–203), Rees (1952) (discussing the Egyptian evidence for the post) and Hillner (2015), pp. 143–6.

² Note the antiquarian tone of the preface, on which see Maas (1986).

themselves for the post, are people without adequate livelihood or independent means. They are exposed to the governors' whims, as if they were just another plaything; in fact, the governors depose them whenever they like, on very small grounds of complaint or none at all, and replace them with so-called 'deputy' defenders, often doing so with several different people in a year. The result is that the civil servants,³ the city authorities and their populations all hold the defender in extreme contempt, and transactions executed before these defenders are as good as not made at all. They would not even dare to enter a transaction in their own records without an order from the provincial governors, whose complete slaves they are, and whose nod is all they attend to. Should any transaction actually be executed, even then it is only for payment, for one thing; and for another, there is no archive in which any such transaction before them is deposited: it is lost from view, and one could find absolutely not one single entry in their possession that goes back any distance into the past. Instead, people who need such records go to search for them among the defenders' heirs, and their successors; and then find that some of them are entirely unreliable, and others are lost altogether, falling so far out of sight that they might as well never have existed.⁴

Now that we have put the affairs of governors into good order, and widened their powers of control over their provinces, supervision of cities' affairs is in fact less accessible to them.⁵ For that reason, we have deemed it necessary also to consolidate the position of the defenders, in such a way that there would be a good relationship, with the defenders of the cities taking on the rank of governors, and the governor of the province being seen, rather, as a governor of governors. He would thus be a more honourable figure than before; the higher those under him are, the greater and more honourable he himself is.

1

For a start, the first part of our legislation must be that no-one is to have freedom to decline appointment as a defender; all the more honourable of the cities' inhabitants are to fulfil this duty by turns, this being the

³ 'Civil servants' is here used to translate the Greek ταξέωται (= Latin *cohortales*), signifying, in this instance those employed in the *officium* or τάξις of the local governor (for other meanings, see *J. Nov.* 6, note 6).

⁴ For the collection of official documents in private archives rather than the official public archive of the city in the sixth century, see Sarris (2013). The disappearance of such public archives is a major complaint of the emperor's.

⁵ I.e. via *J. Nov.* 8, which this law thus supplements.

procedure that we have discovered to have been prevalently in use in the old days. No-one, not even one of those honoured with the rank of the Most Magnificent *illustres*,⁶ is to be permitted to refuse it, even if he holds an honoured position in the government service, nor yet if he pleads the privilege of divine directives, even pragmatic ones,⁷ granted in his honour. The city's inhabitants of any note are to fill this position; when the rota comes to its end, they are to return for a second tenure of the post, performing their service for their city in the said role.⁸ Thus the defender in each city is to be seen as an office-holder rather than a defender, taking office by vote, under oath, of all the property-owners in the city communally; not, however, of those resident here.⁹

1. He is to take an oath to the effect that all his actions will be in accordance with law and justice, in the public interest. As we now prescribe, his appointment is to be confirmed by an order from our Most Illustrious prefects, and he is to hold office for just two years, then step down. The Most Distinguished governor of the province is to have no licence to oust him; should the holder be regarded as acting in any improper way, the governor is to inform the Most Illustrious prefects, so that termination of the appointment comes from the same source as its grant.

2

Neither office-holder nor defenders themselves are to have any freedom to appoint deputies; this, too, is to be entirely forbidden for all of them. Nor are the Most Distinguished governors to send out to the cities any deputies for themselves, other than the actual defenders; they are the ones we wish to fill the governors' role in the cities and, in person, to see to all the affairs of the cities in which they are.

3

Registration of wills, deeds of gift, and any other such instrument that belongs in a record-office is to be executed before the defenders, with no power for the Most Distinguished provincial governor either to prevent its

⁶ The Greek text uses the Latin term *illustis* for an individual of the highest senatorial rank: see Avotins (1989), pp. 76–7.

⁷ 'Pragmatic' (Latin *pragmaticum/a*) could be used as a noun in its own right to signify an imperial edict or instruction: see Berger (1953), p. 648.

⁸ The rota appears to have comprised local landowners of senatorial as well as curial status. For this tying in of senatorial properties to city councils see especially Laniado (2002).

⁹ I.e. senators resident in Constantinople cannot be appointed to the office.

recording in advance, or to order that he does not wish it to be recorded or, if recorded, to be made available; we are giving him absolutely no authority at all for anything of the kind, as we regard it as being utterly unacceptable that people's necessary business should fall through on the orders of office-holders, for possibly unreasonable motives. He is both to execute, and to make available, any instrument desired by anyone; even should it affect the governor of the province or any powerful person, he is not to prevent it. The conduct required of those in any positions of authority or power is not that they should try to prevent any action against their interests, but that they should evince so blameless a character as to give no-one an opening to complain of them. Irrespective of the presence of an office-holder in the city, or his absence, no-one is to be prevented from executing, before the defenders as well, any instruments on any matters he may wish, with the sole exception of any that require legal adjudication, and depend on the personal authority of the office-holders.

1. Secondly, defenders of the cities are to give support, in every way, to those who have to collect the public taxes: possibly by putting on public record, if necessary, the disaffection of intransigent tax-payers, and doing so whole-heartedly; possibly by face-to-face confrontation with those who are disruptive, and acting as witness to these facts; possibly also by quelling public disorders; and, in a word, by taking on the governors' role, particularly in their absence. The local civil servants in the city where the defenders reside are to be under his orders and to assist him, so that the cities do not find anything to be less satisfactory in the absence of the provincial governors than in their presence. Defenders are also to have a shorthand-writer from the local staff at their service, and two civil servants to carry out their decisions.

2. They are to be the judges on all financial cases up the value of three hundred gold pieces.¹⁰ As long as the case is within the stated limit of three hundred *solidi*, subjects cannot take their opponents to court before the Most Distinguished governors of their provinces; . . .¹¹

¹⁰ Hitherto the *defensor's* jurisdiction had only applied to cases worth up to fifty *solidi* (see *Codex* 1.55.1). By virtue of this law, therefore, the civic tribunal of the *defensor* would have been the court of first instance for most litigants, and, as Di Segni (1996) notes (p. 582) 'poor litigants, who could not afford the legal expenses, would never reach the provincial court'. Accordingly, litigation before the provincial and higher courts on the part of poorer plaintiffs would probably for the most part have been in the form of collective suits (akin to 'class actions'), such as we encounter in the early sixth century with respect to the inhabitants of Aphrodito, who petitioned the emperor: see Sarris (2006), pp. 105–9.

¹¹ This measure forms part of Justinian's attempts to prevent litigants from clogging up the higher courts (especially those of Constantinople).

4

... nor are plaintiffs to raise the sum in litigation¹² for just that reason, so as to crush their defendants by suing them before the provincial governor instead of the defender of the city. Should they do any such thing, and should the verdict show value of the suit to be less than the 300 gold pieces, having been purposely inflated in order to have it tried before the provincial governor instead of the defender of the city, the plaintiff alone is to bear the whole cost of the case.

5

Note that appeals from defenders are to go before the governors in person; though if the civil servants should act in a way injurious to the defenders, provincial governors are to provide their support, and are to discipline their officials:¹³ we are giving the defenders licence that if provincial governors are remiss over this, they are to report it to your excellency's high office, so that proper assistance and vindication are available to them from that source. Thus they will genuinely be defenders against wrongdoers, because they represent the dignity of office-holders.

1. In the event that a defender of the city should drop out, the election is at once to go to the next person named on the rota, together with the above-mentioned oath; he is to take office immediately, and the election is to be reported to, and ratified by, your excellency. To avoid our ever again giving any apparently plausible pretext for lack of proper control, as in the past, no so-called 'deputy' is ever to be assigned for a defender, as we have already said.

2. Your excellency is to issue orders to every province for a public building to be set aside in their cities, suitable for storage of the records by the defender with a locally appointed person to look after them, so that they remain in good condition and can be quickly found by those wishing to consult them. This will form a local archive, and will rectify something that has hitherto been wrong in cities.¹⁴

¹² 'The sum in litigation' = in legal Latin the *litis aestimatio* or 'evaluation in money of the thing claimed by the plaintiff to make possible a judgment in a sum of money' (Berger (1953), p. 565).

¹³ Provincial governors are here obliged to discipline members of their staff who fail to assist the defenders, on pain of punishment by the praetorian prefect.

¹⁴ Justinian is here attempting to restore the institution of the civic archive or *gesta municipalia* (see discussion in Sarris (2013)).

6

It has already been ordained, under our laws, that defenders of the cities, too, shall take office without payment of any kind; and that for their letters of instruction,¹⁵ your excellency's court shall be paid no more than four gold pieces if their cities are larger, and three if smaller. However, if they have any public stipends they shall continue to receive these, in accordance with custom.

1. In addition, they will hear less serious charges, and submit them for appropriate chastisement. Those found guilty on more serious charges they will keep in custody, and remit to the provincial governor. Thus each city will benefit from having a post with authority, and the province as a whole will be conscious of greater care, by being under a greater governor. The defenders of the cities will cut down many of the concerns of governorship by transferring them to themselves, and they will lighten the governors' overall load of responsibilities by putting an end to part of them themselves, and by settling the cases of those who are suffering injustice, or are in controversy; also, as has been repeatedly stated, they will be rendering those in governorships respected. Should the public taxes meet with intransigence on anyone's part, provincial governors are to give the defenders instructions to carry out the exactions against the intransigent, as an additional means of assistance for them.

Should any appointment of a defender be made in contravention of these provisions, or should anyone decline appointment as defender when it is his turn, on grounds of rank, service, privilege or anything else, he is to know that he is liable to a fine of five pounds of gold. Even after payment of this, which is to go towards public works, has been made, he is still to be obliged to complete his term of office as defender, because it is right for each of the more highly honoured men to perform this service towards the city in which he lives, as recompense for his residence there.

Conclusion

Accordingly, your excellency is to take pains to publish these decisions of ours, manifested by means of this divine law, in the provinces under you, by means of orders of your own, so that all may be aware that all matters, whether of the highest or the lowest importance, or in between, are objects of our concern, and that there is nothing such that we regard it as lying

¹⁵ 'Letters of instruction' translating the Greek προστάγματα (= *mandata principum*: see *J. Nov.* 17).

outside our cares. Your excellency is to make it a part of your own instructions that, from now on, provincial governors are to prepare lists of those in good repute in each city, to be named as defenders on the rota, as stated; that communal elections are taken for them, under oath; that the said rota is put on record; that they should take office in turn for two years at a time; that if one of them should drop out, another should be put in to replace him, the election being always made under oath; that the person himself, when about to take up the office, should take the set oath; and that his appointment should be made by the most God-beloved bishop, the holy clergy and the rest of those holding high repute in the city. This should be done with immediate effect, and with everything proceeding according to this general law of ours. Those who are at present defenders, should they have proved satisfactory, are also to be included on the rota, and are to complete a two-year period of office; if they have already had a two-year period in office, they are to step down from office as defender, unless they are willing to hold office in the same position for a further two years, by communal election. If they have not yet completed their two years, but have been found worthy of inclusion on the rota, they are to serve out the remainder of their term. No-one is to be a city defender for longer than that; that is to be the limit of his time, unless the city communality votes him an extension, unopposed. If that happens, he is to take on the office for a second two-year term, and then, in any case, to lay it down, resuming it only when the rota itself brings his turn for this office round again.¹⁶ This is so that certain persons do not have indefinite tenure of the said administration, by means of unbroken continuance in office, renewed each time by some machination.

These provisions are all to be in force for all time, since we have devised them, with all unsleeping earnestness and zeal towards God, as a gift for our subjects.

Given at Constantinople, August 13th, consulship of the Most Distinguished Belisarius

535

¹⁶ The Roman government sought to limit terms of office, to prevent the power of its officials from becoming too embedded and thus liable to corruption.

16 | Clergy to be transferred from one church to another, up to the number missing from the *statutum*¹

The same Sovereign to Anthimus,² most divine and most blessed archbishop, ecumenical patriarch

Preamble

We recently laid down a law on the quota of appointments,³ and on the requirement that they ought not to be overabundant, either for the most holy great church of this fortunate city, or for others. We certainly command that that is to be valid, and to be applicable in its full force. However, because our aim is to cut down appointments, and thus to limit excessive expenditure in the most holy great church to a moderate and tolerable level, by reducing the number of its outgoings, we have explored every avenue to this end, and have arrived at the present additional law. It is of a kind no different from the previous one, but springs from the same purpose, and is even better able to be advantageous to the most holy great church. . .

1

. . . because we are decreeing that if, in any of the most holy churches whose administration and outgoings the most holy great church itself has undertaken, the death should occur of a presbyter, deacon, reader or cantor, another is not to be brought straight in from outside. Instead, there is to be consideration of the number of clergy serving there at the time. If the number has not yet been reduced, but is still in surplus with reference to what has been previously defined, and to the *statutum*, as it is called, no appointment is to be made as replacement for him until the

¹ This law represents another measure aimed at curtailing exorbitant ecclesiastical expenditure resultant from the over-manning of churches. The *statutum* appears to be a statute setting out the number of priests et al. assigned to the foundation of a religious or charitable institution (comparable to the statutes of an Oxbridge College or a monastic *typikon*).

² For Anthimus, see *J. Nov.* 42, note 1.

³ *J. Nov.* 3.

number has returned to itself. If, however, the amount has been reduced to the point where, to keep up the *statutum*, another cleric must be brought in to replace the one who has died, your beatitude is to consider if there is a superfluous cleric of the same grade in any of the churches other than the most holy great church, and to transfer him as a replacement, instead of making a new appointment. Thus the good balance, dear to God, will be imposed on the matter, with the shortfall being always made up from the surplus; and, from that, the most holy great church will gradually be freed from its debts. Otherwise, should the lack be made up by introductions from outside, with no reduction in the surplus, an infinitely long time will go by before the surplus is all reduced.

Conclusion

Accordingly, your beatitude is to take pains to put our decisions, fittingly made for the benefit of the churches, into practical effect. If there is any contravention of them, the person who has the temerity to accept appointment contrary to this law must know that he will have no benefit from it; and the most reverend stewards will not put the resulting expenditure in this regard to the account of the most holy church, but will themselves take on the consequent detriment, and reap the harvest of their own remissness out of their own resources.

Given at Constantinople, August 13th, consulship of the Most Distinguished Belisarius, indiction 13⁴

535

⁴ 'Indiction 13' = the thirteenth year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311.

17 | Mandata principis¹

[Heading, in the Latin version only]

*Emperor Justinian, to Tribonian, quaestor of the sacred Palace, ex-consul*²

Your excellency is not unaware, from ancient books containing the laws called ‘Roman’, of the amount written on emperors’ instructions by legislators, each in his own book.³ In the course of our restoration of all ancient practice, now partly lost and partly impaired, we have therefore decided to issue to all our holders of lower or intermediate offices – whether appointed as *correctores*, consulars or *spectabiles* – not just warrants, but also instructions, so that by perusal of these they will be able to carry out all their gubernatorial duties in a praiseworthy manner.⁴ For this purpose we have composed a book of instructions, subjoined in both languages, to be given to our administrators according to which

¹ *Mandata principis* = ‘judicial and administrative rules or general instructions issued by the emperors to high functionaries of the empire, primarily to provincial governors to be applied by them in the exercise of their official functions. They were binding only in the province for which they were issued. When an imperial *mandatum* affected lower officials, it was made public by an edict of the governor’ (Berger (1953), p. 574). Fragments of such publicly displayed *mandata* survive in the epigraphic evidence dating from the reigns of Justin II and Maurice (see Feissel (2009), p. 108 and *J. Nov.* 8). In this law Justinian sets out the terms of a uniform set of instructions to governors and identifies what he regards as the most pressing causes of disorder at a provincial level. Particular attention is drawn to tax evasion (especially by the owners of large estates), the seizure of property by local magnates (including estates belonging to the crown and imperial government), landowners forcing peasants to become their *coloni adscripticii* or stealing the *coloni* of others, and the problems caused by private armed retinues and militias. These issues would reappear in the legislation specific to individual provinces (see Sarris (2006), pp. 200–27).

² For the career of Tribonian, on whom Justinian relied for much of his programme of legal reform, see especially Honoré (1978) and *PLREIIIB*, pp. 1335–9 (Tribonianus 1). A native of Pamphylia, he was famous for his legal learning and had practised at the Bar prior to his appointment to the commission which compiled the first edition of the *Codex Iustinianus*. He was first appointed *quaestor* in 529, and remained in office until 532, when Justinian was obliged to dismiss him in response to the demands of the ‘Nika’ rioters. He was then restored to the office in 535, and may have continued to hold it until his death in 542 (although see *J. Edict* 9, note 2). According to one source (which was included in the Middle Byzantine *Suda Lexicon*), he was a pagan (*Suidas* T. 956). The *quaestor (sacri palatii)* was the chief legal officer of the empire (see *J. Nov.* 7, note 19).

³ See *Codex* 1 15.

⁴ The *mandata* are to be issued to all provincial governors, whether they bear the third senatorial rank of *clarissimi* (i.e. the *correctores*) or the second senatorial rank of *spectabiles* (i.e. the *consulares*): see *J. Nov.* 8, note 12, Van Der Wal (1998), pp. 20, note 42 and 22, note 53, Stein (1949) 2, pp. 463–80 and 747–56 and Guiland (1967). Note again the antiquarian rhetoric of legal restoration and the particular role in the process ascribed to the law’s addressee, Tribonian.

language, Greek or Latin, is in use in their area,⁵ for them to know what is laid down in them; and so that they shall not dare to ignore anything in them, but shall take pains to govern our provinces, and the peoples subject to our rule, in perpetual observance of our most salutary dispositions. Therefore your glorious eminence, as holder of the office of *quaesitor*, is to order the said instructions to be transcribed into the law-books, and also to be deposited in the sacred *laterculum*,⁶ to the end that administrators may receive these along with their codicils, and, from them, be not unaware of how they may be of service to the realm.

In the name of the Lord Jesus Christ, our God. [Greek version]

*Emperor Caesar Flavius Justinianus Alamanicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africanus, pious fortunate glorious victor triumphator, ever revered Augustus*⁷

Preamble

All the principles by which those taking up offices should administer them, mindful of the oaths which they take for this purpose, have already been set

⁵ For the use of and relationship between Latin and Greek in provincial administration, see Miller (2006), pp. 20–5 and 93–7. Broadly speaking, Greek was the official language in all provinces subject to the Praetorian Prefect of the East, whereas Latin was used in Illyricum (and the re-conquered territories, such as Africa, which had been restored to imperial control by this point).

⁶ The *laterculum* was the register and archive which recorded all public offices and officers (see Berger (1953), p. 537 and *J. Nov.* 8).

⁷ The emperor's titles here celebrate his recent conquest of Africa and its Vandal and Alan overlords (hence *Africanus*, *Alanicus*, *Vandalicus*) and victories in the Balkans against Slavs and associated groupings known as the Antae (*Anticus*). The other titles of *Alamanicus*, *Gothicus*, *Francicus* and *Germanicus* would soon be justified by victories against both the Ostrogoths and their allies and armies loyal to the Frankish kings in Italy. To claim such triumphant titles at this point, however, was arguably rather presumptuous, but signified what has been termed 'a powerful reassertion of the image of the victorious emperor . . . redolent of the good old days of the fourth century' (McCormick (1986), pp. 67–8). The same bombastic titulature is already to be found in the constitution on 'Imperial Majesty' (*C. Imp. Mai.*) which was issued to announce the promulgation of the *Institutes* in November 533 and in the constitutions celebrating the promulgation of the *Digest* (*C. Omnem* of 533) and the second recension of the *Codex* (*C. Cordi* of 534). In the constitutions ordaining and confirming the composition of the first recension of the *Codex* (*C. Summa* issued in 529) and initiating work on the composition of the *Digest* (*C. Deo Auctore* issued in 530), by contrast, the emperor had simply described himself as 'pious, fortunate, renowned, conqueror and triumphator'. For the military context to this shift in imperial titulature, and the implied adoption of a more aggressive stance both strategically and ideologically, see Sarris (2011a), pp. 93–7 (on Africa), 115–20 (on Italy) and 170–7 (on the Balkans).

down in our Piety's general law.⁸ Nevertheless, we have thought it necessary also to give you the appropriate instructions now, as you take up your office. They are in the form devised by the forerunners of our realm, who issued specific instructions, which they called *mandata principis*, to those being sent out to positions of authority, as to how they were to administer their offices.

1

Taking up office, as you are, cleanly and without any payment, you must before all else keep your hands clean before God, ourselves and the law. You are to be content solely with what you are paid by the public treasury, and must not lay hands on any gain, great or small, nor engage in any fraudulent dealing at the expense of our subjects; both in your own person, and in those of your staff, you are to keep justice uncontaminated for them in all respects.

In the first place, you are to be zealous in exacting the public tax demands vigilantly, with unflinching concern for the public treasury, seeking to ensure that it suffers no loss and has its due from every source. Just as we assist individual victims of wrongdoing, so we also wish the public treasury to remain uninjured; and if our tax-contributors are kept free of all injurious treatment in other ways, they will be ready and willing to pay their taxes. They will easily rid themselves of indebtedness over those, because they will be paying directly to the public funds what previously they had been robbed of, leaving them still owing their taxes.

2

Secondly, it is your duty to see to it that there is no factional rioting among the urban populations, but complete peace in the cities, as the result of your maintenance of fairness towards our subjects in this respect also, without inclining towards any party for reasons of either gain or favour.⁹

3

Your third aim must be complete fairness in hearing cases. On the shorter ones, particularly all those involving smaller sums of money, you are to

⁸ *J. Nov.* 8.

⁹ On riots and circus factions, see Greatrex (1997) and Booth (2011).

settle people's disputes with each other by bringing them to a conclusion and making decisions without written documentation, thus not letting them incur any expense in the way of court costs beyond what is contained in our divine constitution – and even that, only if they are at all capable of paying it; otherwise, you are to hear cases even at no cost, and not let the provincials whom you are governing come running to this fortunate city, and pestering us, through negligence on your part.¹⁰ You are to be aware that, should anyone in fact come and make a petition to us, and when asked by us if he has previously taken his case before you, reply that he has done so but has not received justice, it is on you that we shall turn our wrath, should we find that to be true. If, however, he should have the temerity to appear in this sovereign city without having taken his case before you, we shall send him back with comprehensive chastisement, and without an answer.

4

Next, it is your duty not to let those <officials> going out from here, whether *magistriani*¹¹ or from any other court whatsoever, wrong our subjects or overcharge them. Should anyone come to you with a complaint of such a kind, you are to pursue the matter and ensure that he is indemnified. You are not to permit anyone to impose extra charges on our subjects under alleged instructions from any court, of the kind customarily issued for aqueducts, docks, roadbuilding, bridges, statues, walls, demolition of buildings for having been erected on public land, and other similar purposes.¹² Even for such a reason, we wish no extra charge to be inflicted on them: you will take personal care of all these projects, doing everything without charge. Should anyone arrive with such orders, you will pay no attention to him at all unless he shows a divine pragmatic directive of ours made out for these purposes; you will then accept such a directive provisionally, but still take no action on it until you have informed us, and received from us a second authorisation for these purposes.

1. As well as seeing that there are plentiful supplies of necessities, you will also see to public works in the cities, ensuring that the city fathers, as

¹⁰ Note Justinian's persistent concern to discourage litigants from clogging up the higher courts (especially those of Constantinople).

¹¹ *Magistriani* = officers of the *Magister Officiorum*, an immensely powerful official of the court 'in administrative and disciplinary control of the palatine *officia* (apart from the financial offices) and their co-ordinator' (Jones (1964), pp. 368–9).

¹² The law here prohibits so-called *superexactiones* (on which see Berger (1953), p. 458 and *Codex* 10.20).

such, see to the most essential works, and likewise to bridges, roads, docks (in any such place as there are docks, in the provinces you govern) and walls, out of municipal funds.¹³ If there is anything at all that is to the benefit of the public treasury and the cities, you will consider it, act on it, and inform us.

2. In any of these undertakings that you wish, you will also have the soldiers in your province under your orders, for any justifiable assistance. Should you find them committing any offence, you will subject them to due chastisement, and in addition will provide compensation out of their stipends to the injured parties.

5

You will not allow criminals to claim any privileges; the one thing you will uphold as being of any help to them is their proving to be entirely innocent, and clear of the charges against them. You will follow up cases of murder, adultery, abduction of virgins, assault and <all> crimes, and punish the criminals so severely, in accordance with our laws, that by punishment inflicted on a few, you will be saving everyone else.

1. Most importantly, you will keep control of your civil servants, not allowing them to plunder our subjects, nor to give the impression that they are under your command, while in reality it is they who are in command of your decision-making.

2. You will also make a point of taking as an assessor¹⁴ any good man on your staff who conducts himself absolutely cleanly, and is content with what he receives from the public treasury; should anyone disappoint you, and you find him not keeping good faith with you, you will dismiss him, and employ another man as assessor, one who does cleanhandedly uphold law and justice.

3. In both in public and private, your behaviour to all will be such that it will be the wrongdoers, and those who are non-compliant towards the public treasury, who have the more to fear from you, while those who find you more forgiving, and merciful, will be the law-abiding and the compliant, on whom you will confer paternal care.

¹³ For the centralised supervision and direction of such civic funds, see Liebeschuetz (1996). The 'city father' (Latin *pater civitatis*) was a civic functionary locally chosen but whose appointment was ratified by Constantinople (see *J. Nov.* 128 c. 16). He assisted the *defensor civitatis* and civic notables in the administration of the city (see Liebeschuetz (2001), pp. 110–12 and Roueché (1979)).

¹⁴ The *assessor* was a legal secretary or adviser (see Greatrex (2001)).

6

To avoid people's disputes with each other lasting indefinitely, you are not to be hasty in issuing these so-called licences¹⁵ too readily, or for any over-long period, but only after enquiry, and for a moderate period, not exceeding thirty days. In a case where you have put a person under the so-called 'licence' and someone then brings suit against him, you will bring him to court, while upholding the licence given him, and will investigate the case, with the licence being maintained in all respects. If he has to have a verdict passed against him, you will condemn him, and then offer him the choice between two alternatives: either, if he wishes, to forgo the licence given him and do as dictated by the verdict, or, failing that, you will take him back within the sacred precincts and there put sentence into execution, temperately, and with the respect due to the holy precincts.¹⁶

7

For those committing murder, adultery and abduction of unmarried girls, you will not uphold the protection of sanctuary; even from such places, you will drag them out and inflict punishment on them. It is not the criminals to whom one should be showing mercy in such cases, but the survivors, to avoid their becoming victims of such crimes at the hands of the reckless; and, in any case, the safety of holy places has been granted by law for the benefit of those who suffer injustice, not those who inflict it. It would not be possible to assert the safety of inviolable places for them, both criminal and victim alike.

1. However, you will make provision for the exactions of public taxes, under proper procedure, even inside holy places; the matter of taxes is absolutely essential for the benefit of ordinary citizens as well as of the army, the sacred places themselves, and the realm as a whole. Support for you in this will be given by the most God-beloved defenders of the churches,¹⁷

¹⁵ The 'licence (of exemption)' (Greek λόγος ἀσουλίας) was a certificate of temporary immunity from prosecution which allowed its recipient to seek sanctuary (see *J. Edict* 2 (Preamble) and *J. Edict* 10 c. 1).

¹⁶ The law suggests imprisonment within the sanctuary. On the cognate practice of imprisonment within monasteries, which would emerge out of this under Justinian, see Hillner (2015), pp. 314–41.

¹⁷ The 'defenders of the churches' were ecclesiastical officials comparable to the defenders of the cities (see *J. Nov.* 15). They guarded the Church's legal interests and 'acted as clerical policemen' (Jones (1964), p. 911), with the 'defender' serving as a 'permanently mandated professional advocate, capable of acting for the Church in all legal cases' (Humfress (2001), p. 572).

and the stewards: they will not shelter anyone in the provinces from the exaction, if he is subject to the demand for public taxes, nor will they allow those executing the exaction to be subjected to any violence or rioting. Should they do any such thing, they are to be aware that they will be compelled to compensate the public treasury out of their own resources for any shortfall.

8

You will require the tax-agents¹⁸ to make clear in their receipts the items for which the receipts are being issued, namely: the totals of *zygocephala*, *iuga*, *iuliae*¹⁹ or whatever the local term may be; for what estate properties the demand is made, and of what kind they are; and the total received, whether in kinds or in money. You will threaten them with a heavy fine and with amputation of a hand, if they do not, at least in future, comply unflinchingly with what have always been their instructions, though not hitherto observed. Should they, as they may, invent some evasion and say that they were unable to include the total of *iuga*, it is in our view in all probability a serious misdemeanour, unless in fact neither the public treasury nor taxpayers are to suffer from it: that is, the public treasury is still to receive all that belongs to it, without prejudice; those paying it are to receive the customary certificates of receipt, and suffer no further demand; and there is thus to be no harm done at all. The customary contribution is to be paid by them, and brought in to the public treasury; and our Most Illustrious prefects are to be informed of the circumstances, after the *censuales*²⁰ have first been required to render precise *ektheseis*,²¹ as they are called, so that the case can be judged on the basis of those. Thus, when the customary tax-payments have been faultlessly brought in at the outset, whatever decision on the issue our Most Illustrious prefects reach is to be in force as settlement of the disputed questions. Once the truth of the matters under enquiry has been established, the agents are required, from then on, to include in the certificates of receipt the total of the *zygocephala* that there are, and all the other details, in the form already decreed by us.

¹⁸ 'The tax-agents' = Greek πρακτῶρες.

¹⁹ The ζυγοκέφαλον (= Latin *iugatio capitatio* or *iuga sive capita*) was the tax assessment of a fiscal unit calculated on the basis of the quality and extent of land (*iuga*) and the number of 'heads' (*capita*) available to work it (see Sarris 2011c); *iuga* and *iuliae* refer to the land units assessed for fiscal purposes (see Chouquer (2014), pp. 188–91).

²⁰ *Censuales* = officials charged with tax-collection and the maintenance of tax registers (Berger (1953), p. 386).

²¹ The ἔκθεσις was a statement of account or account of arrears: see *P.Oxy.* XVI 1918 *recto*.

1. When sales or other transfers of ownership of estate properties are taking place, with holdings being transferred to other persons, you will not allow either city councillors or *censuales* to engage in any tergiversation, or fail to convey the estate properties from sellers to buyers; you will by all means require them, without fail, to make the conveyances, without extra charge. Should they say that the buyers are unable to afford it, and that that is their reason for not making the conveyance, you will enquire into this very point, without any extra charge whatever; and, should the buyers be well off, you will require the tax authorities by all means to make the transfer, with no extra charge at all. If, however, you should find that they are genuinely not very well off, you will require the sellers to agree explicitly, on record, that it is at their risk that public taxes are being transferred from them to those who have made the purchase – this is something we know to be the practice in many provinces of the East.²² Thus no loss will be inflicted on the public treasury, and the public taxes will be being collected from those in possession of the land, to avoid having people paying the tax who are not the same as those in possession. Ideally, the taxes must be raised from those in possession of the portions of land; certainly not from those who neither hold it nor have possession.²³

9

We wish you to be aware that should we, perhaps, ever order you to proceed to other provinces, it is your duty to be content with the moneys generously provided for you by the public treasury, and not to make unnecessary disbursements at others' expense, or to oppress our subjects. You are to use the same funds for your travelling-expenses to other provinces as you used for expenses when in your province, without either yourself or your staff oppressing the taxpayers by requisitioning transport, but instead making your journey with your own pack-animals, and at your own expense. The same is also to be observed for travel within your frontiers, whenever you are touring the cities of your province for any necessary reason.

10

We absolutely forbid the appointment by governors of what are known as 'deputies', even of ones with the rank of *spectabilis* or Most Distinguished

²² 'The East' = subject to the Praetorian Prefect of the East.

²³ Justinian here notes the fiscal complexities potentially caused by the distinction drawn in Roman law between full ownership (*dominium*) and possession or detention (*possessio*).

governor, in cities of their provinces.²⁴ Any soldiers accompanying you must also not be permitted to make payments at others' expense, but only out of their own stipends. Should they act otherwise, using taxpayers' money for their expenses and requisitioning transport, you will, at your peril, repay the injured parties out of the soldiers' own stipends for every loss incurred by the subject population.

11

Not even in the cause of religion, and of hunting down heresy, shall you allow anyone to plunder your province, or to be given a commission for any such action in the province of which you are governor. You yourself will see to the investigation of such matters, with due consideration also for the interests of the public treasury, and will not allow anything to be done in the name of religion that is not in accordance with our instructions. If the case is one of canon law, whether the parties to the controversy be bishops or any others, you are to judge it in conjunction with the metropolitan of the province,²⁵ and to reach on it an appropriate decision, pleasing to God, which will observe due respect to the orthodox faith, ensure that the revenues are unimpaired, and keep our taxpayers unharmed.

12

Something else over which you must take every care, whenever someone proves to deserve punishment, is to chastise him without touching his property; you are to permit that to be left to his family, and to the law and its terms. After all, it is not the property that commits offences, but the property-owners. Those who reverse that position are letting those who deserve punishment to go free, and punishing others in their stead – those whom the law was perhaps calling to their succession – by depriving them of their property.

²⁴ I.e. governors may not even appoint as deputies men of high status such as ex-governors (see Jones (1964), pp. 528–30). The Greek text uses the Latin term *spectabilis*, which is elsewhere rendered by the Greek *περίβλεπτος*, and translated by us as 'Admirable', and signifies the second senatorial grade awarded to higher-ranking governors. 'Most Distinguished governor' = those of the third senatorial rank of *clarissimus*, awarded to 'ordinary' governors: see *J. Nov.* 8, note 12 and Van Der Wal (1998), pp. 20–1, esp. note 42.

²⁵ 'Metropolitan' = the chief bishop in a province.

13

You will, by all means, prosecute cases of unjust patronage which, we understand, are taking place in our provinces. You will allow no-one to exploit the livelihoods of others,²⁶ to misappropriate estate properties which do not belong to them at all, to offer patronage to the detriment of others, or to pit their own strength against the public treasury in order to defraud it. To whatever overlordship²⁷ those who do so may belong, you are not to take that into consideration; the law, and the Sovereign's favour, will always be adequate for you against the strongest power.

14

Your hostility to those who take possession of others' agricultural workers will be such that you will compel them immediately to surrender those they have wrongfully appropriated; and that, should they remain disobedient for any length of time, you will add to their holdings any unproductive land there is in your province.²⁸ Should the workers be said to be in other provinces, you will write official letters to the governors of those provinces that they are to surrender to the owners those either confessing, or proved, to be runaways, and to have them brought back to the province which you are governing. You are to penalise the non-compliant more severely by the transfer of unproductive land to them.²⁹ It is proper that a person indulging in such practices should come to feel, in his own estate, the undesirable consequences and depreciation of property that ensue; so that, by suffering loss, he may realise the gravity of the offence, and its injustice to others. You will take this action irrespectively of whether it is the estate-owners themselves who are in the provinces, or only the managers of property belonging to others. Owners must possess only what the law gives them; and the managers of others' property must have in their charge

²⁶ 'The livelihoods of others', i.e. to abuse or lower the social status of a free person by making him subject to a patron's power or *potestas*: agricultural workers who were forced to become *coloni adscripticii* ceased to be legally free with respect to their new masters and were placed in a legal position analogous to slaves or sons 'in power' (*in potestate*): see Sarris (2011b).

²⁷ 'Overlordship', translating the Greek δεσποτεία (Latin *dominium*); i.e. whosoever the masters of those perpetrating such acts may be, they are to be punished.

²⁸ Justinian here refers to landowners drawing away or snatching from their neighbours *coloni adscripticii* bound to their estates: see Sarris (2011b).

²⁹ A fiscal procedure known as the *adiectio sterilium* (Greek ἐπιβολή), on which see *J. Nov.* 166.

only what has been put into their hands under a rental agreement or by other legal means: they are to leave others' property alone, and not look after one party's interests by wronging other people, making an impious profit for themselves in doing so.

15

As for those who dare to put up notice-boards with their own name written on them on other people's estate properties, or on workshops situated in cities, you will make it so dangerous for them that they realise that in doing so they will be making over their own property to the public treasury. Should anyone attempt to purloin what has been given solely to the Sovereignty and the public treasury, let him discover the consequence in his own possessions: by having 'Public Property' boards posted on his own, he is to be made an example of proper behaviour to others who, should they embark on the same malpractices, will be subject to similar penalties.³⁰

You will therefore observe all these instructions, acknowledging our favour towards you, and in awareness both of what our attitude will be towards you if you offend, and of what it will be if you earn a good reputation and comply with our directions and laws.

16

As soon as you set foot in the province, you will call a meeting of all those with a position in the metropolis:³¹ we mean the most God-beloved bishop, the holy clergy and the city authorities. You will make these divine orders of ours known to them, with an entry in the records; and you will post a copy of them publicly, not just in the metropolis but also in the other cities of the province, sending them, at no extra cost, by means of your city councillors, for all to know the terms upon which you have taken up your office, and to see whether you are observing them, and proving yourself worthy of our choice.³²

17

Your observance of these terms will make your tenure of your present office more lasting and more distinguished – that is, provided that in

³⁰ Justinian here alludes to provincial magnates claiming imperial or crown lands (on which see also, in a late sixth-century context, Kaplan (1981)).

³¹ I.e. in the capital of the province.

³² For epigraphic attestations, see Feissel (2009), p. 108.

addition to everything else you also permit no-one not in the army to carry weapons.³³ That will establish you as a friend to God, to the laws and to us. Another point you will see to is that, should any fomenter of public disturbances ever attempt to escape from this great city and arrive, either alone or in company with others, in the province of which you are governor, you will track down his activities, examine him with full strictness, take him into safe custody and send information here, in case he is one of those on the list of wanted persons. If so, he is to be brought to this fortunate city and undergo the punishments decreed by law for such persons.

*Given at Constantinople, April 16th, consulship of the Most Distinguished
Belisarius*

535

³³ Upholding the *Lex Iulia de Vi Publica Seu Privata*: see *Digest* 48.6–7 and *Codex* 9.12. For the problems caused by private armed retainers, see also Sarris (2006), pp. 162–75.

Children's legal share: should there be up to four children, to be four *unciae*; if there are more than four, six *unciae*. In intestacy, natural children, in the absence of legitimate issue, take two *unciae* with their mother. Joint contribution is applicable both by will, unless explicitly excluded by the testator, and in intestacy. Apportionment by parents to children; denial of own bond; and other heads¹

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

¹ This novel addresses and reforms various aspects affecting the law of inheritance, modifying it in favour of the interests of widows and both legitimate and illegitimate children (the latter referred to as 'natural' children). It thus conforms to the general pattern of Justinian's social legislation (see Krumpholz (1992), pp. 117–204 and Evans Grubbs (2014), pp. 44–9). The interests of children were protected by the emperor declaring that if there were up to four legitimate children, a minimum one-third of the estate (= four *unciae* out of twelve) now had to be left to them (as opposed to the quarter share of the *portio legitima* that had applied hitherto). If there were more than four children, that share rose to one-half (= six *unciae*). Husbands were also forbidden from leaving the usufruct of the entirety of the estate to their wife, a strategy which hitherto had risked excluding children from effective enjoyment of their inheritance during their mother's lifetime. In the absence of legitimate heirs, a surviving concubine and her children were guaranteed at least one-sixth of the estate (= two *unciae*). This concern for the interests of concubines is revealing, given Christian hostility to such non-marital sexual relations (see Tomulescu (1972) and Evans Grubbs (2014)). The interests of widows were advanced through a significant tidying up of the law. Until this novel, it was agreed that if a husband only left his wife a legacy of usufruct with respect to his estate, she lost it to her children in the event of re-marriage. In this law, Justinian decreed that a widow who chose to re-marry maintained the right of usufruct to the estate of her first husband, so long as the children of that marriage received at least a third of the estate in their own right (see Beaucamp (1990), pp. 229–37, Humbert (1972), pp. 387–456 and Arjava (1996), pp. 174–5). The 'joint contribution' referred to in the title is the *collatio bonorum*, whereby emancipated children (i.e. those not under paternal power) were obliged to make a contribution to the estate if they wished to participate along with unemancipated children in an intestate succession, on the grounds that, as a result of their emancipation, they had ceased to contribute to the household. Here the scope of the institution is extended to embrace non-intestacy.

Preamble

In this great realm, well-constituted, as one might say, by God, namely that of the Romans, much serious work has been done on wills, and the law-books are full of such matters. The authors of those works have not been only the experts of the past, and the authority of pious monarchs: legislation on this subject has also been laid down by ourselves, no less than by our predecessors as emperors. Mindful as we always are of God, and of how we may prove pleasing to him and take some action worthy of his benefits to us, we are endeavouring to devise something further that is both in accordance with nature, and an amendment of past practice.

Accordingly, we have been wondering, as we often have before, why they determined that what is obligatorily bequeathed (now known as the 'debt'²) to legitimate, compliant children to whom their parents are grateful, is only three *unciae*, while the remainder is left at the parents' discretion, to be taken by all the relatives, by outsiders,³ and by slaves with emancipation; while the children, however many they may be, and even should they give their parents no offence, are shamed, with only three *unciae* to share out between them even if there are as many as ten of them, or even more. They will thus be poor, despite being children of a father who in his lifetime was rich.

1

That has prompted us to amend the law by means of the following measure, rather than letting it remain in everlasting embarrassment.

A father or mother of one, two, three or four children is to bequeath them not just three *unciae*, but one-third, that is four *unciae*, of their estate. Up to the said number, that is to be the prescribed minimum; but if he has more than four children, a half-share of the total estate is to be left to them; that is, what is owed to them is at least six *unciae*. Each is to take an equal share of the four *unciae* or six *unciae* respectively; and that is not to be in an unfair disposition of the property, as in that case there may well be injustice to some, from their receiving inferior portions of it while others receive better ones: what falls to each is to be entirely fair as to both quality and quantity, whether one bequeaths it by way of institution as heir or as a legacy, and the same is to be said of a *fideicommissum*.⁴ He may keep the

² By 'debt' is meant the 'obligatory portion', i.e. the quarter share known as the *portio legitima*: see Van Der Wal (1998), p.140, note 63 and Urbanik (2008).

³ 'Outsiders' (Latin *extranei*) = heirs from outside the household or family.

⁴ *Fideicommissum* = trust. See Johnston (1988).

remainder, eight *unciae* or six *unciae* respectively, to bestow, in any amount he may wish, on either his children themselves or outsiders; once due regard has been paid to the claims of nature, the rest can then go on external gifts of honouring. This is to apply to all persons for whom what used to be the quarter-share in a case *de inofficioso*⁵ has been assigned by law from the beginning.

2

However, there is to be an exception for the law we recently enacted on city councillors, which intends the sons of city councillors, or also their daughters, if married to city councillors, to be given at least nine *unciae*, with the remaining three *unciae* disposed at the parents' discretion. All other laws laid down on the *de inofficioso*, especially our own, are to be maintained in their own force, both for children who are ungrateful and for those not so; with the sole exception as to amount, which we have increased at present, on all the lines set out above.⁶

3

We are also putting an end to another serious problem; it is one that does have some legal basis, but falls into gravely severe hardship. There are wills that we know of under which the decedents made their institution of heirs, not in a fatherly way and as husbands should, but very feebly and submissively: they have bequeathed the entire *ususfructus* of their property to their wives, with only mere ownership to their children.⁷ I suppose the aim of such a will is for the wife to receive the ownership as well, since the children may starve to death! After all, how are they to manage in the meantime, and have their daily sustenance, when nothing has been bequeathed to them, and when there may well be the obstacle of perhaps unreasonable

⁵ *De inofficioso* = a claim under the *querela inofficiosi testamenti* = 'a complaint of unduteous will', meaning a claim on the part of an heir who would have been legitimate in intestacy but who was omitted or unjustly disinherited in the testator's will (Berger (1953), p. 665).

⁶ Justinian, like emperors before him, was determined to maintain city councils through protecting the liquidity of councillors (*curiales*) who were obliged to shoulder the burden of many of the costs of civic administration (see Liebeschuetz (1996)). The legislation referred to appears to be *Codex* 10.35.3.

⁷ See introductory note to novel. *Ususfructus* = usufruct or a right to use another's property and profit from its produce (Berger (1953), p. 755). See *Institutes* 2.4; 'mere ownership' = Latin *nuda proprietas* or *nudum dominium*: 'when the owner has no right to use the object or to take the fruits thereof because these rights are vested in another' (Berger (1953), p. 601).

resentment from the wife, depriving them of the everyday wherewithal to manage on? In future, therefore, no-one whatever who has children will be allowed to do any such thing. If he wants to be called 'father' of children able to survive, instead of starving to death immediately, he must bequeath them, as a minimum, both the use and the income from this legal share that we have now set aside for them, as well as the ownership. We mean this to apply not just to a father, but also to a mother, grandfather and great-grandfather, and to the females conjoined with each, that is, grandmother and great-grandmother, whether on the father's side or the mother's.

4

It is also no longer to be observed in future that grandchildren and great-grandchildren in paternal power, not *sui*,⁸ may have no more than one-third of the portion that testators had to leave to their surviving parents. We are no longer singling out the grandchildren born to sons of their paternal grandfathers to receive the whole of the share of whatever their father would have received if he had survived, while grandchildren born to their grandfather's daughters, as the intervening generation, or to either their paternal or maternal grandmother, received no more than one-third.⁹ Instead, we are applying a single rank-order for all grandchildren and great-grandchildren, and not tolerating a poorer position in such matters for the female than for the male. Neither the male by itself, nor the female alone, is independently capable of producing children; but just as God has joined each of them together for the purpose of procreation, so we too maintain equal fairness for each.¹⁰

1. Nor shall we limit our law to this. We mean the same, also, for children of lawful marriages, even should no dowries ensue after the wedding, should a declared and obvious intention between the cohabitants confer

⁸ 'In paternal power', i.e. *in potestate*; 'not *sui*' = not *heredes sui* or not in the paternal power of the head of the family at the time of his death. The point being made is that these children are *in potestate* with respect to their paternal grandfather or great-grandfather, but not with respect to their maternal grandfather or great-grandfather, from whom Justinian is hereby permitting them to inherit an enhanced share of the estate, despite only being cognatic relatives (see Van Der Wal (1998), p. 129 (entry 889)).

⁹ Prior to a law of 389 (*Codex* 6.55.9), such children would not have been entitled to anything.

¹⁰ Note the emperor's concern for the protection of the interests of women (see *Codex* 6.55.9), which here leads him to undermine the agnatic principle on which Roman inheritance law had traditionally rested (see Humbert (1972), pp. 450–1). Justinian would push the law still further in this direction in *J. Nov.* 22, *J. Nov.* 117 and, above all, *J. Nov.* 118.

legitimacy on the children. Marriage brings about a dowry; but what brings the marriage about is not the dowries, but the mutual intention of the cohabitants. The same is to hold good also in the case of children born after an intention has been formed later on, who have been legitimised, under our constitution, by means of dowry-contracts.¹¹

That, then, is to be the law for legitimate offspring; . . .

5

. . . let us, however, also look towards an act of benevolence towards mere nature. We constantly have numbers of people troubling us, with frequent supplications, and weeping children, and we do always give a generous decision; but it is embarrassing for us to do so without a law. By making law on it as well, we shall be ridding ourselves of nuisances, and also giving the benefit of the law to all of them.

To fathers of natural children,¹² we have granted that they may make bequests to them, too, but if there is legitimate issue, only up to one *uncia*, which they will also share with the mother, as previously; whereas, if there are no legitimate children, as much as half their whole estate. That is what our already enacted laws state; and they allow fathers to do so not only in a will, but also by the other donations with which they honour them during their lifetime. However, this present constitution will have something to say about cases of intestacy, and will now be introducing a new principle. Suppose a decedent has absolutely no legitimate issue at all – that is, no children, grandchildren or any in the subsequent succession –, nor a lawful wife, but during his lifetime has had in his household a free woman living with him as his concubine, and children by her. (This legislation of ours applies only when the concubine has quite unquestionably been kept

¹¹ Written contracts of marriage as such were not required in Roman law, but dowries did generate written documentation (*Codex* 5. 13 and 14). Accordingly, such dowry contracts (*pacta dotalia*) or instruments of dowry (*instrumenta dotalia*) often comprised the only written proof that a marriage had been contracted (Berger (1953), p. 505). Here Justinian decrees that such documentation was not required to prove the existence of a marriage and thus the legitimacy of heirs. Rather, he upholds the traditional Roman position whereby marriage was presented as the outcome of the mutual intention of the parties concerned, mirroring Justinian's broader emphasis on intention (Greek δίαθεσις, Latin *animus*) in his legislation as a whole, despite his general preference for written documentation in contracts (see Jolowicz and Nicholas (1972), p. 513).

¹² 'Natural children' = Latin (*filius*) *naturalis* – this term originally meant a child born in marriage (as opposed to a child through adoption) but from the reign of Constantine onwards it came to mean a child born in concubinage. In Justinianic law, it is used to signify any illegitimate child (Berger (1953), p. 473).

within the household, and the illegitimate children have been born and brought up there.)¹³ Suppose then that he has died without testamentary disposition of his property; and that then, perhaps, a relative appears, or possibly a manumitter,¹⁴ upsetting the transmission of the property¹⁵ and trying to get hold of it, or even that our crown treasury does so; as far as this is concerned, we do not make allowances even for that. In this case, we grant the illegitimate children, even when their parents die intestate, two *unciae* of the paternal estate, to be shared with their mother, however many children there may be, on the basis that the mother takes the same proportionate share as one child.

We mean this to apply in any case where he lives with a single concubine and has had children by her; or where the concubine has either predeceased him, perhaps, or separated, but his children remain in the household. We then grant them the call to their two *unciae* in intestacy.

However, should the consequences of his concupiscence reach exorbitant lengths, bringing in more and more concubines in addition to the first, with numerous women as his whores – a fairer term – , and should he have children by them, and die leaving a number of concubines together, such a person is abhorrent to us, and he is to be completely and permanently excluded from this law. Just as someone living with a lawful wife could not bring in other women while the marriage was still in existence and have legitimate children by them, so, should he have died intestate, we shall not allow any by-product of his pleasure to be also included in the succession, after the concubine recognised by the law in the way we have stated, and after his children by her. Without this provision of ours in the law, it will be impossible to distinguish between the women's position, as to which he loved more, which less; and the children's position will also be indistinguishable. We are not conceding legitimacy to libertines, but to men who behave decently. Further, we are making no distinction in the children's position as to whether they are male or female; just as nature makes no fine distinction in such matters, so no more do we lay down one law for males and another for females in this respect.

¹³ The taking of concubines (a female partner with whom one formed a monogamous sexual relationship but did not marry) was legally frowned upon, especially by Christian emperors, but widely accepted as it allowed a man to form a relationship with a social inferior with whom matrimony would have been regarded as socially unacceptable.

¹⁴ 'Manumitter': if the deceased was a freedman, his former master might have a claim to his property.

¹⁵ 'Transmission of the property' = Latin *bonorum possessio*, i.e. possession of property granted under the law of succession (Berger (1953), p. 375).

This law of ours, also – this one above all – will be applicable in succeeding generations because, compared with what was erroneously in force in the past, there is much that it has rectified and introduced; and what is past could not be regulated by what had not yet happened.

That is to be what we have legislated on the said forms of succession.

6

There is another point that we have seen fit to include in this law, on joint contributions.¹⁶ The intention of previous laws was that, in cases where parents died without a will, joint contributions should be made, with their normal force; whereas when they died after making dispositions but without mentioning joint contributions these had no place. Instead, the property, whether given by dowry or in any other possible way, was to be kept, and the bequests claimed. What we decree is that, unless he specifically instructed that there should be no joint contribution, and that the person required by law to pay joint contribution should keep both what he has already been given and his rights under the will, there is to be no such presumption at all; otherwise, irrespectively of whether anyone should die intestate or with dispositions, there are to be joint contributions in all cases, with the resulting fairness, as has already been enshrined in a constitution. This is because it is unclear that it is not through having once forgotten what had been given, or under the stress of confusion at his death, that a testator did not remember this matter. All our previous legislation on joint contributions is to remain in its own force.

7

It has also been thought necessary for a decision that has frequently been made by us, when presiding over trials, to become part of the present law. Parents who have had several children, and then apportion their property in advance, with the idea of saving them from fraternal strife, frequently land them in even more serious and intractable quarrels. Given that intention, they should have made a specific apportionment of everything in their wills; or if not, at least have made it all into shares, over their signature, thus giving their children an indisputable apportionment. Instead of doing that, they write their own list for part of it – and even that, not in a complete document, but perhaps lying about as a marginal

¹⁶ 'Joint contributions' = Latin *collationes*. See note 1 above.

addendum to a document in someone else's writing, or on a used sheet that has been discarded as not worth keeping – and the remainder is not in their own handwriting any more, but in that of some possibly corrupt secretary, or just anyone. This results in innumerable grounds for lawsuits between them as to whether these represent their father's intention, or only that of some scheming contriver of strife and contention, who has written them in favour of one of the parties.

As we intend our subjects not to have these vexations in future, we decree that anyone wishing to apportion his property between his children, either in entirety, or perhaps also to make certain specific bequests, is preferably to state that in his will, if possible, thus giving his children the benefit of something indisputable.¹⁷ Should he not do so, for any of the numerous and compelling reasons that beset mankind, it is nevertheless allowable for him to make allocations of whatever property that he wishes to assign, and have them all signed, either by himself, or by causing all the children between whom he is apportioning the property to sign them, thus giving the action indisputable reliability. Such a form of procedure is to be firmly valid, with no need of any further safeguard. Should someone fail to do so, and only put his signature to something so disjointed and mainly unwitnessed, he must know that he will not be providing his children with anything of any use; they will divide up his estate as if not done,¹⁸ without following his unclear and mainly unwitnessed papers, and also without any compulsion on those judging the case, who are called by the laws 'judges *familiae erciscundae*',¹⁹ to observe them. What is required is meticulous provision for the security of the children, not the securing of one aspect while leaving another vague; that gives rise to still more troublesome and insoluble cases, frequently incurring litigation.

So much, then, for what is to be the law on successions, joint contributions, and the other above-mentioned topics.

8

However, certain people's non-compliance has made it necessary for us to approve a law passed in antiquity by the people²⁰ through one of their

¹⁷ As noted in the Introduction, the growing emphasis on written documentation (and processes for authenticating it) is a feature of Justinianic law.

¹⁸ I.e. the will is null and void.

¹⁹ *Familiae erciscundae* = judges 'for dividing an inheritance' (see *Digest* 10.2.37 and *Codex* 3.36).

²⁰ 'People' (δημοι) = Latin *plebs*. A reference to the *Lex Aquilia* concerned with tort and the *actio legis Aquiliae* through which it was pursued. In Justinianic law this action acquired

tribunes, which was given the name of ‘the Aquilian’, after him. By it, he subjected those attempting refusal and non-compliance to double exactions, consequent on their refusal. Certain other actions were also launched under the same ordinance; but a gradual impression of some leniency in this has imperceptibly come to foster non-compliance from the baser sort. For that reason, we too have decided that it is necessary for us to punish improper and disgraceful refusals with the above penalty. If a defendant whose bond is produced should disclaim it, despite its carrying his signature, thus compelling the plaintiff to endure difficulties in establishing its genuineness, or should he acknowledge the document but say the loan was never paid over to him, and the plaintiff makes good his case against that by legitimate means, we decree that the payments adjudged against him, in either case, are to be double. This is not because we take pleasure from increases in the harshness of the law, but because by these means we shall be reducing the number of lawsuits, as defendants will be readier to say what they ought to admit, for fear of the penalty.

This, then, is the form that we wish adverse judgments to take in such cases, without exception. Should a judge act otherwise, he is to be aware that he is in contravention of the law, and so will himself be subject to its penalties. However, we do not mean this to apply if the plaintiff should be prepared to desist from his arguments in proof, and accept a withdrawal, under oath, of the defendant’s previous denial. Should he do so, provided that he puts the oath to the defendant at the outset, directly after the denial, and that the defendant at once admits what he had previously put into denial, the latter will be safe from the doubling, at least. If the plaintiff puts the oath only after the case has gone on longer, and the defendant still accepts it, we relieve him of the penalty of doubling, but order him to pay the plaintiff the entire costs incurred over his proceedings in evidence up to that point, for having disclaimed liability, but admitted it only later; the costs being adjudicated under oath from the plaintiff. In a case where someone began by denying that the sum had been paid over to him, but

widespread applicability. As Berger notes: ‘a characteristic feature of the *actio legis Aquiliae* was that the defendant who denied his liability had to pay double damages if condemned. The second chapter of the *Lex Aquilia* had nothing to do with physical damage. It gave the primary creditor a remedy against a co-creditor’ (Berger (1953), p. 548). See also *Institutes* 4.3, *Digest* 9.2 and *Codex* 3.35. The presence of this law and the following passages (chapters 9–10) inserted amongst regulations on marriage and inheritance would suggest that they formed part of a ‘bundle’ of laws sent out from Constantinople to the provinces as suggested by Noailles (1912). For the situation envisaged in this law, see *Codex* 4.65.33 and 8.4.10. It is instructive that the defendant is precluded from relying on contradictory defences. Note also the emphasis on written documentation as proof (for which see the Introduction).

subsequently pleads that he had paid instalments on it, we decree that such a person shall have no benefit from his genuinely paid instalments, but shall be made to repay the entire debt, as the sole penalty for his denial – that having been, in fact, the decree of one of our predecessors as emperor. On this, too, no judges are to give way at all; they are to uphold the strictness of the law.

In a case where the defendant also produces a signed document of the plaintiff's, the plaintiff denies it, and the defendant makes good his case, it is not just the sum previously denied that is to be taken into account, but as much again is to be added. Here too, the procedure of offering an oath is to be brought in against the plaintiff also, in the same way.

9

Should the case be being conducted by supervisors,²¹ because it involves persons who have to have supervisors, such penalties for denial, when the deeds are in the supervisors' own hand, are to be imposed on the actual persons who made this disgraceful denial, not on those under his duty of care.

Any other augmentation of an adverse judgment to double, triple or quadruple, which has been enacted under ancient laws or the Sovereign's constitutions, is to retain its own form, as we have laid down in our *Institutes, Digests* and *Book of Constitutions*;²² this present one is to be an addition to the earlier ones.

10

There is another point which has been disputed in courts, and which we think we must put into better, more coherent order than all our predecessors. It involves any case where someone, accused of holding property belonging to another, asserts that it does not belong to the person alleged by the plaintiff, and where the person bringing the action has been compelled to make use of deeds or witnesses, or has had other troubles in proving that the property is his; and where the one who has denied

²¹ 'Supervisors' = Latin *curatores* (as in the *Authenticum*); 'duty of care' = Latin *cura*. Curatorship was a form of guardianship invoked when a charge was in legal dispute with his guardian (*tutor*) or the guardian was incapable of acting. *Curatores* were also appointed to the mentally ill and young men and women in need of but lacking a *tutor*. The *curator* could enter into contracts on behalf of his charge. See Berger (1953), pp. 420–1 and Buckland (1963), pp. 168–73.

²² 'Book of Constitutions' = the *Codex Iustinianus*.

throughout that the property belonged to that person decides, later, to plead his rights from that person, and to claim that, by hypothecs²³ or for other reasons attributable to that person, he himself has a better title than the person bringing the suit: all other opinions given by our predecessors are to lapse, and the penalty imposed on those in denial is to be one that is both moderate and generous, and is directed straight at the issue: possession of the property that is the subject of the enquiry is to be transferred, even while the case is still being pleaded, to the plaintiff, as compensation for the denial and for the plaintiff's trouble; but the person surrendering it has licence, should he have any rights due to him from the person in respect of whom he previously allowed himself to make the denial, to put them forward and obtain justice. The penalty is then confined solely to the transfer of possession.²⁴

That is what we have devised and enacted, and shall apply in future, on the topics of successions, joint contributions, allocations, safeguarding of litigants and decreasing the number of trials. Our purpose is that people should know about successions, and should not be ignorant about joint contributions, nor dispute about apportionments; also so that those with unscrupulous intentions should not unthinkingly trample their own deeds underfoot by denials, or deny payments, and subsequently perhaps plead that they have paid instalments, or deny that property they hold belongs to the person from whom they hold it; but so that, by proving by their actions that they are moderate, reasonable and truthful, they should also enjoy proportionate justice.

11

We are attaching to the present law a point that has been unscrupulously put at issue by some people about certain constitutions of ours, and raised in many lawsuits; it should rightly be in question no longer. We had decreed that if a man should have a kindly regard for a woman, bring her into his house without dowry-contracts, and then have children, but should subsequently form an intention to marry her, draw up contracts for that purpose and have children, it is not only the children born afterwards who are to be legitimate, but the previous ones as well.²⁵ In

²³ 'Hypothecs' = mortgages or securities.

²⁴ 'Possession' = Latin *possessio* rather than 'ownership' = Latin *dominium*.

²⁵ Here Justinian allows for the legitimation of the existing offspring of a concubine through marriage, in contrast to traditional Roman attitudes to such offspring.

consequence of the ingeniously dishonest and iniquitous interpretations that have been put on that, we drew up an additional constitution, to the effect that we intend that provision to apply also in a case where there were no children after the dowry-settlement, or where there were some, but they died. Despite that, yet another point of controversy has been devised by some, who do not accept this as also applying to cohabitation with freed-women. Yet, to those who divined our aim correctly, that was also understandable as already covered by the legislation, because if marriage with a freedwoman was entirely unprohibited, it was obvious that we meant this provision to apply to them as well.

However, since this has now been generally called into controversy, we are making a decree for the case that a man with no lawful wife or legitimate children comes to have a warmer feeling for a slave-woman of his own, and has children by her while she is a slave, but subsequently honours both her and her offspring with freedom, and applies for the right to gold rings for them and also for the restoration of privileges,²⁶ by these means giving them free-born status and confirming the marriage. Should he draw up marriage-contracts after that, whether or not children should be born thereafter (to combine the cases covered by both our constitutions), the woman is to be a lawful wife, and the children, both subject to paternal power²⁷ and *sui*, are to be their begetter's heirs, in intestacy also; and we do mean children born before the dowry-contract, because legitimacy has been conferred on them by the previously described ways in which they have attained free-born status, and by the subsequent making of the dowry-settlement, which gives them legitimacy.

Conclusion

Accordingly, your excellency is to publish these good and holy decisions of ours, devised for the relief of our subjects' difficulties, by means of proclamations of your own in all the nations under your command. They are thus

²⁶ 'Restoration of privileges' = Latin *natalium restitutio* or 'the privileges of a free-born, granted by the emperor to a freedman' (Berger (1953), p. 591: see also *J. Nov.* 78 and Melluso (2000), pp. 158–66). For the 'right to gold rings' referred to in the law, see *J. Nov.* 74, note 10.

²⁷ 'Subject to paternal power' = Latin *in potestate*; '*sui*' = *sui iuris* or independent of the legal authority of another (as opposed to standing for *heredes sui* as in note 8: the use of the same abbreviation for two distinct legal terms in the same novel is unfortunate, but each such use is attested elsewhere).

to know that not one of our most serious preoccupations, through which God is constantly adding to our dominions, precludes us from our care and forethought for them.

Given at Constantinople, March 1st, <after>consulship of the Most Distinguished Belisarius

536

19 | Children born before dowry-contracts¹

The same Sovereign to John, Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

It has reached us that a futile controversy has occurred, in some quarters, as to whether our legislation on children born before the making of dowry-contracts, when these did later take place, is inapplicable retrospectively, in cases not concluded by verdict or settlement. Yet, when laying down the individual laws, we expressly mentioned, in our first constitution that legislated on this,² that the judgment is anyhow to be made as our law states, whether fathers are surviving or deceased, when proceedings in such cases have not yet been concluded either by verdicts or by settlements. We have also made a second law³ in amplification of this, decreeing that the same is to apply even if there are no children born after the dowry arrangements, or if there are some, but they die: none the less, children born before the dowry arrangements are to be legitimate. Similarly, we added in this second constitution of ours that its provisions must also be applied to earlier times, except for all cases that had been decided, either by judicial verdict or by settlement. After these clear laws, however, certain people have had the audaciously minded temerity to misinterpret our legislation; so we were compelled to lay down yet a third constitution,⁴ by which we commanded that even if someone should have had a lawful wife and had legitimate children by her, but then the marriage should have ended with her death, or by *repudium*,⁵ and he should have had children by a woman legally marriageable, and afterwards drawn up dowry-contracts with her, the children thus born were also to be legitimate. In that

¹ This law clarifies issues that had arisen in litigation over the status of dowry-contracts and re-iterates the emperor's position that the offspring of a concubine could be legitimated by marriage, and that the proof of such a marriage could be established by the evidence of a dowry-contract (although, as noted in *J. Nov.* 18, marriage did not normally necessarily require such a contract: see Van Der Wal (1998), p. 69 (entry 523)). The preamble casts interesting light on the process whereby imperial laws were codified and shorn of detail in the process of codification. For further discussion of this novel, see Sitzia (1997).

² *Codex* 5.27.10.

³ *J. Nov.* 12.

⁴ A possible reference to *J. Nov.* 18.

⁵ *Repudium* = unilateral dissolution of a marriage.

constitution of ours, we had not specifically added that the validity of these laws applied also in the case of children with fathers either surviving, or deceased but with the disputed issues unresolved by either legal verdict or amicable agreement. From that, some supposed that we absolutely did not wish the provisions on children born before the making of dowry arrangements, in the above-mentioned pieces of legislation, to apply also to those born before such legislation; especially because of our having, in the compilation of the Code, removed the part on this in our first and second constitutions. They were wrong to suppose this, because our removal of this point from our first and second constitutions, and not having added it in the third, was entirely justified: in the individual pieces of legislation, it was perhaps necessary to make this reference to previous legislation, but we rightly instructed such items to be omitted in the complete collection of the law in the Code bearing our name, in order to avoid an excessive amount of text in its volumes. We did not add anything about times in the third constitution, on the ground that it was quite obvious to all that what was added by way of explanation must also apply in the cases to which the laws thus explained were relevant.

1

However, as some people have evidently been attempting, nevertheless, to call even such obvious points into controversy, or have been mistaken, we add the following law as well.

We decree that our legislation in the said three constitutions is to apply in the cases that we included, specifically, in the text of the first law that we enacted, that is, either in the event that fathers of such children are surviving, or that they are deceased without the issues in such a case having yet reached a conclusion, either by verdict or by settlement. Thus, cases of that kind are by this to be brought under the laws laid down by us, with the exception of all those decided, either by judges' verdict or by settlement, before our laws were laid down.

Conclusion

Accordingly, your excellency is to take pains to make our decisions, manifested by this divine law, plain to all.

Given at Constantinople, March 16th, after consulship of the Most Distinguished Belisarius

20 | *Officia* serving on sacred appeals¹

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

We have already made, and sent both to your excellency and to our Most Illustrious *quaestor*,² a divine law³ on the subject of appeals, dealing with the procedure to be observed in them, and the courts from and to which they should be referred. There has, however, been much controversy over the *officia* serving on these: members of the sacred *scrinium epistolarum*⁴ have been claiming the service on appeals from the *spectabiles* judges,⁵ but

¹ The Latin word *officia* could be used to mean moral duties, or offices or the holders of such offices themselves. In this law it effectively means 'officials' serving on imperial courts of appeal. In order to limit the flow of litigants to the imperial capital (a consistent aim of Justinian's), the emperor here overhauls appellate procedure in the light of his recent reform of provincial governorships (*J. Nov.* 8). Henceforth, appeals against judgments issued by governors and officials of lower rank (*clarissimi*) would be heard by a neighbouring governor holding the next rank up (*spectabilis*), whose judgments in turn could only be appealed to officials bearing the highest senatorial rank of *illustris*. Accordingly, appeals against judgments given in cases in which the judge of first instance was of *spectabilis* rank were still automatically to be referred to Constantinople, but there they were now to be heard jointly by the Praetorian Prefect and the *quaestor sacri palatii* (see Van Der Wal (1998), p.180 (entries 1168 and 1169) with note 94). On the different senatorial grades, see Jones (1964), pp. 142–3, 161, 378–9, 528–30 and 534–5 and Guillard (1967). The reform (and associated legislation) was the subject of bitter criticism on the part of the contemporary scholar and bureaucrat John Lydus, who blamed John the Cappadocian for ruining the institution and authority of the Praetorian Prefecture of the East: see *De Magistratibus* 3.65–66 and (for more extensive references and analysis) Kelly (2004), pp. 71–81.

² The *quaestor (sacri palatii)* was the chief legal officer in the empire (see *J. Nov.* 7, note 19).

³ A reference to *Codex* 7.63.5 and, it would appear, *J. Nov.* 23.

⁴ The *sacrum scrinium epistolarum* ('sacred' or 'imperial secretariat of letters') consisted of high-ranking officers of the imperial chancery who served under the *magister epistolarum* (see Jones (1964), pp. 367–8 and 503–5). The significant point with respect to the present law is that these officials were servants of the *quaestor sacri palatii* and not the Praetorian Prefect, whose own officials were eager to protect their role in judicial appeals (and the fees they derived from them). It had previously been established that such chancery officials were permitted to serve on courts over which the Praetorian Prefect presided (in conjunction with the *quaestor*). In c. 1 of this law, however, Justinian responds to lobbying from officials of the praetorian prefecture to re-assert their monopoly in assisting in certain (although not all) such cases: see discussion in Kelly (2004), pp. 64–81 and, for an exception, c. 6 of this novel.

⁵ All governors were judges: in a series of laws (*J. Novs.* 8, 24–31, 102, 103 and *J. Edict* 4) Justinian elevated a number of governors of the lower senatorial rank of *clarissimi* to the

those in your excellency's high office have been declaring that a very serious injustice has been done to them if, as a result of the status change, they will no longer be the only ones serving on appeals that come solely to your court, from provincial governors who rank as Most Distinguished.⁶ That was so when you were sitting alone on appeals in divine court, with your staff serving under you; but now that, because of the status of the *spectabiles*, the case is initiated in the office of the sacred courthouse⁷, our Most Illustrious *quaestor* is sitting jointly with your excellency, and each office is claiming the whole thing. Your excellency and our Most Illustrious *quaestor* have thus been frequently accompanied both by members of the sacred *scrinium* who serve on appeals and by those of your high office, combined; and finally a formulation has been reached, which you have laid before us, though not in writing, and which we, too, find not unreasonable.

So far, because Paphlagonia and Honorias, formerly divided between two governors, have now been put under one and the same person, with the enhanced title of *praetor*, that status was decided as coming indisputably under your authority. Exactly the same applies to what were formerly the two provinces of Pontus: Helenopontus and Pontus Polemoniacus. There too, there were previously two governors, whereas they have now come under one, the *moderator*, who has also been dignified with the status of Admirable.⁸ Hence, the same situation has again arisen: appeal-cases had to be referred solely to your court, but under the terms of the constitution on appeals.

1

A joint decision was thus taken simultaneously by the staff of each office, and by you both, with our own approval of your decision, as well, that it should be solely your excellency's staff that serves on such appeals, as it was before, even though they are pleaded at the level of the sacred courthouse, and our Most Illustrious *quaestor* is also to take part in the proceedings.

intermediate rank of *spectabilis*. This altered their rights and responsibilities as now potentially presiding over courts of appeal with respect to the judgments issued by lower-ranking governors (Van Der Wal (1998), p. 180, note 94).

⁶ 'Most Distinguished' (Greek λαμπρότατος) = Latin *clarissimus* (see Banaji (2007), p. 252 and Sarris (2006), p. 77).

⁷ 'Sacred courthouse' or 'imperial courthouse' = *sacrum auditorium* or the appeal court of Constantinople.

⁸ 'Admirable' (Greek περίβλεπτος) = *spectabilis*.

2

Now, the governor of the First Cappadocia used formerly to look solely to your office, and appeals were referred to that; whereas his status has now been changed to that of Admirable, as proconsul. It is none the less appropriate, under our sacred constitution, that when the governor receives an appeal and the case is referred here, it should be contested in the office of the sacred courtroom, with our Most Illustrious *quaestor* present and sitting on the case jointly, but with solely your staff serving on it, as that had been the previous custom. Granted that the position of the Admirable count of the households⁹ has now been combined with the post, it is nevertheless true that not many cases were launched before him in the past, and hardly a single appeal was referred here from his court. In any case, we have now also assigned matters of crown treasury¹⁰ administration to others, without there being any need for a consequent downgrading of your high office; it is still your staff that is to serve on cases that are referred here.

3

The same also applies to the proconsul of Armenia. We previously made this province just an ordinary governorship, but have now changed its status to proconsular, though without adding anything to it. Even so, your excellency's staff will be serving on cases from there as well, despite the fact that the case is to be brought in the procedure of the sacred courthouse, as we said before, and also tried by both of you. It is your staff that will be serving on it none the less, just as formerly, when the governorship carried only the normal status, called *ordinarius*,¹¹ and had not had its rank enhanced.

4

Lycaonia, Pisidia and Isauria were also previously under governors, sending appeals to your high office, but have come to be dignified with praetorian rank – albeit being regarded as in some sense combined with military

⁹ 'Admirable count of the households' = the *comes domorum per Cappadociam* or administrator of imperial estates in the region: see *J. Nov.* 30 and Delmaire (1989), pp. 220–3.

¹⁰ 'Crown treasury', i.e. pertaining to the estates of the imperial household or *domus divina*: see *J. Nov.* 30 c. 1, *J. Nov.* 30, notes 4 and 36, and Delmaire (1989), p. 639.

¹¹ '*Ordinarius*' = the lowest ranking or 'ordinary' governors bearing the rank of *clarissimi* (see Van Der Wal (1998), pp. 20–2).

rank, as well, since there used previously to be a *dux*¹² in each of these provinces. Hence we have decided that, because of the reorganisation, it was necessary to put the trial of appeals solely in the hands of your eminence and the Most Illustrious *quaestor*; also, rather generously, to assign to your staff the service on the business that that involves. We thus decree that anything that has taken place previously, or will take place later, is to be under the same staff.

5

There used to be two separate offices, that of *comes* of the East, and that of governor of the First Syria alone;¹³ and appeals from the latter, a civilian office, were brought before your eminence, with solely your staff serving on them, while those of the *comes* of the East,¹⁴ as being *spectabilis*, were brought, representing the sacred courthouses,¹⁵ to both your eminence and the Most Illustrious *quaestor*, with solely members of the sacred *scrinium* serving on them.

6

However, this has now been reorganised in such a way that both constitute a single post. Having regard to that, it seemed good to us to award the service for this province to members both of the sacred *scrinium* and of your office.

As the two former vicariates of Pontica and Asiana have been completely reorganised, and changed into the governorship of a single province, that of Galatia with Phrygia Pacatiana, it is to go to both your excellency and the Most Illustrious *quaestor*, but to receive service solely from your eminence's staff.

7

However, in the case of these posts that we have now devised, with an alteration in their ancient status, we decree that whether their decisions

¹² *Dux* = the commander of a military district or military governor (see Williams (1985), pp. 115–24).

¹³ For the cities that came within the province of the First Syria (which had its capital at Antioch), see Todt and Vest (2014) 1, p. 372.

¹⁴ 'Comes of the East' = *comes orientis*: see *J. Nov.* 8, note 18.

¹⁵ 'Representing the sacred courthouse' = *vice sacra*, or sitting in place of the emperor (see Van Der Wal (1998), p. 180 (entry 1169)). For the earlier history of this procedure, see Pergami (2011), pp. 335–48.

have been given by their own internal authority in the province, or by assignation of jurisdiction from us, the same format is to be observed: where we have decreed that it is solely your office that is to serve, we decree that similarly, whether appeals come up internally from their court, or by assignment of jurisdiction from us, it will belong to your office.

In cases where we have said that the servicing belongs jointly to members of your staff and of the sacred *scrinium*, we similarly retain that partnership, whether the need for the inquiry derives from assignation or from what has been ordered by the court. However, for trials where the judges were not *spectabiles* but only barristers, under which circumstances the cases were referred before both your eminence and our Most Illustrious *quaestor*, and serviced by the most devoted *libellenses*,¹⁶ we retain the old form, as there has been no reorganisation involved in those at all. Similarly, we also direct that the staffing arrangements are to remain as they were, unchanged, in all other cases where there has been no reorganisation. It is the reorganisation which has supervened that has suggested the necessity also for some corresponding change in the form of the staffing.

Conclusion

Your excellency is thus to take pains to put our decisions, declared by this divine law, into practical effect.

Given at Constantinople, March 18th, after consulship of the Most Distinguished Belisarius

536

¹⁶ 'Libellenses' = officials employed in the *scrinium libellorum* 'a bureau in the imperial chancery in the late Empire concerned with all sorts of petitions (*libelli*) addressed to the Emperor' (Berger (1953), p. 692).

21 | Armenians also to obey Roman laws in all respects¹

The same Sovereign to Acacius, Most Magnificent proconsul of Armenia²

Preamble

Our desire being that the province of Armenia should be perfectly well governed, and differ in no way from the rest of our realm, we have, for one thing, dignified it with Roman offices, getting rid of its former titles; for another, we have accustomed it to the use of Roman procedures; and for

¹ The revival of super-power warfare with Persia in the early sixth century led the imperial authorities in Constantinople to launch a concerted effort to strengthen the empire's position in the western and central Caucasus. In 521–2 the king of Lazica was induced to accept Christianity and enter a pro-Roman alliance, whilst in 525 the king of Iberia also defected from a pro-Persian to a pro-Roman stance. Under Justinian, attempts were made to consolidate this strengthened position by imposing a military garrison and direct Roman rule on the territory of Tzanica (which bordered Lazica) and in 528 fully incorporating into the empire the territories of Roman Armenia, placing them under the authority of a new officer known as the *Magister Militum Per Armeniam*, whose military command replaced that of indigenous Armenian noblemen and princes who had held the title of *satraps* and who hitherto had been allowed to maintain their own armies which they led on the emperor's behalf (see Sarris (2011a), pp. 138–45, Procopius, *Buildings* 3.1.27 and 3.6 and *Wars* 1.15–24; *Codex Justinianus* 1.29.5 and Malalas 18.10). The imposition of direct Roman rule on the Armenian territories and their full incorporation into the empire was further consolidated by this law, which sought to abolish traditional Armenian inheritance and marriage customs and bring Armenian practice into line with Roman law by allowing females to inherit and forbidding the institution of the 'bride price' (on which see Arjava (1996), pp. 54, 57 and 70). The emperor's expression of concern for the interests of women is a common feature of his legislation (see Krumpholz (1992), pp. 162–204). It is possible that this reform of inheritance law was primarily meant, however, to dissipate the estates and thereby undermine the social power and economic clout of members of the Armenian nobility and princely families (as argued by Adontz (1970), pp. 127–54). The full integration of Roman Armenia into the empire would be completed by *J. Nov 31* (promulgated, like this law, in 536), which divided the territories into four new provinces each under a separate governor. Mounting disaffection at the intensification of Roman control and the treatment of the Armenian nobility resultant from this legislation would lead to defections to the Persians in 539–40 (see Procopius, *Wars* 2.3.31–3). For Byzantine–Armenian relations in this period, see Thomson (2008) and especially Adontz (1970). The provisions of the present law are anticipated by *J. Edict* 3. For the marriage and inheritance customs of Armenia and the broader Persian world from which they were ultimately derived, see Adontz (1970), pp. 145–54 and Payne (2015), pp. 108–17.

² On Acacius, see *PLREIIIA*, pp. 8–9 (Acacius 1). According to Procopius, he was an Armenian by birth who earned himself the hostility of his compatriots by virtue of his imposition of Roman taxes in a region that had hitherto been exempt from them. As a result, a conspiracy was formed against him, culminating in his assassination in 538/9 (see Procopius, *Wars* 2.3.6–7 and 4. 27.17).

another, we have commanded that its laws should not be different from those in use among Romans.

There is also something seriously wrong there that we have deemed it necessary to set right, by a specific law: that is, to put a stop to its barbarian institution of having successions in the male line only, from parents, brothers and the rest of the family, but stopping short of females; and also to women's marrying without a dowry, but being bought by their prospective husbands, a quite barbarian custom that has still been in use there. They are not the only people to take this quite uncivilised view: other races also disregard nature and treat the female sex in this utterly insulting way, as if it were not part of God's creation, and a partner in procreation, but just a worthless and dishonoured object that ought to be entirely outside the scope of respect.

1

Accordingly, by means of this divine law we decree that in Armenia, too, the same rules should be valid as ours in the matter of succession of females, with no discrimination between male and female. Armenian succession-law is to be just as has been decreed by our laws, as to the manner in which women inheriting from parents (that is, father and mother), from grandfather and grandmother, and from more distant generations still, and also from those after them, namely son and daughter, in the same way as they are themselves succeeded in inheritance: there is to be no difference between Armenian and Roman practice. Given that Armenia is part of our state, subservient to us along with the other provinces, and enjoying all that is ours, it is certainly not going to be the only country where females are excluded from the equality they have here. There will be equality for all in the application of our laws; and that includes both those we have assembled from the ancient sources and put into our Institutes and Digests,³ and those we have drawn up from the legislation of sovereigns, both previous emperors and ourselves.

2

We thus decree that all this is to be valid for all time, from and including the opening of the present fourteenth indiction,⁴ when we are laying this

³ I.e. the *Codex Iustinianus*.

⁴ 'The present fourteenth indiction': the year 536 marked the fourteenth year of the fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311. In *J. Edict*

law down. Going into what happened longer ago, and back into the past, is the province of confusion, rather than legislation; instead, it is from and including the date we have just stated, the present fourteenth indiction, and for all time henceforth, that successions are to stay homogeneous, the rule being that everything that passes into successions, for any reason, is in future to be kept on the same terms for women as for men. We allow all that has taken place hitherto to remain in its previous form, whether consisting of patrimonial⁵ or other property, with female persons having no share whatever in patrimonial lands already apportioned, or in successions that have taken place up to and including the thirteenth indiction; but from the stated date, that is from the fourteenth indiction, we decree that the law we have laid down shall be in force.

Conclusion

Your magnificence, and those who will take up your office in future, are thus to take pains over the perpetual observance of our decisions manifested by this divine law.

Given at Constantinople, April 18th, after consulship of the Most Distinguished Belisarius

536

3, Justinian had attempted to backdate this reform to the start of his reign, but that had clearly proved to be too legally problematic (see Adontz (1970), pp. 144–5).

⁵ ‘Patrimonial’: the emperor is here referring to what in Armenian were known as the ‘*nakharar*’ estates. These were considered to be the common property of the clan and were effectively held in trust by the head of the family. In the highly ‘feudal’ world of the Armenians, they were the basis of princely power and wealth: see Adontz (1970), pp. 151–3.

The same Sovereign to the Most Illustrious John, for the second time prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

A large variety of laws has already been laid down by us which, as well as providing a way to improve each aspect of previous laws or constitutions made by us that we have come to regard as unsatisfactory, also guide our subjects towards the proper way to conduct their lives. This law that we are now making is a general one, which applies the appropriate regulation to the most vital matter of all: matrimony. This is so lofty a state that it can be regarded as imparting to the human race a man-made immortality: renewed by procreation, families last continuously, and by God's bountiful goodness our nature is granted immortality, insofar as that is possible. That being so, there is good cause for our strong concern for the state of matrimony. Other aspects of legislation are not relevant to every person, matter or time, but marriage is something important to practically the whole human race; as being its sole source of renewal, it deserves uniquely careful consideration.

Now, antiquity was not very much concerned to make a distinction between first and second marriages: both fathers and mothers were allowed to enter even several marriages without financial loss, and, by its very simplicity, this resulted in confusion. Since the time of Theodosius the elder,² however, more careful consideration has been given to the systematic treatment of this subject, down through successive sovereigns to Leo of

¹ This extensive law effectively codified and reformed existing imperial legislation on divorce and re-marriage. In accordance with Justinian's moralising agenda, it imposed additional penalties on those who divorced without just cause (*sine causa*) and sought to encourage chastity on the part of widows. Most importantly, however, it significantly strengthened the rights of widows over the property of their deceased partner at the expense of the deceased's agnatic kin (see discussion of c. 47 below). As such, it ultimately served to undermine a key principle of the Roman law of marriage with respect to inheritance, which had traditionally sought to prevent the transmission of property between families through marriage (see Arjava (1996), p. 107 and Humbert (1972), pp. 450–1). The grounds for legitimate divorce repeated and extended by the present law also cast interesting light on early Byzantine social attitudes with respect to appropriate gender roles, civic institutions and public spaces such as the circus and theatre. For the classical Roman law on marriage, see Treggiari (1991). For further discussion of this law, see Feenstra (1983), pp. 41–4 and Fögen (1992).

² Theodosius the Elder = Theodosius I (r. 379–395).

pious memory,³ a man whose legislation, most especially on this topic, was high-minded and vigorous; and we have now, despite the large number of our other constitutions on this subject contained in our compilation, deemed it necessary to give the matter more thorough deliberations, and to correct some points, not only in others' legislation but now also in our own. Rather than waiting for the law to be corrected by others, it is no embarrassment to us to put into law ourselves a second improvement that we devise over earlier statements, even of our own, which provides the appropriate amendment of them.

1

There are, then, two preliminary statements to be made about this law.

The first is this: that every provision in previous legislation, whether ours or our predecessors', is to be valid, each for its own time, without any readjustment resulting from the present law. It is valid and in use for its own cases, and awaits its own outcomes from the law already laid down, with no relation to the present law; whereas the present law is valid from now on in all future cases, with applicability to all marriages after this, whether first or subsequent, and to future gains either from marriage or from succession to children. We are leaving all the past under the laws already enacted; what we are securing by means of the present law is the future. Thus whether a marriage is a first or a second one; whether parents have in the past gained by successions from their children by their first marriage or from dowries, pre-nuptial gifts or any other source; and whether or not there are children from a second marriage, those are all to be dealt with in accordance with their own dates. Husbands and wives are to enjoy the benefit of the previous legislation, whether they should have entered on a second marriage or, equally, have stopped at the first, and whether they have been their children's successors, or have done anything else at all in conformity with the previous laws. No one could find fault with those who have formed alliances, in reliance on those laws, as to why they did not know the future as well, or completely distrust normal, obvious practice for fear of something that had not yet come about. Thus all those provisions are still to retain their own system of regulation; but the future, in all cases generated hereafter, is to pay regard to what is due to be in force for marriages yet to come, as stated, which has all been collected and laid down in this single law.

That, then, is to be the first statement as a preliminary to the law.

³ Leo = Leo I (r. 457–474).

2

The second is this: whatever a testator, whether husband or wife, instructs on such matters, from today on, is all to be valid. Each is to prescribe what is equitable on his own property, and his intention is to be law, just as is stated also in our most ancient law, practically the first law to regulate the Roman state, that of the Twelve Tables.⁴ What that says, in the ancient traditional language, runs as follows: *uti legassit quisque de sua re, ita ius esto*.⁵ No-one can introduce any different direction on someone else's property contrary to that person's wish, not even by execution of a divine directive, nor by any other means at all.

1. Provided that the testator should have made no statement or direction that is precluded by laws already laid down and in force, nor given any instruction contrary to laws in general, this law is then to hold good. Including everything humanly possible, it goes briefly through corrections to matters of first and second marriages, of successions, of dissolutions of marriages either by deaths or by divorce, and of what precedes or follows the period of mourning, making a single coherent sequence out of this whole composition. It thus makes something clear, and in all ways internally consistent, out of legislation that began in antiquity, and that, for about a hundred and fifty-five years now, has been being more frequently modified, at the same time as being assembled bit by bit from a confused state of dispersion in a very large number of places, and gradually tied up and stuck together, in constant need of some correction.

3

It is a mutual intention that makes a marriage, with no additional requirement of a dowry.⁶ Once entered on, whether by mere matrimonial intention or with endowment of a dowry and the gift in respect of marriage, it

⁴ The 'Twelve Tables' (*Lex duodecim tabularum*) of 451–450 BC was the earliest codification or collection of Roman customary law. The work was compiled by a commission of ten legal experts and published on twelve tablets (Berger (1953), p. 551).

⁵ *uti legassit quisque de sua re, ita ius esto*: 'As each has bequeathed on his own property, that is how the law is to be.' The text of Tab. 5.3 used here is that given in some other legal sources: Gaius *Inst.*, Justinian *Inst.*, *Digest* (Pomponius). However, Ulpian, *Tituli* and *Digest* (Paul) give a different, more specific, wording, found much earlier (first century BC) in the *Ad Herennium* and Cicero, *de Inventione*. The latter is used in the reconstruction of the original text of the Tables in Crawford (1996) 2, pp. 635–40.

⁶ The emperor here re-iterates that written proof, such as that furnished by the *instrumenta dotalia*, was not in principle necessary to establish the legitimacy of a marriage (see *Codex* 5.4.22). Nor was a dowry a legal requirement.

must also, in any case, be followed, in turn, by its dissolution, either innocent, or subject to penalty; as things go in human affairs, 'everything joined is dissoluble'. What we are the first to have devised is that, even when a contractual relationship is without a dowry, a penalty may perhaps ensue on its dissolution.⁷

4

Some marriages are dissolved during the partners' lifetime by mutual consent; that is a case we do not have to discuss here, as the consenting parties arrange the matter as each may see fit. Others are for an acceptable cause, also known as *bona gratia*; some are entirely fault-free, but others are on reasonable grounds of fault.⁸

5

It is for a blameless reason when, in a conversion to a better way, one of the parties chooses asceticism, preferring the life of chastity.⁹ In that case, another law of ours states that both husband and wife have the right to dissolve the marriage by way of a change for the better, and go into seclusion, with some slight compensation left for the remaining party. The person remaining, whether husband or wife, must have from the other whatever the contracting parties may have agreed as their acquisition on death, because as far as the former spouse is concerned that person, by choosing one way of life instead of another, is regarded as dying.¹⁰

⁷ The emperor thus signals his intention to penalise unilateral divorce (*repudium*) whilst acknowledging its legality, thereby highlighting a tension between traditional Roman attitudes to marriage, which accepted divorce, and Christian ones, which took a much more negative view of the institution. 'everything joined' = Plato *Timaeus* 41a.

⁸ The law here distinguishes between divorce (*divortium*) by mutual consent, and unilateral divorce (*repudium*) *bona gratia* (= 'in good faith', i.e. for reasons for which neither party could be held responsible, such as childlessness), *iusta causa* (= 'with just cause' resultant from misbehaviour on the part of one of the betrothed, such as adultery) and *sine causa* (= 'without cause' or without reasonable grounds, which carried a financial penalty).

⁹ Albeit rather obliquely, the novel here establishes that a marriage was automatically dissolved when one or other of the parties concerned entered a monastery or nunnery, and that such a divorce was to be treated as *bona gratia*. A husband or wife whose partner became a monk or nun acquired the same property rights as they would have done if widowed (*in casum mortis*).

¹⁰ A reference to *Codex* 1.3.52.15 and 1.3.54.4.

6

It is also an inevitable, and not unreasonable, cause for dissolution of a marriage when a man is incapable of sexual intercourse, and cannot perform the function allotted to men by nature. Under the law recently enacted by us, if two years should have elapsed since the date of the wedding without his proving that he is really a man, a wife, or her parents, may break off the marriage; they may serve for divorce, even should the husband be unwilling.¹¹ In that case, the dowry, if a dowry has been paid at all, will go with the wife; the husband will repay it if he has received one, but the nuptial or pre-nuptial gift will remain with the husband, and he will not suffer any loss to his own property. We are amending this law by a small addition: we wish the period from the actual date of the wedding to be counted as three years, not two. This is because we have learnt, from what has taken place in the interim, that some men, after more than two years of impotence, have subsequently been seen to be capable of doing their part in producing children.¹²

7

Captivity¹³ is another case of such a kind as to dissolve a marriage *bona gratia*. Strict, narrow logic dissolves the marriage, whether it is a husband who suffers this misfortune, while the wife remains in our realm, or whether it is the wife who goes into captivity and her husband who remains in our realm: once slavery has overtaken either, the inequality of their status does not permit the equality of marriage to last. Looking at such cases more humanely, however, we permit marriages to remain undissolved for as long as it is clear that the person, be it husband or wife, is still alive; neither husbands nor wives shall enter a second marriage unless they are prepared to be regarded as having done so precipitately, and to be subject to the penalties: payment in full of the gift before marriage in his case, and of the dowry in hers. Should it be unclear whether or not the person who has fallen into enemy hands is still alive, in that case the husband or wife, respectively, must wait five years, after which they may

¹¹ See *Codex* 5.17.10.

¹² The minimum age of marriage for boys in Rome was fourteen. Given the later onset of puberty and adolescence in the pre-modern world, this would have meant that some boys are likely to have married before they had reached physical maturity. See Davidson (2007), pp. 80–1.

¹³ On the Roman law of captivity or *postliminium* (to which Justinian is here making a significant reform), see Buckland (1963), pp. 67–8.

marry with impunity whether or not the question of death has yet become clear. This has been counted by our predecessors as being among the grounds for dissolutions called *bona gratia*, and we concur in that. Thus, when that is the cause for the separation between them, there is no occasion for a divorce, and no-one will gain anything by it, neither the husband the dowry nor the wife the pre-nuptial gift; each will remain in possession of their own.

8

By a humane concession, we are annulling a former consequence of the law's severity. Under the legislation of the ancients, if a husband or wife was sentenced by court order to be handed over to a mine, such as exists nowadays in Proconnesus or the place called Gypsus, that brought slavery as a consequence of the punishment, and the marriage used to be broken up; the punishment held the convicted person as its slave.¹⁴ We are relaxing this, and do not permit any person originally freeborn to become a slave as the result of a punishment;¹⁵ given that we aim to be liberators of former slaves, we would not change free status into the condition of slavery. Thus the marriage is to remain in being in this case, and to suffer no harm from such a sentence, as subsisting between free persons.

9

Should a court order enslave a freedman, freedwoman or their children, the slavery that supervenes severs them from one another, despite the pre-existing marriage; it is as if death had ensued, as our predecessors say that a supervening enslavement differs little from death. In this case, each is to receive his own, and only the settlement agreed on death is to be left to the free persons, the rest going to the person who has taken the other into slavery.

¹⁴ The law here refers to the criminal penalty of being condemned to work in the mines or a quarry (*in metallum* or *in metalla damnare*). In its severity, it was deemed second only to the death penalty (see Berger (1953), p. 581) and one of the most demeaning forms of punishment (Hillner (2015), p. 201). The Greek island of Proconnesus was a famed source of grey-white marble in late antiquity (on which see Asgari (1995)) to which we know dissident monks were sent in the early fifth century, whilst Gypsus appears to have been the collective name for a series of mines probably associated with the imperial alabaster quarries in the Nile Valley in the vicinity of Alabastrine (modern Qum el-Akhmar). See *Codex* 9.47.26.5, Miller (1984) and Hillner (2015), p. 202.

¹⁵ Justinian thus abolishes what was known as the *servitus poenae* ('slavery to the punishment'), as Hillner notes, 'predominantly to allow for continuity of the convict's marriage, but also perhaps to facilitate imperial pardon' (Hillner (2015), p. 201).

10

In a case where someone has thought, right from the outset, that he or she is marrying a free person, but that person subsequently proves to be a slave, we shall call it not a dissolution of marriage, but non-existence of marriage in the first place, for our previously stated reason: inequality of status. There is thus to be no consideration of gain from marriage, or anything of the kind, but merely of repayment of what is due, by means of the appropriate legal proceedings. This decision of ours, that no marriage exists in such a case, applies wherever it is only the non-discovery of status that has brought the situation about, not where complicity or any criminal intent, or negligence, is proved against the slave-owner . . .

11

. . . because, if an owner did pass off a slave-woman of his as free and give her in marriage to a free man who took her in reliance on the giver (perhaps with a dowry-contract made, or not actually made, but with the owner's deliberate intent behind the business), it would be unjust for such a situation not to constitute a marriage. Instead, we decree that a tacit manumission, on the part of the person taking such action, ensues for the husband or wife: such a person, of either sex, is to be rescued into freeborn status, and the case is to be adjudicated as being one that concerns persons both free and freeborn. Should the owner of one of the persons not personally be the arranger of the marriage, but be aware of what is happening, and deliberately conceal the fact, in order to fabricate trouble, subsequently, for one of those united, that is a crime; if it is clearly proved, we punish it by depriving authors of so criminal a scheme of their ownership. That, again, is also to constitute a marriage, just as if the owner had been complicit from the outset: he is to forfeit his ownership, and the slave person is to be rescued into free-born status. Thus the outcome turns out just the same, whether the owner had either connived at the crime, or committed it. Clearly, children of such marriages will also be free under this law of ours, and free-born.

12

This is to apply all the more if the owner had in fact previously disposed of the slave or slave-woman, either because they were sick or because he set no value on them, thus discarding his intention of being their owner. Now

constituted as free in this way, by their title as virtually *pro derelicto*,¹⁶ and being no-one else's property, they are not to be troubled later on by those who have in the past spurned ownership of them.

13

Deportatio, the modern version of the ancient denial of fire and water (*aqua et igni interdictio*, as our laws call it), does not dissolve marriage.¹⁷ That was regarded by the most divine Constantine¹⁸ as a humane decision; it has been accepted by us, and is unaffected by this law. That being a matter that remains in its own force, its effects do not need exposition.

14

We are also aware of a law¹⁹ enacted by the founder of this fortunate city of ours, namely Constantine of divine destiny, by which, if there were anyone away on campaign from whom his wife had heard nothing for the space of four years, nor had any confirmation of his feelings for her, she would then have licence to go on to a second marriage, after first giving notice to the army commander as evidence of this very intention; should such be the case, she would then change to a second husband with impunity, and without forfeiting her dowry, although also without gaining the pre-nuptial gift. That was according to the most divine Constantine; but to us such a decree seems quite inappropriate: to impose the loss of his wife on a married man, engaged on active service, is a penalty no less than his being made a prisoner of war. Therefore a wife such as that posited by that lawgiver is not to go to a second husband before a period of fully ten years has elapsed, during which she has been constantly pestering her husband by sending him letters, or messages by others; and either he has distinctly renounced his marriage to her, or nothing at all has been heard from him; and she has put in notice to either the Most Illustrious general, or Admirable *dux*, or Most Distinguished *tribunus*²⁰

¹⁶ *Pro derelicto* = as if abandoned by the owner (see Berger (1953), p. 752 and Van Der Wal (1998), p. 96 (entry 678) and note 20).

¹⁷ *Deportatio* ('deportation') = the criminal penalty of perpetual banishment, which also traditionally resulted in the loss of Roman citizenship and confiscation of property. In the imperial period, this penalty replaced the former *interdictio aqua et igni* ('interdiction of fire and water') whereby citizens were forcibly excluded from communal life (see Berger (1953), pp. 432 and 507).

¹⁸ See *Codex* 5.16.24 and 5.17.1.

¹⁹ *Codex* 5.17.7.

²⁰ 'General' (Greek στρατηγός) = *magister militum*, i.e. one of the supreme regional commanders such as the *magister militum per orientem* in charge of the army in the

under whom the soldier concerned is serving. We then grant her licence to submit a supplication to the Sovereign, and thus gain this permission. She is to be aware that if she contravenes these conditions in any way, she will fall under the law's penalties for marrying precipitately.

1. Such, then, roughly speaking, are the better forms of dissolution of marriages, to be assigned to a general category of severance *bona gratia*.

15

Next are those forms that seek to find a ground of blame on either the husband's part or the wife's,²¹ so as to penalise the one at fault by forfeiture of that person's contribution, namely the dowry or the gift in respect of marriage. Older legislators made numerous different lists of these grounds of blame, and Theodosius the younger enacted a constitution on *repudium*, in which he took some points from those earlier ones and devised additional ones of his own.²² We have devised some further additional grounds, which we have decided it right to class as blameworthy on the part of those who come under them.²³

1. Thus, under the constitution of Theodosius of pious destiny, the law gives a wife licence to resort to *repudium* and quit her marriage, taking her dowry and the pre-nuptial gift in entirety, if she should be able to show that her consort had committed adultery; was guilty of murder; had practised witchcraft or deceptions; was complicit in the guilt of the gravest of all crimes, namely forming designs against the Sovereignty itself; had been condemned for forgery; had broken into tombs; had stolen from any sacred house; had taken up a life of banditry, or had harboured bandits; was one of those called 'rustlers' who make a practice of lying in wait for other people's pack-animals or herd-animals, and driving them away; had been found guilty of being an enslaver; was living so lewdly as to engage in depravity with other women in full view of his wife (something that particularly maddens women, and most particularly chaste ones, as being a crime against their marriage-bed); or else if she proved that her husband had been making attempts on her life, by poisons, the sword or any other such means – many are the roads that people take to wickedness –, or was using

eastern provinces; *dux* = the head of a military district or frontier commander answerable in military matters to the *magister militum*; *tribunus* = an army officer. See Lee (2005), p. 117 and Southern and Dixon (1996), pp. 58–61.

²¹ I.e. a divorce *iusta causa*.

²² A reference to the legislation that appears as *Codex* 5.17.8.

²³ In what follows Justinian essentially repeats the additions to the Theodosian legislation already promulgated under *Codex* 5.17.11.2.

whips on her. She would not have to prove all these grounds at once, but just one on its own.²⁴

2. Again, the law gives a husband licence to dismiss his wife if he should find her being adulterous; engaging in witchcraft; committing murder, enslavement, tomb-robbery or sacrilege; being an accomplice of bandits, or being one of them herself; enjoying drinking-parties with other men unrelated to her, without her husband's knowledge or even against his prohibition; spending the night out against her husband's wish, without reasonable cause; enjoying herself by attendance at the races against his will; visiting theatres (that is, either those where plays and suchlike things are staged, or where there are fights between animals and humans); contriving attempts against him by poisons, swords or other life-threatening means; being an accomplice with plotters to usurp the throne; being guilty of forgery; or laying reckless hands on him. If anything of such a kind has taken place, this law grants that the husband, even should he prove only just one of these grounds, may dismiss his wife, and gain her dowry while retaining his pre-nuptial gift.

3. Also should either of them serve notice of *repudium* unreasonably, that person will, by that very act of having broken up the marriage without reason, be subject to the penalties previously stated. In addition, the wife, if guilty on any of the above grounds, or of unreasonable dismissal, is also prohibited for a complete five-year period from entering a second union. Her marriage before the five years are up is to be a guilty one, and no marriage: 'Anyone who wishes', she is saying, 'can come forward and denounce this as a barefaced breach of the law.'

16

However, if a wife should give notice of *repudium* with good reason, and win her case, or if her husband should have fallen under the penalties for having dismissed her unreasonably, she is to gain financially in the ways stated above; but she must not, for shame, enter on a second marriage before a year has elapsed. We need not observe this for a husband: one who has secured such financial gains with good reason may marry at once, given that even one who has not secured them may do so too. This is because there is no good reason for suspecting confusion over paternity, which is the logical reason for preventing a woman from forming a union within the year.²⁵ The

²⁴ A rare flash of humour on the part of the emperor is possibly discernible here.

²⁵ On the differing approaches to confusion over paternity in the classical law with respect to widows and divorcées, see Gardner (1986), pp. 50–6.

importance of this prohibition is shown by the fact that even should it be the case that a marriage have been dissolved *bona gratia*, under the constitution of Anastasius of pious destiny, the prohibition has been imposed on women's remarriage within a year despite that.²⁶

1. Those, then, are the grounds of fault detailed for us by Theodosius. To these we have added another three, taken from the ancients: licence has been granted by us for husbands to serve notice of *repudium* on their wives, securing the gain of the dowry and retaining their pre-nuptial gift, if a woman should be so deep in wickedness as purposefully to induce a miscarriage, distressing her husband by depriving him of his prospect of having children;²⁷ if her licentiousness should go so far in dissipation as actually to have baths together with men; or if, while still cohabiting with her husband, she should start discussing marriage for herself with other men.²⁸ These are also grounds that are now capable of dissolving the marriage with good reason, and come into the same category for which the constitution of Theodosius of pious destiny prescribed the penalties.

17

A registered estate worker belonging to someone else is not allowed to marry a free woman, either with or without the knowledge of the owner. Should any such action be taken by the registered worker, the owner has the right, both if acting alone on his own initiative, and through the governor of the province, to chastise the registered worker who has done this, with a moderate number of lashes, and to part him from the woman.²⁹ That is merely a setting-right of a wrong action: his association with her is

²⁶ The Anastasian law referred to is to be found at *Codex* 5.17.9.

²⁷ For abortion in classical Roman law, see Gardner (1986), pp. 158–9. See also *Digest* 48.8.8.

²⁸ The law here repeats the additional grounds for divorce established by *Codex* 5.17.11.2. (see Arjava (1996), p. 182). Note the law's antiquarian air.

²⁹ 'Registered estate worker' is here used to translate the Greek *ἐναπογράφος/ ἐναπογράφοι* which is equivalent to the Latin *adscripticius*. *Coloni adscripticii* were agricultural workers or farmers (= *coloni*) registered (= *adscripticii*) on the tax roster (*census*) of their landowning employer who thus became liable to the state for such taxes as the peasants were obliged to pay. Such registered estate employees and their children were obliged to remain on or tied to the estate and were placed under the legal authority or *potestas* of their employer in the same manner as an unemancipated son or a slave. This explains the right of the landowner revealed by this law to beat his *coloni*. The analogy between the master's rights over his slaves and those of an employer over his *coloni* also informs this law's readiness to describe the landowner as 'owning' a *colonus adscripticius* in a similar way to which he owned a slave: see Sirks (2008) and Sarris (2011b). For 'mixed unions' involving *coloni*, see esp. Sirks (2008), pp. 127–8.

abortive, and what has taken place is not a marriage, nor is there any settlement of dowry or pre-nuptial gift.

1. That, then, is how marriages are dissolved during the lifetime of the contracting parties; the penalties, more or less confined to those to do with the dowry and the pre-nuptial gift, are financial.

18

There is, however, something further that we have devised, subjecting even undowried unions, when they split up without good reason, to an appropriate chastisement.³⁰ Should a man take a wife, or a woman go to a husband, when a deliberate intention of marriage has been formed, but without an ensuing dowry or pre-nuptial gift – a situation which used to result in precipitate dissolutions, there being no consequent danger to the party who has acted precipitately – we have enacted a constitution stating that if anyone marries a woman without a dowry being given, or contracts drawn up for one (whether with parental consent, if she is subject to the legal authority of another,³¹ or she is perhaps independent), that marriage is to be a marriage, even with no dowry-contract. This is to prevent the husband from using that as an excuse for driving his wife out of the house, as we know has happened in a number of cases, without one of the aforementioned reasonable grounds enumerated both by Theodosius and by ourselves. If any such thing does take place, either by his dismissing her from the house groundlessly, or else should he himself provide a reasonable ground for the wife to leave her cohabitation with him, he is to be made to pay one-quarter of his own property to her.³² If his property is not worth more than four hundred pounds of gold, what he will lose is one hundred pounds, that is a quarter of his fortune; if less than that, only as much as amounts to the quarter. If, however, he should have a fortune amounting to more than the said four hundred pounds of gold, he is not to lose more than the hundred pounds of gold.³³ We have drawn up this law

³⁰ That is to say, Justinian is here setting out the penalties for divorce *sine causa*.

³¹ Re-iterating that a dowry contract is not required to prove the legitimacy of a marriage. 'Subject to the legal authority of another' = *in potestate*.

³² This provision, combined with the testimony of a late antique legal text known as the *Syro-Roman Lawbook*, has been used to suggest that it was common for a father to make over one quarter of his estate by way of dowry for a daughter: see Arjava (1996), pp. 64–66 and *Syro-Roman Lawbook* 50.1.

³³ 100 *librae* (pounds' weight) of gold = 7,200 *solidi*. This provision of the constitution has been used to suggest that dowries of more than 7,200 *solidi* (and, by inference, that estates worth more than around 30,000 *solidi* net of all debts) were relatively rare (see Arjava (1966), p. 66). In the early sixth century, the wife of the scholar and bureaucrat John Lydus

with a view to what is generally the maximum dowry; and what we have deemed to be his property under our laws is, in fairness, only that which may be shown to be clear of debts.

The reasoning is to go on the same grounds in the converse state also: if an undowried wife should leave her husband when the blame is her own, or should serve notice of *repudium* on him without any reasonable ground of blame, she is to be subject to the same penalties in all respects. Should the marriage be dissolved on the ground of a fault of hers, the wife must observe the five-year period in which she will not enter a second marriage; but if on the ground of a fault of her consort's, or even *bona gratia*, as is also quite possible, she is to observe just the year for the avoidance of a confusion of paternity. This is so that our law may be complete in every way.

19

There is another measure, at once both pious and pleasing, that we have devised to prevent fraud against fathers on the part of married women subject to legal authority,³⁴ when their marriages are still in existence even after the serving of notices of *repudium*. This is because we have found that some husbands have been forming the deliberate intention of drawing up notices of *repudium* and serving them on their wives – or else, on the contrary, dissolving their marriages without there being any reasonable ground at all – simply in order to make their parents liable to repay the dowry or gift before marriage, as if the marriage had actually been dissolved, while they themselves had perhaps continued to cohabit, covertly. Thus the parents have come off with a financial loss, that being their reward for their generosity to their children. To prevent such fraud, we have enacted a law whose intention is that without parental consent neither male nor female children, either subject to their authority or *emancipati*, shall be able to dissolve their marriages to the detriment of their parents who have endowed or received the dowries or pre-nuptial gifts, either on their own or jointly with their children.³⁵ Exactly as we await parental

brought with her a dowry of precisely 100 pounds' weight of gold (John Lydus, *De Magistratibus* 3.28). In his *Epitome*, Theodore of Hermoupolis interprets this law as setting 100 *librae* of gold as the legal maximum for a dowry (Van Der Wal (1998), p. 83, note 79).

³⁴ 'Subject to legal authority' = *in potestate*. Note Justinian's emphasis on the role of written documentation in divorce proceedings. Prior to Justinian, such written notification had not been obligatory: see *Digest* 24.2.

³⁵ '*Emancipati*' = those 'emancipated' from paternal authority (*patria potestas*). The law referred to is to be found at *Codex* 5.17.12, the provisions of which are repeated here.

consent in the arrangement of marriages, so we are also not permitting them to dissolve their marriages, to their parents' detriment and against their wishes. Even should notice of *repudium* be served, we do not concede admissibility of the penalties being exacted from the parents, whether they have themselves been the donors or the recipients, or joint recipients. There would be no logic in allowing the children, possibly when quite young and without any real understanding of what is good for them, to dissolve their marriage against their fathers' wishes and cause injustice thereby to their fathers, when the father cannot dissolve the marriage against his son's wishes. Marcus, that great philosopher, made a good start by his decree on this; Diocletian followed him; and we have accepted it likewise.³⁶

Let us put an end in this way to severances made when cohabitation continues.

20

The eventual end that awaits marriages, as it does all things alike, is death. Thus whether it is on the death of the husband that the marriage is dissolved, or on the decease of the wife, according to the agreement contained in the marriage contracts the husband gains the dowry, and the wife the pre-nuptial gift, on whatever terms were decided at the outset by the contracting parties.³⁷ There is no bar against the settlements being unequal as to amount, but there is a bar against unequal agreements. That is what the most noble Leo correctly enacted in his own laws, and we have taken that on, and decreed it still more clearly; because, if one party stipulated a larger proportionate gain and the other a smaller one, it was unclear which should be valid, the larger or the smaller, as each side in the controversy had equal standing.³⁸ We set our face against disproportion, and so have decided that the larger proportion in the agreement should be reduced to the smaller one: thus it is not allowed for one party to stipulate a one-third share of the gain and the other, say, a quarter, but in any such situation it is the quarter that is to be received by either side, and so on,

³⁶ Referring to legislation of the Emperors Marcus Aurelius (161–180) and Diocletian (284–305): see *Codex* 5.17.5.

³⁷ The law here appears to be primarily concerned with the *instrumenta dotalia* (see Van Der Wal (1998), p. 78, note 50).

³⁸ See *Codex* 5.14.9 and 5.14.10. It was common to stipulate in the *instrumenta dotalia* the shares to be allocated to the partner in event of death (*in casum mortis*) and in the event of the absence or death of any issue (*in casum non existentium liberorum*): see Van Der Wal (1998), p. 79, note 54.

similarly, down the proportions. This does not, however, apply to the total amount agreed on either side.

1. Now, when a marriage has been dissolved, by any of the above forms of severance, the fortunate and blessed course is for each of the contracting parties to abide by their original union, and avoid the vexation to their existing offspring that might arise from subsequent alliances.³⁹ If they should do so, stopping at their original marriage, they will keep their own (that is, the wife her dowry, and the husband his pre-nuptial gift), without the intervention from us that is involved in second marriages; but the husband will take the profits derived from the dowry, and the wife those from the pre-nuptial gift.⁴⁰ These will be their own, with virtually no difference from the rest of their property: during their lifetime they will have complete freedom of alienation with respect to them, just as they had with respect to all else that was in their own possession at the outset; and at their death, also, they may dispose of them to others by way of *legata* or *fideicommissa*, such alienations being permitted to them under a constitution that we have enacted on this.⁴¹

2. However, should such property, or some part of it, remain unalienated when they have appointed their children as heirs to one portion of their estate, and outsiders to another, it is not regarded as having been alienated by the fact that some other heir has been included in the appointment; it, too, is to remain as the children's.⁴² Also, should they have appointed all the children as heirs, but in unequal shares, the children will not receive it in the shares corresponding to their inheritance, but will share it out equally, according to how many there are of them. They will also receive it in the same way even should their parents not have appointed any of them as heir at all, but only outsiders, what is due to the children having been satisfied in other ways. We have taken the view, by presumption, that inasmuch as the father neither alienated nor specifically hypothecated any of this property in his lifetime, nor at his death transferred it specifically to another, his preferred intention was to preserve it for his children, as having been acquired by him for their sake, rather than to transfer it to outsiders. Under our law this will be given to the children as a special perquisite, even should they not be heirs either of their father or of their

³⁹ Justinian here once again makes clear his preference for the divorced and bereaved not to re-marry: see Arjava (1996), p. 167.

⁴⁰ I.e. they are able to draw upon the *lucrum* or profit derived from the dowry or ante-nuptial gift that had belonged to their deceased partner, rather like the modern spousal inheritance of a pension.

⁴¹ '*legata* or *fideicommissa*' = 'legacies or trusts'. The law referred to is *Codex* 5.9.8.

⁴² 'Outsiders' (Greek ἐξωτικοί) = non-members of the family (Latin *extranei*).

mother, or of both; also, even should some of them be heirs and others decline. That, in our view, is a more correct proceeding than the previous ones. Thus, given that it is a perquisite descending to them by law, it is not to be adulterated by any addition, nor diminished, unless the children themselves give grounds for the diminution of their own share; . . .

21

. . . because, if any of them should prove ungrateful, we give this perquisite to the others who who have done no such thing. This is to teach others to respect their parents, and pay heed to their siblings' example. Thus, should there be so great a misfortune in the whole family of children that all of them are ungrateful, it is to go to the deceased's heirs as part of his estate; the children are not to be able to have a perquisite from a parent to whom they have shown disrespect, and that is why we do not grant it to them.

1. Should some of the children be among the living while others are departed, but have left children, we give the deceased's share to his children, if they are their father's heirs; otherwise, to his siblings. In completing our law in this way, we intend it to apply not only to dowry or gift before marriage, but also to gains that accrue, by our constitution, from undowered marriages. These too, as long as parents safeguard them by not entering on second marriages, will belong to their children in the way we have stated above.

Those, then, are to be our rulings on first marriages, the gains arising from them, and the consequent observances.

22

However, the law must also cover any who do not content themselves with their first marriage but proceed to a second, whether they are childless by the first marriage but have issue by the second or, on the contrary, childless by the second but parents by the first; or childless by both, or parents by each. Should they remain childless by their first marriage, or by both, there is no intervention on the second: husbands will emerge free of any requirement at all, but on wives there will be imposed the single precaution that they are not to enter a second marriage within the period of a year; or else, should they take any such step and contract too early a marriage, they must be aware that they will incur penalties. These will be on one level if they are childless by their first marriage, but on a higher one if children subsist. If no issue subsists, the

immediate consequence will be disgrace:⁴³ for her eagerness to marry, the wife will be disgraced in all respects: she will receive nothing bequeathed to her from her previous marriage, nor enjoy the pre-nuptial gift, nor endow her partner in the second marriage with more than a one-third share of her own property. Further, she will see no extraneous mark of honour, either; from no outsider will she receive anything at all: no inheritance, no *fideicommissum*, no *legatum*, no gift *mortis causa*.⁴⁴ These will go to, or remain with, the deceased's heirs, or to her co-heirs had she been at all capable of inheriting, as she will gain no advantage whatsoever from them. Instead, if there should in fact be others also appointed as heirs, or called in intestacy, what has been left to such a woman will go to them. The public treasury will not appropriate it, in case it should look as if our motive for chastising such behaviour were to benefit the treasury.

That is the way in which what has been left her by outsiders will go to others. What will come to her from her previous consort will be taken from her, and go to the ten persons of her husband's, the testator's, kin that are contained in the edict: namely ascendants, descendants and collaterals as far as the second degree, the degrees being kept in their respective order of precedence.⁴⁵ If there are none, it will go to the treasury.

1. She will not come into an inheritance in intestacy from any more distant relative of her own kindred. Her succession will come to an end with consideration of only the third degree, in any direction; more distant ones will have other heirs. As for the main penalty inflicted on her, namely the disgrace, it will be cancelled, should she be childless by her previous marriage, on a written order from the Sovereign. Should she have children, by whichever marriage, she is allowed to petition the Sovereign about the disgrace, but will gain nothing from the rescript unless she is willing to receive the assistance of the Sovereign, and be absolved from the other penalties, by unconditionally making over half of her own property, unencumbered, to the children of her first marriage, without retaining even the

⁴³ 'Disgrace' (Greek ἀτιμία) = legal Latin *infamia*. Such *infamia* resulted in both social stigma and legal restrictions (as evident here) and by Justinian's day had acquired the status of a developed legal institution: see Berger (1958), p. 500, *Digest* 3.2 and *Codex* 2.11 and 10.59. The penalties prescribed here, however, go beyond the standard legal penalties for *infamia* (for which see Gardner (1993), pp. 111–28).

⁴⁴ 'No gift *mortis causa*' = no gift made by the donor on the assumption that he would die before the donee.

⁴⁵ 'The ten persons' referred to = the father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother and sister of the deceased husband (this was known as *bonorum possessio unde decem personae*): see Van Der Wal (1998), p. 131 (entry 897 and note 16), Buckland (1963), p. 384 and Lenel (1927), p. 356).

use of it. She must relinquish to her previously born children a half-share, as we have just stated, of her whole property at the time of her entry on the second marriage. The children will all share this equally; if they should have children, they will pass it down to them – a necessary addition to the ancient laws; or if not, their siblings will all, proportionately, receive the shares of the deceased one or ones. Should they all be departed, their mother is to receive the property back, as consolation for her misfortune. We mean this only if the children should die intestate; we shall not stop them making testamentary disposition of property they have once received, nor disposing of it as they wish during their lifetime.

That, then, is how such penalties are to be imposed on women who marry before the mourning-period is over. With this single insertion, this law of ours has expressed the terms of the three constitutions enacted on this subject by our predecessors,⁴⁶ with the appropriate amplification.

23

However, should the wife wait out the time and thus escape the penalties stated, and then enter a second marriage without considering her previous one, if she is childless – let it be said once again – there is no consequential danger at all; but should there be issue subsisting, and should the law see children dishonoured as a result, in that case she is deprived of any gift of honour that comes to her from her husband, as far as its ownership is concerned: the law leaves her only the use, and the revenue from it.⁴⁷ This ruling is to apply both to the pre-nuptial gift and to every other gift of honour made to her by her husband, whether in his lifetime, or in his will, or as a gift *mortis causa*; whether as part of institution as heir, or as legacy or *fideicommissum*. To generalise, she will be left with no kind of ownership over anything that has come to her from her previous husband; her children will receive it, and will be secure possessors of the ownership from the moment that their mother has married someone else.

⁴⁶ I.e. *Codex* 2.11.15, 5.9.1 and 6.56.4.

⁴⁷ Ever since the *Lex Cincia* of 204 BC, Roman law had prohibited gifts and transfers of property between husband and wife. As Johnston has noted, ‘the purpose of this was clearly not to discourage birthday or anniversary presents, but to prevent large capital settlements being made from one side of the family to the other’: see Johnston (1999), p. 34. The reference to inter-marital gifts within this novel would suggest that by Justinian’s day the prohibition on such gifts had been watered down: see Van Der Wal (1998), p. 84, note 84 and *Digest* 24.1. The law makes it clear, however, that such gifts could not be alienated outside of the family.

These penalties are to apply to wife and husband in common: if he, similarly, has children but brings in a second wife over them, he will not enjoy the gains from the dowry in respect of ownership, nor will he have firm possession of any other mark of honour he has received from his wife, but only as to the use and income for his lifetime. In that case, too, the children, even if they are subject to authority,⁴⁸ will have secure possession of ownership of such assets, which will accrue to them immediately on the union with the second wife. As for the dowry or the gift before marriage, we are making no distinction as to whether the donors were the couple themselves or others on their behalf, either from within the family or from outside it.

24

Even if the pre-nuptial gift is regarded as in some way combined with the dowry, what has been legislated about gains accruing to spouses is still to apply, nevertheless. The law will thus become the children's safeguard of such property, by not permitting the parents to make any alienation or hypothec on it; should they do so at all, that at once puts their estate under hypothec to their children. This is not to prevent the parents taking any action they wish with respect to it, as the law shies away from putting children in the position of checking their parents' behaviour; what it does do, without disrespect for the parents, is to hold over recipients the threat that any purchase they make from such parents will be of no use to them: they are to know, as a result of this law, that should they make any purchase, or receive a gift, from such parents, or transact any business with them at all, the transaction will count as not having been made or executed, because the children, and their heirs and successors, will in any case reclaim it at law from recipients' heirs and successors. The only bar to their doing so would be the expiry of a thirty-year period,⁴⁹ that period starting to run from the time when the children eventually are, or become, independent; at that point, possession would establish the recipients' ownership unless any of the children should have the additional assistance of being then still a minor.

25

Such parts of the gains will go to the children of the earlier marriage, all of them: we are not permitting the parents to show any wrongfully introduced

⁴⁸ 'Subject to authority' = *in (patria) potestate*.

⁴⁹ Thirty years was the normal period of prescription or limitation: see Berger (1953), p. 646.

preference between them, or to give to one of the children while dishonouring another, because all have been similarly dishonoured by the second marriage.⁵⁰ And, in particular, given that parents inherit from all their children alike – they do not succeed from one without doing so from another –, why should they themselves not act towards all of them on an equal basis in this matter, rather than preferring some and overlooking others? Thus each is to gain proportionately in such a case, and is to pass it on to any children he may have; they, too, are to share it out among themselves in proportion to how many there are, within the limit of their father's share.

26

As we have declared alienations made by parents in such cases to be invalid, it is incumbent on us to provide a more precise regulation of this matter.

Should the parent predecease the children born of the first marriage while they are all still alive, all aspects of the alienation will remain completely invalid, as we have stated above; but if they should all have died, thus reducing the situation to one of childlessness, the alienation will then, as a result, be valid. After all, who would actually overturn it, when there are no children subsisting, for whose benefit alone we provided that safeguard? On this point, however, an idea occurred to us recently, and has been carefully and precisely considered, which goes into a case intermediate between the two.⁵¹ As, when the parent had died survived by all the children, nothing was left for the alienees from what they had gained, whereas, when all of the children had died, it all reverted to the alienees, we considered how to devise an intermediate disposition. Thus, if one of a larger number of children should die, his inheritance, as we have frequently stated, is to go to any children he may have; but should he have none, it is not in all cases the whole of it that is to go to his siblings: the alienee is to gain the amount that the parent stood to gain under the agreement in case of childlessness, while letting the rest to go to the child's successors, whether they are siblings or perhaps (as is most often the case with a mother) outsiders, irrespectively of whether the deceased ones have disposed of their estates by will, or died intestate. This enactment in our law is

⁵⁰ I.e. remarried parents lose the right to prefer some children as heirs over others (known as the *ius electionis*).

⁵¹ Justinian here proceeds to build upon and reform *Codex* 5.9.11: see Van Der Wal (1998), p. 89, note 106.

one to which we have given careful consideration, and we are the first to devise this humane legislation.⁵²

Thus, in this situation, should a parent alienate before entering on a second marriage, and should one of his children subsequently die, the alienation is in force only as to the amount devolving on the alienator under the agreement in case of childlessness; it will otherwise, as to all the remaining portions, which go to that child's heirs, be entirely invalid. Hence, when an alienation has been made, the position remains in suspense, varying with subsequent events, the alienation either being totally invalidated outright, or being totally in force, or partly being invalidated and partly standing.

1. In all such gains as the children receive from parents entering a second marriage, we are not going into the question of whether they are the heirs of their parent (either of one who predeceases, or of the second to die), nor of whether they should be inheriting or not. Instead, as we stated above, we are giving this to them, whether heirs or not, as a perquisite. The survivors will receive it themselves on equal terms, along with the children of one who has died, these receiving their parent's share. Ingratitude, however, will in every case stand as an obstacle against such a child's receiving such a gain, as we have also stated previously; we are not overriding existing laws against the ungrateful,⁵³ but are in this way both honouring parents and leading children towards filial piety. Just as we have disallowed preferential treatment, and given such perquisites to all alike, so we are not abolishing the consequences of ungratefulness. It is to be understood that the person to consider as ungrateful is one who has been clearly proved to have been so, either towards both parents, or at least to the one who died second.

27

As to endowments made on second marriages by the contracting parties, the consideration given to these by Leo of divine destiny seems to us

⁵² Whilst, like many of the other measures contained in the novels, motivated by concerns of 'humanity', this reform effectively begins to undermine the principle which prevented transfers of property between or outside of families by a widow or widower. Until this reform, all that was required to prevent any alienation of property from the first marriage was the survival of a single child from that marriage: see Van Der Wal (1998), p. 89, note 106, Monnier (1907), pp. 464–5, and c. 47 below.

⁵³ 'Ungrateful': under Roman law in the later empire, emancipated children who were deemed to act disrespectfully towards their parent (Latin *ingrati*) or after such a manner as brought shame upon the family could be brought back under paternal authority (*patria potestas*) or, as evident here, could be excluded from an inheritance: see Berger (1953), p. 501.

excellent.⁵⁴ He says that, should they be entering on a second or subsequent marriage when already parents of children by a previous marriage, fathers cannot in their lifetime bestow any gift of honour whatever on the stepmother, nor mothers on the stepfather, nor can they at their death leave them anything but the amount a son or daughter, on their own, has from a parent. Should there be more than one child, each having an equal share, the stepfather or stepmother will receive no more than what goes to each child; but should what is left to the children be in fact unequal, only so much must go to the stepfather or stepmother, by way of any gift of honour from the parent whatsoever, as is received of the property by the child who has the smaller amount of his estate, either bequeathed by last will or given whilst alive: namely, what was until recently a quarter but is now, under our law, the minimum one-third or half-share bequeathed or given to the child – unless, again, this should be countered by reason of ingratitude. The same principle is to be observed also for a grandfather and a grandmother, great-grandfather or great-grandmother, grandchildren, male or female, and great-grandchildren alike, from father's or mother's side, whether subject to authority, it may be, or *emancipati*.⁵⁵ On determining this, he correctly added that the surplus of what was in any case bequeathed or given to the stepmother or stepfather shall count as not having been devised, bequeathed, given or presented, but shall be due to the children, and be divided equally between them alone. We still find unsatisfactory the provision, enacted in a certain constitution,⁵⁶ that the children of a second marriage must also share in this division; instead it is to be given only to the children of the first marriage, for whose sake it has been enacted, and no circumvention can be accepted, whether through persons surreptitiously brought in or for any other cause. This excess will be divided up between themselves by the children who have been dutiful to their parents, not those who have been shown to be ungrateful to them, and guilty of such ingratitude as the laws enquire into. We deprive such children of benefit from this source also, in order not to leave so much as a glimmer of hope of any gain from this source if they should brazenly take action against their parents, in disrespect for the laws of nature. It is understood that in that case also, if any of those to whom the excess was to come should die leaving children, the deceased's children will receive it in accordance with their number, and in proportion to the deceased's share.

⁵⁴ A reference to *Codex* 5.9.1, the provisions of which are re-iterated here (Van Der Wal (1998), p. 137, note 48).

⁵⁵ I.e. whether or not *in patria potestate*.

⁵⁶ A reference to *Codex* 5.9.9.

28

Under laws made hitherto, the time at which the surplus is due to be assessed is not defined: is it at the time of the endowment, or at the dissolution of the marriage? It seemed best to us to rule that it is on the occasion of the death of the parent who remarried. People devise larger amounts than they own, and they devise smaller amounts; but supervening events generally produce contrary outcomes. Thus, to avoid going astray in these matters, we must look to the occasion of the death of the person who has remarried. The proportion is to be taken from that time, and, with that proportion in view, the surplus is to be deducted, and awarded to the children. In all such cases, it is not the original gift or devise that is considered, but what is called the *eventus*.⁵⁷

29

There is also another matter, put into correct order by a constitution of Theodosius the younger, of pious destiny, that we must not omit.⁵⁸ He said that, should a wife who has had children enter on a second marriage and have further children from that, if her second husband should die, and she herself should die intestate, the children of both marriages will come into her own personal property under a fair distribution, like for like; but each family will receive its own father's gift before marriage: the children of the first marriage will receive the gift from that, in entirety, and the offspring born of the second will enjoy the gift of honour derived from that, in entirety, even if she did not enter on a third marriage. Why, after all, should that be to the earlier children's advantage? And why should the earlier children bear a grudge against the second ones for not having also been wronged, by a third marriage? Each family is simply to receive the pre-nuptial gift belonging to its own father: the previous children are to receive theirs, in any case, because of the second marriage, and the second ones are to possess theirs, whatever happens, even if the twice-married woman has not gone into a third marriage, so that there is no feeling that they have come off worse in this than their brothers. From this state of affairs, it follows that the same is to apply for fathers who remarry: by reason of the second marriage, the dowry acquired from the first one is to be kept for the children of that, and the proceeds from the second for those of the second, even if the father has not gone on to a third marriage.

⁵⁷ *Eventus* = the legal effect of the transaction (Berger (1953), p. 457).

⁵⁸ A reference to *Codex* 5.9.4.

1. In such cases, all remaining gains that have accrued to either a father or a mother from a second marriage, whether it may be by *legatum* or by *fideicommissum*, when they have not entered into a third marriage, are to be lumped together with their own property, and remain theirs undisturbed by a third marriage. As being their own, these are to go on into their successions, and to be dealt with as they wish in their lifetimes.

30

Now that we have legislated in a logically coherent way for all aspects of gains on severance of marriage by death, we add a brief rider to the effect that all gains, whether by way of dowry or pre-nuptial gift, that are made by parents on dissolution of the marriage by *repudium*, whether served *bona gratia* or otherwise, are to be wholly kept for the children, on the same pattern as for gains on death. The same principle is to be observed also in the case of undowried wives, where the constitution we have laid down penalises precipitateness. We are making no distinction as to the ground on which the marriage has been dissolved by *repudium* because, for them too, whatever the case may be, what has been acquired is reserved to the children of the marriage of which they are its issue, whether it is the first or the second marriage that has been dissolved by *repudium*. This is so, even if no third marriage has ensued.

31

Matters relevant to increases or reductions of dowries or pre-nuptial gifts have been treated in some of our predecessors' laws,⁵⁹ but have been worked up by us into a more complete condition: we have instructed not merely that a gift in respect of marriage may be enlarged, when the marriage is already in existence, but also that it may be first given at that stage; and just as we have permitted it to be enlarged, so too we have allowed for it to be lessened, with the consent of the couple. However, to avoid coming into conflict with the law⁶⁰ of Leo of pious destiny, we shall not allow that (namely, the lessening), in the case of any second marriage, when there have been children by the first. This is because, should the parent contribute too large a dowry, pre-nuptial gift or other gift of honour, and then, on realising what the provisions of the law will lead to, reduce what he has done by diminishing the dowry or pre-nuptial gift, what has been given will no longer be gained by

⁵⁹ A reference to *Codex* 5.3.19.

⁶⁰ *Codex* 5.9.6.

the children; the stepfather or stepmother will be able to gain it, and the children will suffer injustice by this.

32

If by a last will either a husband should give his wife, or a consort give her husband, only the *ususfructus* of a property, the law prior to us⁶¹ said that, should either the father or the mother go on to a second marriage, they automatically forfeited the bequeathed use, just as they had previously forfeited the ownership; it was immediately restored to the children, and, if the children happened to be minors, with the interim profits as well. That was the law's decision; but we have found it quite unsatisfactory. Our intention is that whether the use should have been a gift as mark of honour, or *mortis causa*, or *inter vivos*⁶² – among whom gifts are in fact allowable – or as a bequest, even so the use is to remain with a recipient who goes on to a second marriage, during the lifetime of the holder of the *ususfructus*;⁶³ that is, unless the actual maker of the gift or bequest, as stated, whether male or female, should specifically state the intention that if the recipient of the *ususfructus* goes on to a second marriage, it is cancelled, and reverts to its ownership. We mean this to apply to gifts made as marks of honour; . . .

33

. . . however, should *ususfructus* of property have been given in the form of dowry or pre-nuptial gift, we are making no innovation at all; the already existing legislation is to be in force. The property is to remain with the recipients during their lifetime, no matter how many times any contrary intention has been expressed by the deceased, because no individual will have any power at all to take away a gain that has been granted by the law.

34

Now that we have arrived at the mention of the laws on *ususfructus*, it is good also to include in the law something that has been stated by some previous

⁶¹ A reference to *Codex* 5.10.1, which this provision repeals (Van Der Wal (1998), p. 152, note 117).

⁶² See *Digest* 24.1; *mortis causa* ('on account of death' – i.e. a gift made by the donor to a donee on the assumption that the latter would outlive the former which becomes effective upon the donor's death) and *inter vivos* ('between the living' – i.e. a gift between the living which takes immediate effect).

⁶³ *ususfructus* = 'usufruct'.

constitutions:⁶⁴ that a father has the *ususfructus* in general of everything that comes down to his children, whether from their mother's line, or by reason of his children's matrimony, or from any other source, even should he enter on a second marriage. It is the intention of all previous laws that he should retain uninterrupted use of both matrilineal and all other property during his lifetime, and we agree; but an exceptional case to be taken into account is that of the *peculium* of *castrenses* and *quasicastrenses*.⁶⁵

35

However, a mother who has conferred a gift of property of her own on a child would not, should she enter on a second marriage, be able to revoke what she has given, on a ground of ingratitude, unless the child should be clearly proved to have been plotting against his mother's life, or to have laid impious hands on her, or to be engaged in some action against her, designed to deprive her of her whole estate. Otherwise, it looks as if her motive in bringing an action for ingratitude is a corrupt one; the presumption is that she has resorted to it as a pretext, with a view to her second marriage.

36

We do not permit wives who go on to a second marriage to go on wanting to make use of their first consorts' ranks or privileges; whatever marriage they have gone on to after their first, that is the status with which they are to be content. A woman who has forgotten the past could not again receive any assistance from the past.

37

A further point, a pleasing one not unconnected with religion, has been determined in a constitution of Alexander of divine destiny, as well as by

⁶⁴ See *Codex* 6.60.4.

⁶⁵ Traditionally the head of the household (*pater familias*) had control over the personal fund (*peculium*) of those in his power (*in potestate*). An exception had been made, however, with respect to the earnings and profits of sons still under paternal authority whilst on military service. This was known as the 'camp fund' or *peculium castrense*, with respect to which Justinian regarded the son as having full authority of disposal (see *Digest* 14.6.2 and 49.17 and *Codex* 12.30 and 12.36). This right was then extended to earnings and receipts accrued through public service, employment in the Church, or given by way of imperial licence. In such cases, the fund or property was described as *peculium quasi castrense* ('no a camp-like fund'): see Berger (1953), p. 624.

several other ancient lawgivers.⁶⁶ It concerns any case where someone frees a slave-woman and then marries her.⁶⁷ Should she, presumably having become too puffed up and spoilt, then dissolve her marriage with the man who set her free, the law does not permit her to enter on a second marriage against her previous husband's will; it considers her subsequent marriage not as a marriage or union, but as fornication and immorality, by which an unseemly injury is done to the man who granted her freedom.

38

There is another feature of that same sovereign's legislation⁶⁸ that we have found, and thought fit to incorporate in our own: it is that, as in all cases it is the mother who has been regarded as more trustworthy than anyone else in respect of the children's upbringing, the law grants her that as well, provided that she does not go into a second marriage.

39

While their marriages are still in being, husbands will not make over to their wives any dowries they may have received, without due cause, but only on the grounds enumerated by the law; otherwise, should they take any such action, it is automatically regarded as being in the form of a gift.⁶⁹ Should the wife die, husbands who have prematurely made over dowries to their wives will receive them back from the wives' heirs, along with the interim revenues, and they, and their heirs, will possess them as a gain under the agreement. Should the husbands go on to second marriages, they will keep these assets unalienated, for their children, that being the generally applicable decree. Under the law, should the husbands not in fact have received the dowries while the marriage is still in being, they will receive them even after the wives' death, from the wives' heirs, according to the text of the dowry settlement.⁷⁰

⁶⁶ A reference to the emperor Alexander Severus (r. 222–235) and legislation to be found at *Codex* 5.5.1.

⁶⁷ I.e. a slave concubine is turned into a free wife.

⁶⁸ *Codex* 5.49.1.

⁶⁹ For such cases, see *Digest* 23.3.73.1 and 24.3.20. Such gifts were still strictly speaking, however, potentially illegal: see *J. Nov.* 162.1.

⁷⁰ Here the law repeats *Codex* 5.19.1.

40

Should the wife have tutelage⁷¹ of the children, having of course taken an oath not to enter on a second marriage while they are still minors, but then, in contempt of both her previous marital bond and her oath, go to a second husband without first applying for a tutor, producing her accounts, and paying down the total owing from her on those, the law not only permits the children not only to have a hypothec on her property, but also subsumes under the hypothec the property of the man who has married her. It also forbids her the succession to a child who dies while a minor, even should the father have stated that she is to come into the succession from the child, by substitution.⁷² That, though, is according to our predecessors; for our own part, we are surprised that they have subjected only to such light penalties a wife so impious as by that very act to be in contempt of her oath, and to enter on so premature a marriage, in disregard of three most important things: God, the deceased's memory, and her love for her children. They inflict harsh punishment on a wife who marries within the period of mourning, even one who is not the mother of any children at all, doing so merely for the sake of respectability, childless though she might be; but when a wife's concupiscence had gone to such exorbitant lengths, they did not even subject her to the same penalties as are undergone by those who enter an aberrant second marriage within the mourning period. We thus lay it down that, in addition to the penalties already given, wives who have dared to perjure themselves in this way should in future also be subject to all the penalties we have stated previously for wives who marry within the mourning period: we inflict disgrace⁷³ on them, as well as all the other penalties, while offering them the same release from the penalties as we offer those other wives, by petition to the Sovereign and by giving a half-share of their own property to their children, without

⁷¹ 'Tutelage' = the Roman law institution of *tutela* consisting of 'a right and power over a free person granted and allowed under civil law to protect him who, because of his age, is not able to defend himself' (*Digest* 26.1.1. pr.). A *tutor* was a guardian who exercised this power (see Berger (1953), pp. 747–50). For the prohibition on re-marriage on the part of mothers charged with guardianship, see *Codex* 5.35.2, which obliged them to swear an oath that they would not re-marry (replaced by a promise in *J. Nov.* 94.2).

⁷² 'Substitution' (Greek ὑποκατάστασις) = the Roman law institution of *substitutio* whereby a testator could appoint an alternative heir in the event of the appointed heir not taking up the inheritance due to unwillingness or incapacity: see Berger (1953), p. 721 and, on this penalty, *Codex* 6.56.6.

⁷³ 'Disgrace' = *infamia*. Justinian thus reaffirms *Codex* 5.35.5, 6.56.6 and 8.14.6 and supplements them with this additional proviso: see Van Der Wal (1996), p. 76, notes 39 and 40.

retaining even the use of it. In a word, because of their marrying prematurely we put them on the same footing as a woman who marries within the mourning period. Even if the children under her tutelage are natural children, which is a right we have also granted her, she is still to be subject to the same penalties, if she should take a husband without having done what has been stated previously.⁷⁴ Care is to be taken both in the provinces, by the provincial governors, and here, by the Most Illustrious prefect of this fortunate city, jointly with the *praetor* responsible for that function,⁷⁵ that when a woman with tutelage wishes to marry and to have a tutor appointed for her young ones, they must receive her accounts, and the mother must pay what she owes from the period of her administration.

41

We approve of the constitution of Zeno of pious destiny which intends that a father instructed to pay a child of his own a legacy on a certain condition, required or at a certain time, is not to be required to provide security for payment of the legacies (*legatorum servandorum causa*, as it is called) unless he has allied himself in a second marriage.⁷⁶ That is to be another penalty for those who re-marry.

42

We have decreed,⁷⁷ and desire, that should any member of the most reverend clergy (that is to say, above the rank of reader or cantor) enter on marriage, in any circumstances, he is, under our constitution, to forfeit his priesthood. A married reader who subsequently goes on to a second marriage, under some compelling necessity, will no longer rise to the higher honours of priesthood, but will stay at that level with his wife, as he has chosen his affection for her in preference to advancement to better things. Any lay person wishing for ordination as deacon, sub-deacon or

⁷⁴ I.e. even if the children were *fili naturales*, which in Justinianic law primarily means the offspring of concubinage or those born illegitimately (see Berger (1953), p. 473).

⁷⁵ A reference to the *praetor tutelaris*, who was responsible for the appointment of guardians and the resolution of disputes between guardians and their wards: see Berger (1953), p. 648.

⁷⁶ *Codex* 6.49.6; 'security' (Greek ἀσφάλεια) = Latin *cautio*. Otherwise known as a *cautio legatorum nomine* ('security in the matter of the bequests'), this was a security 'given by the heir that all the testator ordered in connection with a legacy would be fulfilled' (Berger (1953), p. 384). Failure to provide such surety could lead to a legatee being granted possession of the heir's property.

⁷⁷ A reference to *J. Nov.* 6.

presbyter who subsequently proves to have a wife who had not been married to him since virginity, but is either divorced from a husband, or else has not been legitimately married to him right from the start, will not attain the priesthood; nor will he, if he himself enters on a second marriage. Should he attain it undetected, he will in any case forfeit it.

43

The next point is an ancient one that has by now received numerous modifications from ourselves, as well as from others, but has still not reached its fully correct state; it is in pursuit of that that we are making the present legislation.

As a result of the prime importance it attached to the birth rate, the historic ancient law known as the *Julia miscella* allowed wives, even if their husband had been trying to prevent them, and was leaving them something on the condition that they did not go on to a second marriage, to enter a second marriage all the same, and to receive the bequest, provided that they took an oath that their purpose in doing so was to have children.⁷⁸ It offered wives that licence for a year; if one of them wanted to receive the bequest once that had elapsed, the wives could only receive it by putting down security against their entering on a second marriage. That addition was not introduced by the *Julia miscella* itself, but in fact by a previous lawmaker, Quintus Mucius Scaevola,⁷⁹ who had devised similar securities for all cases involving debarments from property. We, however, observe that when women, out of a desire for marriage, take the oath and marry in contravention of the decedents' wishes, many of them do so not for the purpose of having children, but because of their physical need. We have

⁷⁸ Although described in the novel as 'the law (νόμος) *Iulios miscellas*', Justinian is here probably referring to a provision of the *Lex Iulia de Maritandis Ordinibus Iulia et Papia* of 18 BC which Justinian interprets as permitting a widow who has sworn to her deceased husband that she would not re-marry to do so if she declared that the purpose of the subsequent marriage was to produce children: see Van Der Wal (1998), p. 77, note 45 and Berger (1953), p. 554. In the writings of Roman jurists, this law was often effectively merged with the *Lex Papia Poppaea* of AD 9. Accordingly, Berger suggests that Justinian here refers to the previous legislation as '*miscella*' ('mixed') 'because of its various intermingled provisions'. Justinian had previously legislated on the topic of husbands attempting to limit legacies to wives who had promised not to re-marry in *Codex* 6.40.

⁷⁹ Quintus Mucius Scaevola (died c. 82 BC) held the post of *Pontifex Maximus* in Rome and was credited with introducing the study of law as a discipline. For the securities referred to (known in Latin as *cautiones Mucianae*), see Berger (1953), p. 384 and Buckland (1963), pp. 340–1. His doctrines were also of on-going significance to the Justinianic law of marriage by virtue of the so-called *praesumptio Muciana* preserved in the *Digest* (24.1.51) relating to the separation of the property of husband and wife.

thus decided to begin by taking care of the religious aspect, and to prevent them from perjury by not permitting them in the first place to take such oaths as are, anyhow, so readily broken. Moreover, there was no requirement written into the law for women swearing this oath to be childless; even those with children were given the opportunity to take it, to the vexation of both God and the souls of the departed, simultaneously. And yet perjury was easy, while having children was stored away among the gifts of chance.

This, then, is what we have decreed by our law:⁸⁰ we have permitted them to receive such a bequest, and abolished the oath. That done, we observe that the other half of the issue has been left on one side: the need to attend also to the soul of the departed. For that, we lay down the present law, as we do not wish decedents' intentions to fall through when they contain nothing unacceptable.

If we were saying that a wife whose husband instructed her not to marry must in all cases observe his instruction, the law would perhaps have a certain harshness; but as it is, her second alternative, should she form the intention to marry, is not to receive the bequest. It would be in the last degree unacceptable to ignore the imperilment of the deceased's wishes so far as to give her freedom both to marry and to receive the bequest, to the everlasting vexation of her former husband.

44

We thus decree that, should anyone forbid his wife to enter on a second marriage, or should a wife do so to her husband – the case is the same for each – and leave a bequest on that condition, the other spouse has the choice of two alternatives: either to enter on the second marriage and renounce acceptance of the bequest, or, if unwilling to do so out of respect for the deceased, to refrain from the subsequent marriage, whatever happens.

1. However, so that the matter should not be left in suspense, and so that a demand for payment should not recur, possibly long afterwards, we have thought it good to set a limit: there is to be no demand for payment of the bequest within a year, in any circumstances, except if priestly office should supervene, and give one or the other of the persons right of acceptance immediately, there no longer being any prospect of marriage.

⁸⁰ I.e. in *Codex* 6.40.

2. Otherwise, in the event that the period of a year should have elapsed, we grant this person acceptance of the bequest, but not unconditionally, even so. Should it consist of immovable property, he is not to receive it without recording a preliminary oath, and putting his own property under a hypothec for the return of what he has received, in the condition in which he received it, together with profits he has derived from it in the interim, if he should enter on a second marriage. That hypothecation is something we grant under this law, even where unstated.

3. In the case of movable property, however, should the person wishing to receive the bequest be well off, he is to be given it on the same security and the same hypothecs. Should it be anything other than money, he is to return it in the state in which he received it, or else make up for the depreciation; . . .

4 . . . and should it be money, he is to repay it, along with any interest he has been able to make on it, this being adjudged on the oath from the person making the repayment. Should he have made use of it other than lending it out, he is to pay interest at one-third of 1 per cent.⁸¹

5. Should he not be very well off, he is also to be required to provide a guarantor. Should he be unable to provide someone to act as guarantor, he is then to receive the bequest under oath and hypothecation, as stated, of all that he does possess; . . .

6. . . . and, immediately on his entry on a second marriage, the person who paid him the bequest is to reclaim it at law, in whosoever possession it turns out to be, it then being regarded as never having been paid him in the first place. That is just what we decree is to be in force in any case of restitution, whether the property to be restored be immovable or movable.

7. Should the bequest be in gold, and he be too poor to give surety and have insufficient creditworthiness for this to be taken on trust, it will remain with the person out of whose inheritance it has been bequeathed, who will pay interest to the beneficiary at four per cent. He will continue to pay this until either the other goes into a second marriage, at which point restitution of the interest-payments will take place, or it becomes clear that it is no longer possible for this person to marry, by reason either of priestly office, in which case he will pay him the bequest, or of death, in which case the man's heirs will receive it unconditionally, without making any restitution, even of the interest that has been paid.

8. We apply the same principle, and the same reasoning, also to any case where it is not the consorts who have made a bequest under this condition,

⁸¹ 'One-third of 1 per cent' = per month, or 4 per cent per annum.

but where it is someone else, an outsider, who has intended either husband or wife to be given something under such a condition. Chance circumstances must, of course, be taken into account according to their own nature, and to the laws applying in those circumstances to payments and repayments.

Those, then, are the provisions of our previous constitutions in regard to the *Julia miscella* that we are altering; their other provisions are to be valid within the limits, and for the cases, that we have explained.

9. If it is part of an institution as heir, or a legacy, the stated securities are to be given to the heirs, substitute heirs or those out of whose inheritance these bequests have been made; if it is a gift *mortis causa*, then in any case to the heirs; should someone have been appointed heir to the whole estate upon such a condition, to the substitute heirs, if any; or else he is anyhow to provide such securities to those called to inherit in intestacy, so that the law shall have its due fulfilment in all respects.

There is an exception: the testator may perhaps actually give his permission, and say that the person to whom he has bequeathed either institution as heir (whether in part or in entirety), or a legacy, *fideicommissum* or gift *mortis causa*, has licence, in fact, to accept the bequest without providing any security. In that case, the deceased's intention must be followed, because our main aim is to observe the legitimate intentions of the deceased.

45

Just above, we were speaking of the safeguarding of property. We are well aware of the constitution on second marriages of Leo⁸² of pious destiny, to the effect that, should a wife who has entered on one be unable to provide security by way of a contract of surety for restoring the property to her children, she is to receive interest at one-third of 1 per cent; but we have put the matter into still better order by introducing, into the rulings on this subject decreed by that constitution, the sub-distinction that it needs.

1. We decree (as stated by us in a previous constitution)⁸³ that when anyone makes an endowment by way of pre-nuptial gift, if it consists entirely of immovable property, the use of it is to remain with a mother who enters on a second marriage. She is not to decline it, but is to accept it without demanding interest-payments on its value from her children; to

⁸² A reference to *Codex* 5.9.6.2.

⁸³ The law referred to is *J. Nov.* 2 c. 4.

take such care of it as the law assigns to the secure possessors of its use; and to keep it, according to law, for her children in their lifetimes. In the event of the death of all of them, under our law the share due in the *casus* of childlessness is to be kept for the mother, and the remainder to the children's heirs.⁸⁴

2. However, should the pre-nuptial gift perhaps be all in money, or other movable property, the mother is to receive the one-third <of 1 per cent> of the interest on the already-legislated security, and is not to ask her children for cash. There is an exception; if her husband's means should be ample, including gold, silver, clothing and anything that was assigned in writing to the mother, we shall in that case grant the mother the right of choice whether to take the property, giving security by way of a contract of surety, or else the stated interest, namely one-third of 1 per cent, in accordance with both previous laws and our own.

3. Should the property consist of a mixture of kinds, with the gift comprising part in money and part in immovable property, the immovable property is anyhow to remain with the mother, as being her means of subsistence, whereas, for the movable property, the same is to apply as we legislated above for a case where the entire pre-nuptial gift in fact comprised movables: the wife is to take care that she does not neglect the immovable property or diminish it, but restores it as she received it.

46

There is then a further point calling for our attention: that of the succession from children that would be received by women who are going to enter on a second marriage. A law on this has already been enacted by us as a rescript to Hermogenes of glorious memory, who was the *magister* of our sacred offices.⁸⁵ It was issued on March 16th in the consulship of the Most Illustrious Belisarius; and by it, we decreed that mothers are to be called to inherit from a child who had left no children, along with the deceased's own brothers, and to have secure ownership as well as the use of it, whether they have entered their second marriage before the inheritance or after it. We repealed thenceforth the laws that contained a declaration to the contrary; and we decree that this legislation of ours should still remain in force, but only for women who have already entered on a second marriage,

⁸⁴ *Casus* = event. For further information about this Latin term, see Avotins (1992), pp. 116–17.

⁸⁵ I.e. *Magister Sacrorum Officiorum* or effective head of the empire's central administration (Haldon (2005), pp. 41–2). On Hermogenes, see *PLREIIIA*, pp. 590–3 (Hermogenes 1). The law referred to is *J. Nov. 2*.

and have been the successors of some of their own children: it is to be secured to them for the future as well, whether the inheritance happens to have come from their child before the marriage or after it. But for women who take a second husband hereafter, the present law is to be the regulating enactment.

Well then, when the child (male or female) dies, the death must be either testate or intestate. We shall start, therefore, by stating what results when there is a will; having done that, we shall go on to the procedure in intestacy.

1. If a child should make a legitimate will leaving his property, or some part of it, to his mother, she is to receive it, as being devised to her – it being our intention that the wishes of decedents should be observed at all points, – and to possess the bequest or gift, both as to ownership and as to use. Just as a son or daughter could make a bequest to any outsider without any detriment arising for the heir from the mother's second marriage, so one who bequeaths either institution as heir, or a legacy, to their mother is to be correct in bequeathing it as to both ownership and use, whether it comprises property that has accrued to him from outsiders or from the patrimony; and siblings have no power to object to that.

2. Should the child die intestate, after his mother has already entered on a second marriage, or if she does so later on, she is then, under our constitution, to be called to his succession in intestacy along with her son's or daughter's siblings, *in capita*, of course.⁸⁶ If she has gone on to a second marriage, irrespectively of whether previously or afterwards, anything that had come down to her child from patrimonial property is to be hers only as to use; but apart from assets of patrimonial succession, under our call (which we shall be stating shortly, as it too needs some modification) she is to come into all the rest of her child's property, which came from outsiders. We mean this for property other than the pre-nuptial gift, as we are leaving intact what has been legislated on that by us, and also by the constitution of Leo⁸⁷ of pious destiny, by which the mother will have only the use, and the revenue from it.

3. This present legislation, which we are handing on for time to come, relates to all the other property that comes to the child, after the pre-nuptial gift, from his father or from other sources, both by will and also by calls in intestacy. On this property as well, the provision against ungrateful children is in all respects to be observed, whenever genuine grounds of

⁸⁶ '*In capita*' = *per capita*, or 'per person'.

⁸⁷ I.e. *Codex* 5.9.6.

ingratitude are shown. All other stated provisions for succession of parents to children, or children to parents, are retained intact.

4. We take ingratitude into consideration here not only in relation to the mother, as we have previously stated, but also in relation to the deceased brother himself; . . .

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. . . but, aware as we are of the frequency with which disputes arise between brothers, the only one to whom we are denying a share in this gain, on grounds of ingratitude to his brother, is anyone who either plots to murder his brother, or brings a criminal prosecution against him, or aims to have him deprived of his property. That one's share is to go to his remaining brothers and his mother.

That is the law to be laid down on successions to children in which the children's successors are their mothers; it introduces a sub-distinction, made by us, concerning women who shall, in time to come, marry a second husband. As for those who have already entered a second marriage and gained the benefit of our said law, they are to be able to possess securely what has come to them by succession from their children, whether by wills or in intestacy, both as to ownership and as to use and revenue; also to alienate it, dispose of it and pass it on in whatever way they wish, without this law ever constituting any obstacle to them.

1. There is another point, decreed in the above-mentioned previous legislation of ours, which is to remain in force for children of a first marriage. Should it turn out that the pre-nuptial gift that has accrued to their mother at her husband's death has come down to the deceased one of her children, and thus formed part of his inheritance, the mother is not, even insofar as she inherits from the child, to enjoy ownership of the property in this pre-nuptial gift, but only the use, and the revenue from it, in her lifetime. Thus this, too, is to count as a free gift to the children of the previous marriage, unless a court order or resolution of dispute between the parties, made prior to the said law, has made a decision on the matter.⁸⁸

2. The effect of the legal opinion⁸⁹ called 'the Tertullian' was that a mother was excluded by a male child, while being admitted jointly with

⁸⁸ The law here re-states *J. Nov. 2.*

⁸⁹ 'Legal opinion' is here used to translate the Greek δόγμα. The reference is to the *senatusconsultum Tertullianum* which allowed a mother to succeed to her children's inheritance if they died intestate, whilst giving preference to the father, the children's children, and agnatic relatives (Berger (1953), p. 699).

her daughters. We are not going into the question of the children's right;⁹⁰ what we have done is to give her by law her rights that are intrinsically *legitima*,⁹¹ by calling her to inherit along with the deceased's male siblings, to an extent proportionate to the number of children there are. She thus has a share equal to that of each of the brothers; if there is a combination of males and females, our direction is just the same. However, in any case where there are only the mother and daughters, the legal opinion then awarded a half-share to the mother, and the remaining half to the sisters, however many there were. As we have not rectified this before, we are now bringing it under due reform, by calling her to inherit, in this case, on the same basis as each of her daughters, so that she gets just as much as each of her daughters has. In any case where this applies, the mother, too, is to come into a *virilis portio*⁹² (the law's wording), whether there are males only, females only, or a combination of both sexes.

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There is still another point that we have deemed it right to add to the law. We have already legislated⁹³ on the procedure to be observed for gains accruing from marriage, on the death of either a husband or a wife with children by both a previous marriage and by a second one, contracted after this law – such being the subject of the present constitution – and we have also decided the shares that parents must leave to their legitimate, and not ungrateful, children. It would, however, be unjust for the parents themselves to incline entirely towards their second family, and leave the earlier children only the legal requirement, while transferring all the rest to the later ones; they should also give the earlier ones something extra. If one of their children by the second marriage, or, as it may be, by the first, should be the object of their particular favour and particular affection, to the extent that they wish to give him pre-eminence over the others in what

⁹⁰ 'The children's right' = the *ius liberorum* which comprised the privileges enjoyed by parents who had several children (Berger (1953), p. 530).

⁹¹ '*Legitima*' = 'lawful'.

⁹² '*Virilis portio*' = a share of an inheritance on intestacy which an heir received in equal measure to other heirs of the same degree of proximity to the deceased (Berger (1953), p. 636). The cumulative effect of the provisions contained in c. 47 is to significantly improve the rights of succession of the mother (a feature of Justinianic law discussed in Krumpholz (1992), pp. 162–204). At the same time, it had the effect of undermining the 'agnatic principle' which had sought to prevent property passing outside of the deceased father's kin by enabling the mother 'to inherit equally with the dead children's brothers and sisters before any agnates' (Arjava (1996), p. 107: see also Humbert (1972), pp. 450–1).

⁹³ A reference to *J. Nov.* 18.

he receives, we give him licence to do so; but they are not totally to diminish the earlier ones and aggrandise the later ones, nor make the comparative increase excessively large, nor totally forget their previous marriage, nor treat as valid what has been stated on such matters by our predecessors. Instead, they are to consider the second family, but also to consider the first, and not express their distinction between their successors, in their wills, without bearing in mind that both are their children. Given that, if they die intestate, the law calls all their children to inherit equally, it is appropriate for them to imitate the law, and not belittle them by excessively large diminutions. Such respect for the law will make them good parents, worthy of our legislation. By merely observing the law, they will be just; but by bequeathing something over and above the law, they will simultaneously be generous parents, as well as being just. We are not referring here to the distinction between dutiful and ungrateful children, as the subject of ungrateful children has already been dealt with more than once, but to that between children more beloved, or less so; the difference between gratitude and the lack of it is quite unlike the difference in honour. On this topic of equality between children of a first marriage and those of a second, we are speaking more as counsellors than as legislators; apart from that, once having raised the minimum share to be left in intestacy to four *unciae* for up to four children, and, for more than four, to a half-share of the entire estate, we have already given the children adequate recompense, and relieved their long-standing predicament to no small degree.

1. Thus the present law is to legislate for the future, as we have frequently said before, with no application to what is in the past. It collects and wraps up into a single sequence, from every quarter, practically the whole topic of second marriages, and enunciates it. It maintains earlier provisions of our predecessors in their own force, while introducing provisions of its own for future second marriages; and brings in assistance, for those who seek it, which is in all respects new, and is precisely defined. All constitutions laid down on such matters will lapse, as far as concerns marriages made after this law of ours, and their consequences; as determined by us, this one constitution will in future serve instead of them all, in the cases that it covers.

Conclusion

Accordingly, your excellency is to instruct these provisions to be made public, in the customary manner, in all the provinces belonging under your command, so that all may know that, despite undergoing greater labour

than we ought to have, considering the abundant cares of sovereignty, we have nevertheless put nothing before their well-being. As a result, they do not need collect up justice from many sources, but may be aware, by seeing the whole of this area of legislation collected into one, of how we have both upheld previous law, made in constitutions already laid down, and applied the proper order for the future.

Copy written for Patricius, Most Illustrious prefect of this fortunate city⁹⁴

Copy written for Basilides, Most Illustrious *magister* of the divine *officia*, ex-prefect, ex-consul, patrician⁹⁵

Copy written for Strategius, Most Illustrious *comes* of the divine *largitiones*, ex-consul, patrician⁹⁶

Copy written for Tribonian,⁹⁷ Most Illustrious *quaestor* for the second time, ex-consul *legi*⁹⁸

Copy written for Germanus, Most Illustrious commander of the divine *praesens*, ex-consul, patrician⁹⁹ *legi*

Copy written for Tzittas, Most Illustrious commander of the divine *praesens*, ex-consul, patrician¹⁰⁰ *legi*

⁹⁴ See *PLREIIB*, p. 972 (Patricius 3).

⁹⁵ I.e. *Magister sacrorum officiorum*: see *PLREIIIA*, pp.172–3 (Basilides). Basilides served on the law commission that produced the first edition of the *Codex*.

⁹⁶ I.e. *Comes Sacrarum Largitionum*: see *PLREIIB*, pp. 1200–1 (Strategius). Strategius was a member of the wealthy and well-connected Apion family from Egypt, whose history and estates are discussed in Sarris (2006), pp. 17–80.

⁹⁷ Tribonian was head of Justinian's law commission that was responsible for much of the work of legal codification. A practising lawyer by background, he was initially appointed *quaestor* in 529. In 532, however, Justinian was obliged to dismiss him from office in response to the demands of the 'Nika' rioters. He was re-appointed as *quaestor* in 535. See *PLREIIB*, pp. 1335–9 (Tribonianus 1) and *J. Edict* 9, note 2. The historian Procopius was openly critical of Tribonian, accusing him of avarice, malfeasance in public office, and sowing legal confusion (*Wars* 1.24.16). According to a source excerpted for the Middle Byzantine *Suda Lexicon*, Tribonian was a pagan who harboured hostility towards Christianity (*Suidas* T 956).

⁹⁸ '*Legi*' = Latin for 'I have read', indicating that the addressees were obliged to witness and attest the master copy.

⁹⁹ Germanus was a nephew of Justin I and first cousin to Justinian: see *PLREII*, pp. 505–7 (Germanus). He and the two following signatories were commanders of mobile detachments of the field army which were originally meant to accompany the emperor (*magistri praesentalis*), i.e. 'in the presence' of the emperor (see Kazhdan (1991) 2, pp. 1266–7, Jones (1964), pp. 124–5 and Treadgold (1995), pp.10–13 and 54–63). By the sixth century, this effectively meant that they were commanders of the troops stationed in the near vicinity of Constantinople.

¹⁰⁰ Tzittas (or Sittas) was a soldier and courtier, probably of Gothic descent, who married Theodora's niece Comito: see *PLREIIB*, pp. 1160–3 (Sittas 1). According to Procopius, he was amongst the finest of the empire's generals and was renowned for his good looks. He died on active military service in Armenia in 538–9 (see Procopius, *Wars* 2.3.25–6).

Copy written for Maxentianus, Most Illustrious commander of the divine *praesens*, ex-consul *legi*

Copy written for Florus, Most Illustrious *comes* of the divine *privata*, ex-consul *legi*¹⁰¹

Accordingly, your excellency is to take note of our decisions, and to publish them in your court to the advocates and the others under your authority, so that cases are decided in accordance with them. You will not, however, post up this divine constitution of ours in public, as what we have communicated on this to the most illustrious prefects of our sacred *praetoria* will suffice.

Law addressed to John, for the second time Most Illustrious prefect of the sacred *praetoria* of the East, ex-consul, patrician.

Given at Constantinople, March 18th, after consulship of the Most Distinguished Belisarius

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¹⁰¹ I. e. *Comes Sacrarum Privatarum* in charge of imperial estates: see *PLREIIIA*, p. 490 (Florus 1).

23 | Appeals, and time-limits within which they are to be made¹

[Latin only]

*Emperor Justinian Augustus to Tribonian, Most Illustrious magister officiorum, quaestor of the sacred Palace*²

Preamble

As we have been applying very numerous remedies for the harshness of earlier laws, and doing so especially on the subject of appeals, we have also thought it necessary at the present time to arrive at the following act of benevolence.

Antiquity had prescribed that any condemned litigant who had been conducting his case in person should have only two days' licence to appeal, although if the case had been aired by a *procurator*,³ that was to be extended to the immediate three-day period. From practical experience, we have found this quite damaging, because a number of people, in ignorance of the finer points of the law, have thought that they had three days in which to lodge their appeals, and have thus fallen into the obvious danger, and lost their cases by the expiry of the two-day period. Hence we have thought it necessary to apply the following appropriate remedy.

1

We decree that all appeals, whether aired in person or by *procuratores*, *defensores*, *curatores* or *tutores*,⁴ can be brought within the space of ten days, to be counted from the delivery of the verdict by the parties concerned, against judges whether they are high or low, that is with the

¹ This law re-states Justinian's wish to limit the flow of legal cases and appeals to Constantinople by re-invigorating provincial courts and providing litigants (and especially litigants in person) with more time for reflection before lodging an appeal. For contemporary criticism of this law (and associated legislation), see *J. Nov.* 20, note 1.

² For Tribonian, see *J. Nov.* 22, note 97 and Honoré (1978).

³ *Procurator* = a representative acting on behalf of the plaintiff or defendant (Berger (1953), p. 653).

⁴ *Defensores* = those acting on behalf of another at a trial (Berger (1953), p. 428); *curatores*, *tutores* = supervisors and guardians. With respect to the nature of their obligations and responsibilities, in Justinianic law, *curatores* and *tutores* were essentially identical (and differed primarily in terms of the age of their wards).

exception of the most sublime praetorian prefecture. Thus, during that time, the person may give the fullest consideration as to whether he should appeal, or acquiesce. This is to avoid the business of appeals piling up, under the pressure of panic; and so that, instead, everyone may have the opportunity for reflection, which can also restrain people's ill-considered hot-headedness.

2

In addition, we decree that for any occasion when it is hoped to bring a lawsuit before our consistory, should it happen that our imperial Majesty is busy on public affairs and cannot summon the senators away from their universal concerns to hear the case, the suit is not thereby to be imperilled.⁵ After all, what fault is it of litigants if our imperial Sublimity is busy? And who has authority so great as to be able to constrain the Sovereign to summon the senators and other courtiers, against his will? Should such be the situation, the case is to remain untouched until the Emperor, at the prompting of his own volition, orders the courtiers to be summonsed, and allows the case to be brought in and everything to proceed normally.

3

Under the third head, we must settle a point well decided by antiquity, but neglected by modernity. The venerable authority of old time ranked judges in such a way that there were some higher, some intermediate and some lower; and appeals from lower judges were to be sent up, not simply to the highest ones, but to the court of judges ranked as *spectabiles*,⁶ so that they could deal with the case themselves at a session of the sacred court. Modernity has abandoned this, with the result that our highest judges are troubled with very minor cases, and that, on very minor cases, people are worn down with heavy expenses, possibly to the extent that the whole sum in litigation does not cover the court costs. We thus decree that if it is

⁵ I.e. when a case is brought before the imperial council or *sacrum consistorium* in Constantinople over which the emperor presided and with respect to which senators and other high functionaries were charged with judicial responsibilities. In certain respects, it was analogous to the British Privy Council (see Berger (1953), p. 408 and Jones (1964), pp. 333–41). The judicial role of senators would be enhanced in 537 by *J. Nov.* 62.

⁶ *Spectabilis* was the second senatorial grade after that of *illustris* and in the sixth century was commonly held by higher-ranking provincial governors, at whose courts Justinian is here attempting to concentrate litigation to prevent it clogging up the higher courts in Constantinople: see *J. Nov.* 20.

hoped to lodge an appeal, valued at up to ten pounds of gold, from the region of Egypt or the adjoining two Libyas, it is not to go to this sovereign city, but to the *augustalis*.⁷ He is to hear and decide the case, in place of the sacred judge; and after his definitive verdict, no appeal is to be lodged against him.⁸ Similarly, whenever such a case comes to light in the diocese of Asiana, or of Pontus, appeals up to the aforesaid value of ten pounds of gold are to be referred to the *spectabiles*, namely *comites*, proconsuls, praetors or moderators, as it may be, to whom we have specifically deputed the conduct of these cases.⁹ Thus they, like the *augustalis*, are to step into the place of the sacred judge,¹⁰ and take on the adjudication of the cases, without the prospect of appeal, but in fear of God and the laws. Likewise, the region of the East is to send the hearing of cases up to a limit of ten pounds of gold, which have been suspended on appeal, to the *spectabilis comes* of the East, who is likewise to give them a hearing and bring them to a conclusion.¹¹

4

Clearly, it is to be observed that judges of *spectabilis* rank are not to send on appeals, in cases of whatever value, to other judges honoured with the same rank of *spectabilis*, as appeals ought to be referred from a lower court to a higher tribunal, not to judges at the same level. Their appeals, of whatever value, as stated, are to be directed to the Most Illustrious prefecture, which is to decide them in conjunction with his excellency, the *quaestor* at that time; and the staffs of both offices are to serve on them, namely that of the *sacra scrinia*, as is customary, but also that of the

⁷ Ten *librae* (or pounds' weight) of gold = 720 *solidi*; *augustalis*: the Augustal Prefect of Alexandria was the senior governor in Egypt and its adjoining territories: see *J. Edict* 13.

⁸ That is to say, they are not to be brought before the imperial court in Constantinople.

⁹ I.e. provincial governors.

¹⁰ 'Step into the place of the sacred judge', i.e. they are to hear the appeal in place of the emperor or the highest imperial court (*vice sacra*: see Berger (1953), p. 519 and, for the earlier history of the procedure, Pergami (2011), pp. 335–48).

¹¹ The effect of this provision is that judgments issued by officials sitting *vice sacra* were not to be subject to appeal (see Van Der Wal (1998), p. 178 (entry 1153)). The law also appears to set at 720 *solidi* the level of value beneath which cases were precluded from being taken to Constantinople (see also *J. Nov.* 103 c. 1). By the date of *J. Edict* 8 (548), that ceiling would once more be lowered to 500 *solidi* (which is also the level of the cap encountered in *J. Nov.* 24 dating from 535). It is possible, however, that in this novel the figures have been played around with by a later editorial hand and that the original cap set by this law in fact stood at 500 *solidi*, which was only raised to 720 in the following year (see Van Der Wal (1998), p. 180, note 95 and *J. Nov.* 24, note 14). Alternatively, this novel may itself date from 536 (see note 14 below).

prefect.¹² To avoid the impression that a case is being wrongly directed, by not proceeding up a step, our decree is subject to the proviso that an appeal within the said value is not to run to judges of the said rank of *spectabilis* from *duces* or other judges of *spectabilis* rank, to whom, even if not office-holders, our imperial Majesty may have deputed the cases, but only from provincial governors, and judges assigned by us, other than *spectabiles*. Should those assigned by us as judges be *illustres*, the rank of whose office exceeds that of *spectabiles*, or *duces*,¹³ who are in any case honoured with the rank of *spectabiles*, or should those who have been deputed by the sovereign have *spectabilis* rank, their appeals, up to whatever value, are to be referred to the competent judges in this sovereign city, in the ancient manner.

All other provisions decreed on appeals, whether of ancient provenance, or by the authority of earlier constitutions, or by our Clemency, are to be preserved intact and unimpaired.

*Given at Constantinople, January 3rd, after consulship of the Most Distinguished Belisarius*¹⁴

535

¹² Cases are to be heard jointly by the Praetorian Prefect and his staff and the *quaestor* and his staff (employed in the chancery bureaux or *sacra scrinia*): this would be modified by *J. Nov.* 20.

¹³ 'Duces' = the heads of military districts or frontier commanders answerable to *magistri militum* (see Southern and Dixon (1996), pp. 58–60).

¹⁴ For the date, see Honoré (1978), p. 57. For the alternative dating of 536, see Lounghis, Blysidu and Lampakes (2005), p. 260 (under entry 1044, citing Gorla (1995), who supports the later date given by S/K).

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

We are convinced that even the ancient Romans could never have built up so great a realm from small, even minimal, beginnings, and from that taken over almost the whole world and set it in order, had they not made their grandeur more evident by means of sending governors of relatively high rank out to the provinces, and equipping them with authority over both arms and laws; and had they not, also, had men who were both competent and trustworthy in each of those spheres. They called them ‘praetors’,² from their marching in front of all the rest of the troops, and drawing them up in battle-order; and they charged them with both the conduct of warfare and the enactment of legislation. Hence, they assigned to their courtrooms the appellation *praetoria*; many a law was issued by the praetor’s voice, and many a praetor held Sicily, the island of Sardinia, Spain or another province, and governed both sea and land.

1

With this in mind, we are restoring antiquity to our realm, in a greater flowering, and are enhancing the grandeur of the Roman

¹ With this law Justinian returns to a series of constitutions building on the provincial reforms initiated by *J. Nov.* 8. These laws are characterised by an attempt to make provincial governors more powerful by concentrating both civil and military responsibility in their hands, and by attempts to justify the reforms in largely spurious antiquarian terms (see Bonini (1976), Maas (1986) and Pazdernik (2005)). Only in frontier territories (such as Syria, parts of Armenia, Palestine and Arabia) were civil and military commands to be kept separate (see Jones (1964), p. 282). The main focus is on the maintenance of law and order, effective tax-collection and the re-invigoration of gubernatorial courts so as to prevent litigation and appeals clogging up the higher courts in Constantinople. Pisidia in southern Anatolia was renowned for the lawlessness of its inhabitants, whose ability to resist the imperial government was facilitated by the region’s intractable and mountainous landscape (see Sarris (2006), p. 212 and, for a useful summary of the history of Pisidia down to the Justinianic period, Belke and Merisch (1990), pp. 71–83).

² From the Latin prefix ‘*prae-*’ (‘in front’). Similar antiquarian discussion of the office of *praetor* and the *praetoria* is to be found in the contemporary *De Magistratibus* of John Lydus (see, for example, *De Magistratibus* 2.6).

name.³ Hitherto, it has been a twofold form of command that has been sent out to the less tractable provinces, with neither being an entirely independent one; and as a result, in some of our provinces in which there was both a civil governor and someone else as military commander, they were constantly in dispute with one another, and constantly battling, not to achieve some benefit for the subjects, but to increase their oppression of them. Seeing this, we have thought it necessary to combine the two commands, civil and military, into a single form; and again to give the holder of this authority the title of *praetor*. Thus, in accordance with the name historically assigned to him, he will both command the troops in his province, and be the defender of the law, which was the other historical function of praetors. He will have the stipends of both offices, and the services of a single staff consisting of one hundred officials, a sufficient complement for it. The office will be known as praetorian, and will be created by means of *probatoriae*⁴ duly issued from here. Given that he will be handling everything with fuller authority, he will thus be impressive, intimidating to bandits and inexorable to criminals. Clean-handedness has already been enjoined on all officials by our recently enacted law; he is to keep his oath in obedience to that, and to govern in accordance with it, making use of the armed forces, as well as administering civil matters in accordance with our laws.⁵ Thus, should one of the Most Illustrious consulars take up the post, that too is on the model of past practice, by which consuls, ex-consuls and praetors, who are only slightly below consuls, took provinces by lot, and thus gradually built up the Roman name, and have made its greatness such as God has granted to no other state at all.

We wish this to begin with the province of Pisidia, as we have found it stated in earlier historians that the whole of that area was previously under the rule of the Pisidian people; and we are sure that this province needs a higher and more powerful governor, as there are very large, heavily populated settlements in it, often actually in revolt against the public taxes. We have found, too, that this governorship includes under its authority the bandit-ridden, murderous regions situated on the mountain ridge called the Wolf's Head, known as the homeland of the

³ For further discussion of such antiquarian motifs in Justinian's reform literature, see Maas (1986) and Pazdernik (2005).

⁴ *Probatoriae* = imperial decrees whereby officials were appointed (see *Codex* 12.59 and Berger (1953), p. 653).

⁵ A reference to *J. Nov.* 8.

‘Wolfheads’;⁶ and that it is campaigning against this area in a hit-and-run sort of style, instead of in proper military fashion.

Once the military and governmental badges of office are combined into one joint command, with the whole body of all the troops in the province behind the commander, as well as the whole civil staff, and with his impressive new title honoured with the name of praetor, who would not quail before him? Who would not be awestruck at the sight of both laws and arms uniting together, thus presenting them with the choice of either to comply with the laws, and so have nothing to fear, and survive; or to drop dead outright after just one opposing glance, now that laws are closely supported by arms?

2

The man taking up this post – and we are conferring it on him without charge, absolutely without any payment at all, ever, so that he too is to remain absolutely unbribable, and content solely with what he receives from the public treasury, as stated by our first law – must treat the subjects in the way we directed in the earlier law: justly, cleanly, and with a combination of effectiveness and benevolence. He is to banish from the province murders, adulteries, abductions of virgins, and all crime; to punish those who commit such wrongdoings, in accordance with our laws; to be unabashed by any offender, even should he be one of the grandees; and not to truckle to those who can be of no use to him whatever, but can only offer occasions for impiety. He is to uphold justice throughout, with regard to our laws, and to try cases in accordance with them; and he is to cause our subjects to live and behave in accordance with them. He is to look to God, and to fear of us, with nothing else in mind at all. In this way, there will not be great numbers of people coming here and troubling us with minor cases; to forestall that, he will first be hearing and deciding them himself. Mindful of the dignity we have given him, he will discharge his office in such a way that his tenure of it is irreproachable, in the awareness that he will have us to contend with afterwards, should anyone in fact not receive his rights after bringing a case before him, but be

⁶ Greek ‘Λύκου Κεφαλή’, and ‘Λυκοκράνται’. Procopius records that the nickname was derived from the shape of the mountain range rather than the physiognomy of the inhabitants (see Procopius, *Wars* 7.27.20). These names are not mentioned in Strabo’s section on Pisidia (*Geographica* 12.7), although he does remark that whilst the southern ridges of the Taurus range were largely bandit-ridden, they also contained a very fertile area of olive-culture and pasture able to support a population of tens of thousands.

compelled to bring the matter to us. Just as we have honoured him by enhancing his office, so, should we find him using what has been conferred on him in a way that is unworthy of our aim – if we should by any chance find him thieving, being swayed by favour or dislike, or contravening our laws – we shall come down on him appropriately, in service to God and in defence of our laws. It is because we desire to set the subject population back on their feet, and to rectify what has hitherto been wrong, that we have also thought it necessary to look to this constitution, regardless of heavy expenditure.

3

Nor are his responsibilities confined to what we have stated above. He must also take care that the cities' supplies are adequate, and that the citizens have no shortages; to superintend the cities' public works, not letting them deteriorate in this respect, but making a point of having aqueducts, bridges, walls and streets repaired; and not to permit tax-agents,⁷ on their visitations there, to burden our subjects in any way, or make all these requisitions that have been going on for wall-building, street-surfacing or innumerable other purposes, on orders emanating from your excellency's offices, a dishonest practice. He will not permit anyone to treat our subjects unjustly for any of these purposes, or anything else like that; and no authorisation to any such effect will be issued by your excellency's high offices; that is something that we have already barred.

He will have sole care of everything; but if we, by a divine pragmatic directive of ours, should appoint an emissary whom we may possibly send out to your area of command, he, and no-one else, will conduct the special investigation approved by us, as there will be no licence for anyone else at all to plunder the subject population. Our purpose is to see our provinces fully re-populated, in proud possession of its own citizens, instead of there being a mass of people streaming over here who do not have the courage to return to their own country, because of the malpractice of the authorities.

To that end, accordingly, we decree that your excellency is no longer to keep separate the commands in the province of Pisidia. There is to be a single post in it, the governorship of the Admirable *praetor*, and it is to be both a military one and a civil one, combining civil responsibility for public affairs equally with command of the troops, likewise. Thus, in mutual support, the government will have the strength of armed force, and the

⁷ 'Tax-agents' (Greek *πρακτωρες*) = officials of the praetorian prefecture.

armed forces will take pride in the law. From now on, with a man in authority whom we have deemed fit for both spheres of command, there will no longer be unrest in the cities.

4

Accordingly, we are ordering that all moneys that the public treasury had been providing are to be paid to the Admirable *praetor* and his staff, in accordance with the schedule attached to this divine law. We also desire him to be given the additional appellation of our own divine name: the person taking up the governorship of Pisidia is to be *praetor Justinianus*.⁸ Under him is to be the praetorian staff, created, as we have just said, by *probatoriae*, and dealing with both civil and military personnel and business alike.

Another matter that will regard the holder of this office, and his staff, is the collection of taxes. He will have all the insignia of office that he already has, of silver chair, axe and rods; and he will in addition have an *ad responsum*⁹ for the army, although we are also conferring on him, by virtue of his office, command of the troops in this province, to organise them, deploy them and train them for action against bandits, as well as for keeping our subjects submissive, and well-behaved towards each other. He is not to permit the cities to riot, nor the outlying population to defy the public treasury. He is to have full powers over all, absolutely without exception.

This post is to be classed as another intermediate one, enrolled among the office-holders of Admirable rank.¹⁰ Thus, whatever pertains to the former *vicarii*,¹¹ now the Justinianic *comites*¹² of Phrygia Pacatiana and the First Galatia, to the Admirable *comes* of the East, and to the Admirable proconsuls, is also to apply to the holder of this post; he is to be an Admirable governor, and appeals from him are to be sent here for trial, as with the other Admirable governors, and be brought to the court of the

⁸ Justinian's penchant for naming institutions after himself is criticised by Procopius in the *Secret History* (see *Anecdota* 11.2).

⁹ I.e. he will be provided with all the traditional accoutrements of gubernatorial office as well as a military *ad responsum*: a military aide de camp or liaison officer assisting the governor in carrying out his orders (see *J. Edict* 8 c. 3), or with the execution of writs and judgments (Jones (1964), p. 488; Avotins (1992), pp. 5–7).

¹⁰ I.e. he will be of *spectabilis* rank (Greek περιβλεπτος) – the second grade of senator after *illustris*.

¹¹ *Vicarii*; = 'deputies'. The term was used of the heads of dioceses and governors who served under (and thus deputised for) the Praetorian Prefect.

¹² *Comites* = 'counts' or military commanders or governors.

Most Illustrious prefects, with the Most Illustrious *quaestor* of our divine Palace hearing the case jointly, as well. This is because, although the post did always also have a military side, it has been entirely re-organised into the regular form, and must necessarily have the prevailing rank that is still reserved to Admirable governors, by the custom prevailing from the past.¹³

5

By a divine constitution recently enacted, we legislated that appeal cases up to five hundred *solidi* are to be tried under Admirable judges,¹⁴ in place of the divine courtroom.¹⁵ Consequently, we decree that in any such case arising, but only in Pisidia, should the judge assigned by delegation from us, or from any of our Most Illustrious magistrates, not be of Admirable rank, the appeal is not to go to the Admirable Justinianic *comes* of Phrygia Pacatiana, as under our recent legislation. Instead, an appeal from his province is to be referred to the governor himself, and he is to hear it in person, in the manner of the divine courtroom;¹⁶ this is a further way in which we are enhancing the importance of the post. We decree that the ruling that he hands down on it is to be definitive, without referral to this fortunate city, so that the parties in the case do not suffer serious disruptions and costs over unimportant issues.

6

So that those who take up the post of *praetor*, and the other posts that we have devised, and will devise, may also be aware of how they are to administer their posts, we have decided that we shall not merely provide them with their warrants of office, in what are called their *codicilli*,¹⁷ but shall also include a document on how they should exercise their authority, which is what our predecessors as lawgivers

¹³ I.e. he is to have the same judicial authority as other governors bearing the rank of *spectabilis*.

¹⁴ Either the constitution referred to appears to have been lost, or what is meant here is *J. Nov.* 23. The form in which we currently have that law, however, sets the figure concerned at 720 *solidi* (which is also the figure recorded in *J. Nov.* 103). By the time of *J. Edict* 8 (548) the ceiling had once more been lowered to 500 *solidi*: see *J. Nov.* 23, note 11 and discussion in Van Der Wal (1998), p. 180, note 95.

¹⁵ 'In place of the divine courtroom' = sitting *vice sacra* (i.e. in place of the emperor or the highest courts of appeal in Constantinople: see Van Der Wal (1998), p. 180 (entry 1169)).

¹⁶ 'In the manner of the divine courtroom': i.e. he will act with power delegated from the highest appeal court or the emperor in Constantinople (as with note 15).

¹⁷ '*Codicilli*' ('codicils') = 'warrants', or a diploma of appointment (Berger (1953), p. 393).

called *mandata principis*.¹⁸ They may thus regard this as a standard by which to administer their own post, to the consequent general benefit of our subjects. For this purpose, we have directed that such divine *mandata* are to be deposited in our divine *laterculum*,¹⁹ for issue to office-holders at the same time as their warrants; they are then to take the oath that we have prescribed in our divine constitution, and are to discharge all the rest of their duties in the manner we have directed. A transcript will also be subjoined by us to this divine law, showing the dues payable by the appointee, in respect of his warrants of office, to the divine *laterculum* and the court of the Most Illustrious prefect, respectively; and also what he himself, his assessor and his staff are paid. In this way the care we take over positions of authority will become clear to all, and he will make his own service to us clean, and universally approved.

1. Perusal of our divine constitutions will reveal this law to all, as we have ordered it to be added to them; and you will yourself put it into effect, so that it may continue for ever to be conspicuously discernible in actual results.

Given at Constantinople, May 18th, consulship of the Most Distinguished Belisarius

535

To be paid to the praetor of Pisidia, as under:

for him personally, for <i>annonae, capita</i> ²⁰ and other remuneration	300 <i>solidi</i>
for his assessor	72 <i>solidi</i>
for his staff	2 lb gold

To be paid by him, for warrants, as under:²¹

¹⁸ '*Mandata principis*' (or *principum*) = instructions issued by the emperor to high-ranking officials (especially governors) on how they are to perform their duties (Berger (1953), p. 575); see *J. Nov.* 17.

¹⁹ *Laterculum* = the public register of officials and officers. It clearly possessed the character of an archive (see Berger (1953), p. 537). The oath referred to is that recorded in *J. Nov.* 8.

²⁰ I.e. for remuneration in the form of stipend and fodder allowance for mounts (see *J. Nov.* 8, note 15). The Latin version of the *Authenticum* credits the *praetor* with 800 *solidi*, which would be more in keeping with the rate of gubernatorial pay in *J. Nov.* 25 (725 *solidi*).

²¹ Here, as elsewhere, the governor is effectively obliged to make a contribution to the administrative costs of his appointment.

to the three Admirable chartularies of the divine bedchamber	9 <i>solidi</i>
to the <i>primicerius</i> of the Most Illustrious notary tribunes, and to the <i>laterculenses</i> ²²	24 <i>solidi</i>
to his assistant	3 <i>solidi</i>
to the staff of the Most Illustrious prefects, for letters of instruction and every other cause	40 <i>solidi</i>

²² The *primicerius* of the notaries was in charge of the *laterculum* which recorded all major public appointments and had responsibility for its staff of *laterculenses* (see Jones (1964), pp. 574–5).

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

We have thought it just to enhance the province of Lycaonia with a higher-ranking governor than at present, in view of the earliest origins of its foundation, handed down and described to us by historians of antiquity; and also because of its close kinship with Rome, and the very similar circumstances of its settlement.² The fact is that Lycaon, formerly king of Arcadia, in Greece, also came to live in the land of the Romans; and it was his annexation of the people formerly called Oenotri that formed the prelude to Rome's hegemony – these events to which we are referring being far further back than the times of Aeneas and Romulus. He sent out a colony to these parts, for which he took away part of Pisidia, and gave that region his own name, calling it Lycaonia after himself. It would accordingly be just to enhance it, also, with a post designated with ancient Roman marks of rank, and to combine the posts of its present governors, that is to say the civil governor and military commander, into a joint one, adorning that with the distinguished appellation of 'praetor' – this being a traditional title for the Roman office, and one which was actually in use in the great city of Rome even before that of consul, because the ancient Romans used to call their generals praetors; they gave them command of armies, and obeyed the laws laid down by them.³ As an office, it was a blend of both

¹ To the south of Galatia, to the west of Cappadocia, and to the north of the Taurus Mountains, Lycaonia comprised an extensive part of the interior of Asia Minor (for its geography, climate and history down to the Justinianic period, see Belke (1984), pp. 43–58). Justinian's reform of the administration of the province (the inhabitants of which he represents as both tax-shy and violent) conforms to the principles set out with respect to Pisidia in *J. Nov.* 24. Importantly, the Conclusion to this law records that Justinian had ordered it to be included in a volume (βιβλίον) of imperial constitutions, indicating the existence in Constantinople of a formally archived and collected copy of the emperor's post-codificatory novels.

² The preface to this novel provides another classic example of Justinian's strategy of attempting to justify reform with reference to largely spurious antiquarian details and historical claims (see Maas (1986)).

³ See discussion of the military origin of the praetorship in John Lydus, *De Magistratibus* 2.6.

aspects: it carried within itself, and displayed, both strength in battle-formations and good government in laws.

1

As it is our aim, in this case also, to bring the two posts together into one, there is good reason for us also to give it the appellation of praetor, so that those who hear the title can have imprinted on their consciousness, simultaneously with the title of praetor, its nature and composition, as being a combination of two functions, rather than its being a single one with only a sole end in view, either military or legal. On its military side, it is forceful and strong, whereas through the law it is kindly and gentle; thus its behaviour can easily be more forcible towards offenders, but more judicial and restrained towards the law-abiding. And there is more to this action of ours than a mere concern with the title: we are matching the powers of the offices to their function.

The area is one of strong men. It lies inland, directly adjacent to Isauria; being level, it is good horse country, and supports numerous men and horses, with a large number of big villages, and of men who are good riders and archers. They are quick to stand up against over-harsh policies, and readily take up arms, while perhaps heedless of military authority, their society being one that claims civilian status, subject only to civil authorities; yet that, again, they tend to despise, because something that concerns itself with law alone, and has no enforcement arm associated with it, is not so formidable to the bolder spirits. This is what has prompted us to make this post also into a single one, as we did in Pisidia, and to give it, too, the title of praetor, with the addition of our own name: we wish the holder to be called *praetor Justinianus* of Lycaonia, as for the other one, in Pisidia. We are bringing the two staffs together into one, as well, under the control of the civil and military governor; and we are giving this one, as well, the title of praetorian. It is to be formed in the customary manner, by an issue of *probatoriae* from the sacred *scrinium libellorum* here, from which the holders of the office of *dux* used previously to receive theirs.⁴ We are setting its numbers at one hundred members. We are paying him, and his assessor and the rest, the stipends of both posts, as we shall publish by the schedules subjoined to this divine constitution of ours. He is also to

⁴ The *sacrum scrinium libellorum* was an office of the imperial chancery with responsibility for responding to petitions (Berger (1953), p. 692). Here, it is charged with the drafting of letters of appointment (*probatoriae*). ‘*Duces*’ = commanders of a military district (see Kazhdan (1991) 1, p. 659).

have an *ad responsum*⁵ for military organisation, even though we are decreeing that he personally is to have overall command of the soldiers stationed in the said province, as well.

2

To take up this post we shall be sending one of those on our list of office-holders approved by us. It was from them, in antiquity too, that the praetors used to come, and to enhance the state by their personal efforts, sometimes remaining on Italian soil, and sometimes being sent to regions abroad. Such a person is at all times to remember who he is, and from whom his appointment to office has come. With his increased freedom of action in every sphere, he is to inspire respect in the subjects, and terror in bandits and criminals. He will, of course, keep his hands clean, both because he is taking up the office without payment, and, in particular, because of our recently enacted law⁶ that clearly commands holders of all the offices listed on it to keep their hands under control – which is what they swear to do –, to try cases according to our laws, and to impart equity and justice to the subjects. That is how the ancient Romans enhanced their republic, and came to rule every other state. Who would not simultaneously be awed, and quail, before this office, on seeing it fortified by its double conformation, dispensing the provisions of the law with ease, and correcting any transgression of it with the greatest ease, by force of arms?

1. We have thought it right to give the same briefing to the person taking up this post as we did to the praetor of Pisidia, in the law enacted about him: that, just as he is taking it up entirely without payment, so he must be entirely incorruptible, and content with what the public treasury pays him, as detailed in the already enacted law on offices. He must handle affairs cleanly and justly; just as the responsibilities of his post are a mixture, so his character must be a blend of elements, and his utterances at one time sharper and more vehement, and at another gentler and more relaxed.

2. He is to abhor, and with that to punish, all cases of adultery, still more of murder and, more strongly yet, of abduction of virgins. On any criminals whose disorder is incurable he must visit the ultimate penalty; if it is

⁵ *Ad responsum*: a military aide de camp or liaison officer assisting the governor in carrying out his orders (see *Edict* 8 c. 3), or with the execution of writs and judgments (Jones (1964), p. 488; Avotins (1992), pp. 5–7).

⁶ A reference to *J. Nov.* 8 and *J. Nov.* 17.

not so serious, he must reform them.⁷ He is not to falter before any offender, even should he be wealthy and the possessor of some considerable standing; our purpose in sending him out, as a member of one of our more distinguished classes, is so that, by virtue of that fact, he will have the ability to pay no regard to anything but ourselves and the laws, judging in accordance with those, and bringing the subject population into the habit of living by them.

3

He must be neither negligent nor unjust, so that people will not be giving us constant trouble by deserting the province under his governance because of its lawlessness. To forestall that, he is to hear suits in person and pass judgment on them, being ever mindful of the honour we have conferred on him, and discharging the burdens of his office in such a way as to win praise for an irreproachable tenure of it. He is to be clearly aware that if anyone should come to us without having put his grievances before him, to try if he can obtain his rights, we shall return that person to him with no response; but if that person should have come running over here having brought his case, but then not received his rights, we shall from then on be judging not that person, but the office-holder himself. Just as we have made his prestige higher, so we shall come down on him correspondingly hard, in defence of our laws, if we should find him remiss, and careless in the discharge of what he has been given to do; and just as he shows no compunction for our words, our laws, or the status of his office, so we shall show no compunction for him, but will treat him in the same manner as he will be conducting his office's business. Whether we catch him with his hands dirty, or paying regard to some personal feeling, or contravening our laws, we shall apply to him the corrective processes of the law; we have spared no expense, or anything else at all, in our purpose of preserving the subject population.

4

He must also see to there being good order in the cities. First, he must rid the cities under him of any unrest, by maintaining fairness at all points, and by taking every care that the subjects should not lack anything.

⁷ For discussion of Justinian's representation of the 'pathology of crime' in this and other novels, see Hillner (2015), p. 101.

1. He is also not to neglect the cities' public works, so that there is no deterioration from that cause in aqueducts, bridge-crossings, the soundness of walls, or the maintenance of roads. He must keep them all in repair, or else inform us, so that he can carry out some of the repairs out of our revenues, as well as some out of the cities' own.

2. He is also to ensure that tax-agents⁸ arriving there, from officials here, have no licence to inflict any excessive charges or burdens on our subjects, nor those customary requisitions that have in the past been issued by your high offices – to the ruin of people of only modest livelihoods –, with their demands now for repairs to walls, now for road maintenance, now for restoration of statues, bridges, docks and aqueducts, and even for expropriation of public spaces, demolition of buildings as having been put up where they should not have been, and for other things still more liable to lead to extortion. He will see to this in person, at no excessive charge. However, if we decide that this needs still closer supervision, we shall make use of a divine pragmatic directive, which we shall send to your honour, should we so decide, and by it empower someone else to conduct this investigation.

This is how the subject population will at last have a respite; this is how the cities will flourish again, and their populations will grow to their greatest possible extent. They will not be running away from their homelands as if they were the most terrifying places, and avoiding life in their own homes because of their governors' wickedness.

5

Thus your excellency is to know that this office is henceforth to be a single one, not two-fold. Accordingly, you will pay to its holder, his entourage and, of course, his staff, all that the public treasury was hitherto paying to each of the two office-holders, in accordance with the schedule attached to this divine law of ours, just as it was being paid hitherto.

1. Another responsibility of his, and of the praetorian officials under him, will be the collection of the taxes. He will have the insignia of both offices, and even though he is, admittedly, a military officer, he will take his seat on a silver chair, an axe will go in front of him – also a symbol of consular office –, and he will likewise be ceremonially preceded by the *fascēs*.⁹ The whole military force stationed in the province will be at his

⁸ 'Tax-agents': officials sent out by the praetorian prefecture.

⁹ These bundles consisting of rods round an axe were the traditional symbols of consular and gubernatorial authority (see Schäffer (1989)).

service, with the duty of cutting out banditry, defending victims of crime, and ensuring good behaviour from our subjects in relation to each other; . . .

2. . . . nor will he permit the villagers, either, to be non-compliant over their tax-payments.

This will be another post ranked among the Admirables, even should its occupant possibly be of higher status.¹⁰ The rank of those who will be taking up this command will be whatever we judge suited to the post; but, as to the post itself, it is appropriate for it to be counted with the Admirables such as the proconsuls, and the *comites*¹¹ of the East, Galatia and Phrygia.

3. Thus he will also hear financial and criminal cases in his province, and those on issues of free status, just as is allowed in all provinces. Appeals arising from responses of his will be tried, according to the long-standing custom prevailing for Admirable judges, by the Most Illustrious prefect of our sacred *praetoria* and the Most Illustrious quaestor, in the traditional way; this is because the post has now become more of a civil one, thanks to its involvement with the law, which we desire to be paramount even over the armed forces.

6

By our recently enacted law,¹² any case in his province that does not exceed five hundred *solidi* in value, and is afterwards subject to appeal from the judge, will be heard, if it has been passed on to someone not bearing the rank of Admirable (whether by delegation from us, or from one of our Most Illustrious judges), by himself, not by the governor of Phrygia Pacatiana, as we had previously legislated; this is for the reasons we have given earlier, in our recently enacted law on cases that go to appeal.¹³ Another mark of his distinction will be that he, too, will have rights of divine audience, and will be giving the final verdict on the case, which will no longer be sent here, as formerly;¹⁴ this is so that the case does not give rise to heavy costs for our subjects over small matters.

¹⁰ I.e. the holder will carry the rank of *spectabilis* even if he personally enjoys the higher senatorial rank of *illustris*.

¹¹ 'Comites' = 'counts'. It is used here as a military title for governors.

¹² See *J. Nov.* 24, note 14 and Van Der Wal (1998), p. 180, note 95.

¹³ *J. Nov.* 20.

¹⁴ 'Divine audience', i.e. he will sit *vice sacra* or in place of the emperor, thus representing the highest courts of appeal in Constantinople (see Van Der Wal (1998), p. 180 (entry 1169) and notes 94 and 95).

We shall be making all this clear to him ourselves, as our Majesty has taken great care to provide the holder not just with his warrants of the kind issued to Admirable office-holders, in what are called their *codicilli*, but also with instructions from the Sovereign, called *mandata principis* by earlier sovereigns and law-givers. We have drawn these up, and ordered them to be deposited in our divine *laterculum*,¹⁵ so that they can always be given out from there to officials, along with their codicils: one document is to give them their office, and the other is to regulate its conduct. From the transcript subjoined to this divine law of ours, it will be clear what dues he is to pay on appointment in respect of his warrants, and also what salaries are to be paid to him, his assessor and his staff.

Should you find any governors of provinces neighbouring theirs being negligent over the tax, you are not to send anyone else, but are yourself to trouble the *spectabiles* governors to put pressure on their neighbouring governors, should they be negligent, and causing them to bring in the taxes, without fail.

Conclusion

We have caused the present law to be deposited in the book of our divine constitutions.¹⁶ On receiving it, carry out all your duties in accordance with it, so that it ensures everlasting commemoration of the boon we have conferred.

Given at Constantinople, May 18th, consulship of the Most Distinguished Belisarius 535

To be paid to the *praetor* of Lycaonia, as under:

for him personally, for <i>annonae, capita</i> ¹⁷ and other remuneration	300 <i>solidi</i>
for his assessor	72 <i>solidi</i>
for his staff	2 lb gold

¹⁵ The *laterculum* was the ‘official register of all public offices and officers’ (Berger (1953), p. 537).

¹⁶ Indicating the existence of a formal and archivalised collection of Justinian’s post-codificatory legislation.

¹⁷ Stipend and fodder allowance for mounts given by way of remuneration (see *J. Nov.* 8, note 15).

To be paid by him, for warrants, as under:

to the three Admirable chartularies of the divine bedchamber	9 <i>solidi</i>
to the <i>primicerius</i> of the Most Illustrious notary tribunes, and to the <i>laterculenses</i> ¹⁸	24 <i>solidi</i>
to his assistant	3 <i>solidi</i>
to the office of our Most Illustrious prefects, for letters of instruction and every other cause	40 <i>solidi</i>

¹⁸ See discussion in *J. Nov.* 24.

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

It is an admitted fact that any mention of the province of Thrace is at once accompanied by some talk of its courage, its vast forces, and its preoccupation with wars and battles, those being its native, traditional characteristics.² We have thus had it in mind – not for the first time – to set that region’s affairs in order; and it is on the basis of those deliberations that we are now making the present law.³

As we all know, there are two persons, known as *vicarii*,⁴ in position at the Long Walls, one in command of the military units, there being

¹ This law shares the main concerns of Justinian’s other provincial legislation. It aims to enhance the effectiveness of the administration of Thrace by abolishing the diocesan vicariate and combining civil and military officials under a single command and limit the flow of litigation to Constantinople. For further discussion of this law, see Sarantis (2016), pp. 139–42 and Kelly (2004), p. 72.

² One almost senses here that the emperor is tiring of his own antiquarian and ethnographic rhetoric.

³ Thrace was highly vulnerable to attack from the barbarians from beyond the Danube and the Pontic steppe, meaning that society there necessarily possessed a highly militarised character. From an imperial perspective, by the sixth century much of it had effectively come to represent a *cordon sanitaire*, maintained as such to protect the land approaches to Constantinople (which were home to a dense network of suburban estates and villas). At the time this law was issued, the main military threats to Thrace were posed, on the one hand, by comparatively primitively organised bands of Slav raiders and, on the other, by former subject peoples of the Huns adept in cavalry warfare and horseback archery (see Sarris (2011a), pp. 170–82, Curta (2006), pp. 39–69 and Sarantis (2016), p. 141). For the geography, climate and history of Thrace down to the Justinianic period, see especially Soustal (1991), pp. 53–73.

⁴ The Latin title *vicarii* (meaning ‘deputies’) appears in a Hellenised form. The ‘Long Walls’ (also known in scholarship as the ‘Anastasian walls’) were an additional level of fortification provided for Constantinople in the late fifth century built beyond the Theodosian walls that were the city’s main defence on the European side. These walls originally stretched some 56 km from the Black Sea coast to the Sea of Marmara, and enclosed a substantial area that included many of the aqueducts on which the city depended for its water-supply (see Crow (2007) and (2012)). Defending the ‘Long Walls’ (and hence the city’s water-supply), and maintaining them as potential forward base for attack against the barbarians were to be the praetor’s chief strategic concerns (see Sarantis (2016), pp. 139–41). Repairs to the ‘Long Walls’ under Justinian are recorded by Procopius (*de Aedificiis* 4.9.9–11).

numerous forces in that area, and the other in charge of civil affairs. The function of this pair is to discharge, in one case, the office of the Most Illustrious prefects, and in the other, that of the most gallant generals;⁵ but they are never in agreement with each other. While the public treasury pays both of them their stipends and the rest of their remuneration, they have just one perpetual, endless activity, which is quarrelling with each other everlastingly.⁶

1

We have thus decided that it is right to take, here, the same action as we have taken in other provinces – albeit less war-like ones, and less in need of a military garrison – by combining these two posts into one, so that there will no longer be one for civil affairs and one solely for the military, but setting up, instead, a single post in the area. This is to be an impressive one, which commands respect, and which will simultaneously see to civil affairs there and have a similar responsibility for military discipline, as well. This is because the provincial governor is in other areas, and it is all he can do to manage those; . . .

1. . . . whereas the guarding of these walls, and the administration of these areas, both as to civil order and as to military leadership, requires a good man, capable both of keeping military discipline and of presiding over the laws.

Whatever, then, would be the apt title from antiquity for us to give this man? What fitting appellation could we choose for its relevance to one who holds this post? Is it not immediately obvious that he, too, will be called ‘*praetor*’, and take in addition the appellation of our Piety,⁷ in just the same way as both the governor of Pisidia and the prefect of Lycaonia owe to us both their creation and their title? Given that a Roman praetor held this office as simultaneously both general and lawgiver in his province, there is no question but that *praetor* would be the aptest name for the title of this office: he will both command a large body of troops, and have under him a considerable number of civilians, for whom he will be giving judgments

⁵ ‘Generals’ (Greek στρατηγοί) = *magistri militum* or supreme regional commanders. One *magister militum* was appointed to oversee affairs in Thrace (the *magister militum per Thraciam*). See Lee (2005), p. 117 and Treadgold (1995), pp. 152–3.

⁶ Such tension and lack of harmony between the civil and military branches of the imperial administration is a common theme of Justinian’s provincial legislation, which here, as elsewhere, the emperor attempts to resolve by bringing all the officials under a single command. See Jones (1964), p. 282.

⁷ ‘Our Piety’, i.e. Justinian’s own name.

under our laws. There certainly is a need in those parts for a man good at both civil administration and warfare. In the past there were always some military men of very high ranks, who, as well as leading the forces in their area, also acted in the interests of the population as a whole; there were also some who were civilians, not soldiers at all, but who still, in fact, did both.* Barbarian incursions call for strong countermeasures, and the man entrusted with action against them must be one able to command in concert with the law itself. There is a great difference between order and disorder; and it is clear to all that the military alone, and on its own, will be unacceptably brash, whereas the civil side, if not combined with the military, will be inadequate for what is needed. It is the combination of the two that makes a perfectly self-sufficient whole, able to deal with war and peace alike.

* To make the sense required for this seems impossible without assuming emendation on some such palaeographically unwarranted lines as
 <καὶ> εἰ καὶ μὴ στρατιώται τινες, ἰδιῶται δὲ, <ἀμφοτέρα ποιοῦντες>
 ἐτύγχανον ὁμῶς [S/K, p. 204, lines 24–5].

2

So then these posts, too, are to be combined, and this governor is to be known as *praetor Justinianus* in Thrace'. He will have insignia from us, and *codicilli*⁸ issued from here, in the same way as for the other Admirable⁹ office-holders, and he will also have certain instructions from the Sovereignty, as guidance on the manner in which he will conduct his office. Our predecessors called these *mandata principis*;¹⁰ it was with them that the allotted office-holders departed for their province, and from them that they received their instructions. This worked well: praetors were able to win distinction in many provinces of our realm, particularly in the west, and from there Rome went on to conquer practically the whole of the north, and most of the south and east.

Now the contents of our law on officials, referred to above, and all that we have had to say about the praetors of Pisidia and Lycaonia – to the effect that they are appointed from here, without payment, and that their dealings with our subjects must also be without payment – are public knowledge everywhere by this time: the law has recently gone out to the whole of

⁸ *Codicilli* = 'warrants'.

⁹ 'Admirable' = of the rank of *spectabilis*.

¹⁰ *Mandata principis*: see *J. Nov.* 17.

the subject population, and has by now become very well known to everyone. It includes an oath, by which those taking up our offices are to make a fitting consecration of their souls to God, and to safeguard our subjects in equity and justice, free from all profiteering, antagonism and favouritism.

1. The civil servants serving him will not exceed one hundred.¹¹ He will have the insignia of civil power, and he will have that of military command; and, though an *ad responsum*¹² will also be available to him for the forces stationed there, he will have licence to issue their orders, and with them to take and carry through actions in the interest of the realm.

2. The collection of public taxes in those areas will look to him and his staff; that will, as a whole, be known as praetorian, enrolled by *probatoriae* issued from the sacred *scrinium epistolarum*¹³ here, from which the hitherto vicarian office used also to receive its warrants.

3

He will take care, firstly, to keep his hands clean of bribes; and secondly to maintain complete equity for our subjects in both private and public affairs, and also in their business dealings with each other, as well as in court cases, so as to banish all civil disorder. Further, he will constantly be improving the quality and keenness of the troops, by means of exercises in combat training; and will be using the law to keep the civilians in order, making them law-abiding, and free of all wrongdoing; they will be gaining in rectitude, and the soldiers in courage. Any military sortie in wartime will thus be very easily executed, as each staff is available, the one fulfilling all the duties appropriate to civil servants, and the forces being prompt in warding off enemy attacks.

1. He must also hear and judge properly, in accordance with our laws and unswayed by any feeling, all cases, whether they have regard to financial matters, prosecutions, or anything else whatever, in such a way that no-one runs off from there to trouble our Majesty; we do not wish our taxpayers to abandon their province, and come running here, because of having been ignored by their provincial authorities.¹⁴ Should we be going

¹¹ 'Civil servants' (Greek ταξέωται) = *cohortales*. See *J. Nov.* 6, note 6.

¹² '*Ad responsum*': a military aide de camp or liaison officer assisting the governor in carrying out his orders (see *Edict* 8 c. 3), or with the execution of writs and judgments (Jones (1964), p. 488; Avotins (1992), pp. 5–7).

¹³ I.e. letters of appointment (*probatoriae*) will be issued by the *sacrum scrinium epistolarum* which was the office responsible for issuing dispatches.

¹⁴ The emperor repeats his concern to limit appeals and recourse to the courts in Constantinople.

to be troubled subsequently by people coming from there, we shall most certainly enquire of the injured parties whether they have in fact lodged a complaint before the office-holder. Should we find that they have not taken action, we shall return them to their province, comprehensively chastised; if, however, they have taken action, but the office-holder has been remiss, or for some other disreputable reason has disregarded the law, we shall in that case turn all the legal action against him. The salary we have given him is a higher one, comprising, as it does, that of both offices, and there is such a large number of people we have put under him; thus, should we learn that his behaviour is unworthy of his position, we shall make no concession, and the punishment we mete out will be no mild one: the severity of our chastisement, if he transgresses our laws in any way, will be in proportion to the height to which we are raising him, on condition of his good behaviour. He must not defer to anyone at all, no matter how grand or how vastly rich. Our purpose in entrusting such offices to people of higher status is so that they should not readily give in to people who wish to use their wealth for criminal ends.

4

He will also see to all the public works there, not permitting docks, walls, bridges, roads or anything else to decay. He is himself to provide for their repair from civic revenues, as far as possible, and to inform us of anything needing attention beyond that;¹⁵ also for the keeping of accounts, in accordance with that specific provision in our legislation. We do not wish people to be sent out any longer into the province from the office of which you have charge, on what had become their customary business of inspecting water-supplies, market gardens, walls, statues and suchlike things; that is a practice that we have long ago decided should be utterly abolished. Instead, he is personally to investigate what is going on, and is to make them produce accounts, in accordance with our divine constitution.

1. However, if we should decide to send someone else out for this purpose, we shall do so by means of a pragmatic directive, to be delivered, should we so decide, to your honour. Regardless of heavy expenditure, as you surely know, we have in every way been rescuing our subjects, and liberating them from harm; that is our motive for giving governors, their offices and their staffs such large stipends as to provide them with an incentive not to resort to

¹⁵ Note that the emperor expected to be notified of all major repair or building work in the provinces which, on the basis of Procopius' *Buildings (de Aedificiis)*, would then appear to have been formally ascribed to his munificence.

dishonourable practices through poverty or any such cause, so that, on going out into their province with high distinction as members of the great Senate, they may keep both God and ourselves in mind. As long as he never forgets to do that, he will surpass himself in every way.

2. Given that the Romans of old entrusted governorships to men of both consular and praetorian rank, we too will not be acting inappropriately in bestowing these ranks on such men as will check abuses that have been taking place in the provinces, on the part of agents¹⁶ from here who have been trying to impose unreasonable charges on our subjects, and will free <them> from such duress. We are giving him a free hand to intervene in such practices, to prevent them, and to inform us, correcting some personally, and promptly bringing other ones to our notice in such a way that, in matters beyond their powers to handle, they may be strengthened and reinforced by the backing of our will and command.

5

We shall include these points for them in our sovereign instructions, which we shall be issuing along with their warrants of office. Thus, mindful of the oath they will take, and of the instructions we shall give them, they will live their own life in an honourable way, worthy of us and of our concern, and will conduct their administration in conformity with our laws. Those are the terms on which we bestow their office on them: as has been said, we are giving them full powers to judge financial, criminal and, in a word, all cases, and to refer an appeal lodged against them to our Most Illustrious prefects and the Most Illustrious *quaestor*, who will hear it jointly, as representing suits brought before the divine courtroom.¹⁷ On any suit subject to appeal that may arise in that region, below the value of five hundred gold pieces, even if it is by delegation from the Sovereignty or an office-holder, should the judge to whom it was entrusted not be of *spectabilis* rank, the appeal from that region is to go to the *praetor*, and he is to hear it as in the divine courtroom. This is another respect in which we are enhancing his post, by putting it into a position similar to that of the Admirable¹⁸ *comes* of the East, of the proconsulates and of the *comites* of

¹⁶ 'Agents' (Greek *πρακτῶρες* = Latin *executores*) were officials employed by the praetorian prefect, typically for tax-collection: the emperor is referring to earlier measures enacted in *J. Nov* 17 c. 4 and a number of the contemporaneous provincial reforms: see Van Der Wal (1998), p. 94 (entry 661).

¹⁷ I.e. the governor is to sit *vice sacra* representing the emperor and highest imperial courts of appeal in Constantinople (see Van Der Wal (1998), p. 180 (entry 1169)).

¹⁸ 'Admirable' = the middling senatorial rank of *spectabilis*.

Phrygia and Galatia: it, too, is to be *spectabilis* like them, and to have the standing of that rank.

This law of ours does not derogate at all from the office of the Most Distinguished prefect of the region: it is just that he carries out specific legal duties in the other areas of his prefecture, while this man fulfils the task assigned to him by us in the areas in which he is based.¹⁹

1. A schedule will also be subjoined to this law stating what he is to pay in respect of his warrants of office, and what he and his staff are to earn from the public treasury by way of stipends. Our orders are that that is all they are to receive, abstaining from any other form of gain. The reason that we are making these men more important, with higher earnings, is so that they will respond, in turn, by requiting us in the practical ways of preserving our subjects, and keeping in mind the oath that they will take. The statute-book will also contain the present law; and your eminence, on receiving it, is to learn it, and to abide by it in actual practice.²⁰

Given at Constantinople, May 18th, consulship of the Most Distinguished Belisarius 535

To be paid to the *praetor* of Thrace:

for <i>annonae</i> , <i>capita</i> ²¹ and other remuneration	300 <i>solidi</i>
for his assessor	72 <i>solidi</i>
for his staff	2 lb gold

To be paid by him, for warrants, as under:

to the three Admirable chartularies of the divine bedchamber	9 <i>solidi</i>
to the <i>primicerius</i> of the Most Illustrious notary tribunes, and to the <i>laterculenses</i> ²²	24 <i>solidi</i>
to his assistant	3 <i>solidi</i>
to the staff of the Most Illustrious prefects, for letters of instruction and every other cause	40 <i>solidi</i>

¹⁹ Justinian is here trying to mollify the feelings of those officials of the Praetorian Prefecture whose rights of audience with respect to appeals against the judgments of lower-ranking governors are henceforth transferred to the *praetor*.

²⁰ As with the previous constitution, indicating the existence of a volume in which all new laws were automatically entered, and with which the praetorian prefect and his staff were expected to familiarise themselves.

²¹ '*Annonae*' and '*capita*' = Stipends and fodder allowances for mounts given by way of remuneration (see *J. Nov.* 8, note 15).

²² I.e. the staff of the office known as the *laterculum* which recorded official appointments.

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

In the case of the former vicariates, as they were called, of Galatia and Phrygia Pacatiana, we have carried out in fact, through the force of practical action, what had occurred to certain of our predecessors as emperor, in theoretical form, to do for the province of Isauria: we have unified that post with the civil ones, setting up a single office, and giving them the requisite enhancement, with the title of *comes*² in place of their previous name. Thus, one of them is known as *comes* of the First Galatia, and the other as *comes* of Phrygia Pacatiana, in each case with the addition of our name also.

1

We are now taking the same action in the case of the province of Isauria, as well. We no longer wish the holder of this post to have two sets of warrants, taking the title of the civil office in addition to the insignia of military authority, and thus parading a twofold appellation when it is just one thing. By this act we are turning this post into a single one with everything under it, itself both supervising the army and taking on responsibility for the taxes. It will employ a single staff, known as *comital*, which will receive its warrants of service from our sacred *scrinium libellorum*.³

This office, too, will be absolutely free. It will not be paying any money at all; but it too will keep its hands clean, like the others. We shall be sending out to it our recently issued law; and in addition to the *codicilli* enrolling

¹ Isauria was an inland province of Asia Minor characterised by the recalcitrant nature of the militarised inhabitants of its mountainous upland zone: see Lenski (1999) and, for the geography, climate and history of the region down to the Justinianic period and beyond, Hild and Hellenkemper (1990), pp. 22–43. Like Justinian's other provincial laws, this one combines civil and military command and enhances the governor's powers of judicial audience.

² '*Comes*' = 'count' (used here as a military title for a governor).

³ *Scrinium libellorum* = the office of the imperial chancery responsible for responding to petitions and issuing official dispatches (Berger (1953), p. 692).

him as one of the Admirable office-holders,⁴ we shall give it the divine instructions – those known among the ancients as *mandata principis*, and re-introduced into use by ourselves – from which he will learn that, as well as all taxes, his responsibility includes private dealings, public order in general, and the protection of the public treasury's interests from all harm. In short, everything he should be doing will become clear to him from these instructions.

2

Just one thing he is to be aware of is that, as he too ranks among the Admirable office-holders, appeals from him will be heard by the Most Illustrious prefects of our sacred *praetoria* and our Most Illustrious *quaestor*, just as they are from the *augustalis*,⁵ the proconsul,* and the three praetors we have established in Pisidia, Lycaonia and Thrace; also the *comes* of the East, the *comes* of Phrygia Pacatiana, and the *comes* of the First Galatia. Should any case in Isauria below the value of five hundred gold pieces become subject to appeal, he will hear it himself, in place of the divine courtroom;⁶ that is another thing we are conferring on him, as a further enhancement to the prestige of his office.

* Auth. has 'both proconsuls'.

Conclusion

Accordingly, your excellency is to make the arrangements for him, as well, on the same model as for the offices mentioned. We shall also append a schedule to this law of ours to show what he, his staff, and his assessor⁷ are to receive from the public treasury, and what they must pay for their codicils of office.

Those taking up the posts recently enhanced by us are to be aware that our purpose in tolerating the complete discarding of our regular income from appointees to office, in paying – ourselves, out of our own resources – to their assessors what they used not to have, in presenting to their staff what has been taken away from others, and in increasing the remuneration

⁴ I.e. he will be of *spectabilis* rank. For *mandata* see *J. Nov.* 17.

⁵ I.e. the Augustal Prefect of Alexandria.

⁶ I.e. he will hear it *vice sacra* or in place of the emperor and the highest courts of appeal in Constantinople (see Van Der Wal (1998), p. 180 (entry 1169)).

⁷ The *assessor* was the governor's legal secretary or adviser: see *J. Nov.* 60.

of the governors themselves, is so that we can keep our subjects unharmed in all respects.

Should you find that some governors of provinces neighbouring theirs are being negligent towards the public treasury, you will not send out anyone else, but will give the *spectabilis* governors themselves the trouble of putting pressure on whichever of their neighbouring governors are being remiss, and of causing them to bring in the taxes, without fail. This office will thus be much finer and better than the previous one.

Given at Constantinople, May 18th, consulship of the Most Distinguished Belisarius 535

To be paid to the <i>comes</i> of Isauria for <i>annonae</i> : ⁸	300 <i>solidi</i>
to his assessor	72 <i>solidi</i>
to his staff	2 lb gold

To be paid by him, for warrants, as under:

to the three Admirable chartularies of the divine bedchamber	9 <i>solidi</i>
to the <i>primicerius</i> ⁹ of the Most Illustrious notary tribunes, and to the <i>laterculenses</i> ¹⁰	24 <i>solidi</i>
to his assistant	3 <i>solidi</i>
to the office of the Most Illustrious prefects, for letters of instruction and every other cause	40 <i>solidi</i>

⁸ ‘*Annonae*’ = stipends given by way of remuneration (see *J. Nov.* 8, note 15).

⁹ ‘*Primicerius*’ = head.

¹⁰ I.e. the officials of the *laterculum* which recorded major appointments to office.

The same Sovereign to John, prefect of praetoria

Preamble

It would not be a mark of strong administration to introduce, without some good reason, a division in what has long been aptly unified, with a settled, combined strength of its own; strength must rest on truly effective action, not on multiplication of names. Despite this, we have learnt that something of the kind had taken place in the case of what are now known as the two provinces of Pontus: Helenopontus and Polemoniac Pontus. Formerly one province under the rule of a single governor, they have been made into two, with no pressure from any compelling reason of state, nor any other good reason that would be easily discoverable. So clear is the evidence for that being the case that, to this day, the two provinces still have a single administrator² for the public taxation and scheduled levies. A count of the cities in each of them would hardly reach a total adequate for a single province: Helenopontus comprises eight in all – Amaseia, Ibora and Euchaita, then Zela and Andrapa, then the ancient cities in the foothills, Sinope and Amisus, and there is also Leontopolis, if that is also to be counted as a city; while Polemoniac Pontus consists of another five – Neocaesarea, Comana, Trapezus, Cerasus and Polemonium (Pityus and Sebastopolis are to be counted as garrison towns, rather than cities).³ After those, there is our Lazica, containing the city of Petra– whose title and status as a city was received from us, with the added appellation of

¹ In this law Justinian extends his programme of provincial reform to the Pontic provinces, which are placed under a single governor. The abuses of local landowners are singled out for criticism and efforts are once more made to keep legal hearings to a provincial level. These provinces were primarily of significance by virtue of the access they gave to the Black Sea, and the positioning of the chief cities of the provinces along the supply routes for the imperial army on campaign against the Persians on the Syrian frontier and in the Western Caucasus (for the routes of the region, see Bryer and Winfield (1985), pp. 17–60).

² ‘Administrator’ (Greek *τρακτευτής*) = Latin *tractator*. This was an official responsible for the overseeing of tax-collection. One was appointed to each province (the point Justinian is making here). The post seems to have originated in the late fifth century: see Zuckerman (2004), pp. 124–5 and John Lydus, *De Magistratibus* 3.68, where the author accuses John the Cappadocian of undermining the post.

³ For these and the other main centres of Roman authority in the region, see Bryer and Winfield (1985), pp. 7–16, 89–91, 169–70, 20, 69–88, 92–5, 89, 107–10, 178–250, 126–34, 19, 168–9, and 58, respectively.

Justiniana, after our Piety – and also the very large ancient garrison towns of Archaeopolis and Rhodopolis.⁴ With these, we also have the garrison towns recaptured by us from Persia: Scandis, Sarapanis, Mourisios and Lysiris, and whatever other fruits of our labours that there are in Lazica.⁵ After them, there is the land of the Tzani, now, in our own day, acquired by Rome for the first time; that too has been gaining some recently founded cities, and will be gaining some more, to be founded very shortly.⁶ As well as that, there are now, by God's gift, the nations of the Suani, the Scymni, the Apsilae, the Abasgi and others that are friendly to us, and are ours.⁷

1

We were led into this subject by mention of these regions; we shall now revert to the provinces of Pontus, and their unification.⁸ We are now recombining into one these two provinces of Pontus, with their thirteen cities, and restoring to them their ancient unity, while modernising the

⁴ Lazica was an important west Caucasian kingdom which controlled access to the Black Sea and was otherwise important for its wealth of mineral deposits and the extensive stretches of grassland it contained which could be used to feed mounts for cavalry armies. The Roman authorities had secured the defection of the Laz in 521–522 and extended Roman control over the region, securing the empire's hold by extending Roman rule over the neighbouring territory of Tzanica: see Sarris (2011), pp. 139–41 and Procopius, *Wars* 1.15.20 and *Buildings* 3.6. For the settlements mentioned, see Cancik and Schneider (2007–10) (*Antiquity*) 10 (= 2007), pp. 870–4, 1, p. 975, and Braund (1991), p. 222, note 10.

⁵ Lysiris remains unidentified. The other locations have been identified by Braund in Talbert (2000), p. 1261, and were essentially forts guarding the approaches to Lazica (see Greatrex and Lieu (2002), p. 84.)

⁶ For the imposition of Roman rule on Tzanica, and the building work that ensued, see Procopius, *Buildings* 3.6 where the author also describes the construction of churches and Roman roads. Roman administration was city-based, hence the emphasis on building new towns as regions came under Roman rule. In the Caucasus in particular, such settlements were also fortified to serve as military strongholds.

⁷ Whereas Tzanica guarded the southern approaches to Lazica, to its north lay the principalities of Suania and Abasgia over which the Romans and Persians also vied for mastery. Here Justinian rather over-states the extent of Roman control: to the end of his reign, the position of Suania in particular would continue to be contested even though the Persians were obliged to recognise Roman overlordship of Lazica: see Sarris (2011a), pp. 156–7. As a sign of Roman commitment to the region, we know from Procopius that at around this time successful efforts were made to convert the Abasgians to imperial Christianity, which would have had the effect of drawing them more closely into the political orbit of Constantinople: see Procopius, *Wars* 8.3.13–21 and Colvin (2003).

⁸ As noted in the introduction to the novel, the primary significance of these Pontic territories to Justinian, beyond the control they gave of the Black Sea coast, on which Trebizond (Trapezus, modern Trabzon) served as an important trading centre, was the supply routes that connected them to the eastern frontier: see Bryer and Winfield (1985), pp. 19–20 and 182.

name: it is to be known, as a whole, as Helenopontus, that being the name given to it by Constantine of pious destiny, after his most noble mother, Helena, pious in her destiny, who discovered for us the divine emblem of Christianity.⁹ Use of the old name of Polemo, which was that of all the famous tyrants in Pontus, is to be discontinued, firstly because it is a tyrant's name, and secondly because it does have a city named after him, Polemonium; also, it would be better for these lands to be denoted by names that are Christian and regal, rather than by one with the war-like connotation of polemic and disorder.¹⁰

2

All thirteen cities are to be part of a single province, but neither of the metropolitan cities, Amaseia and Neocaesarea,¹¹ is to lose its title of metropolis; and their most God-beloved metropolitan bishops are to be appointed from here, while those under them continue to be appointed by the holders of the metropolitan sees themselves, as hitherto.¹² We are making no change in their high priesthood; ancient times, as well as this, the time now glorified by ourselves, are familiar with many similar situations existing between most God-beloved bishops, even within a single province.

Over both areas, as governor of each, there is to be a single person with the title of *moderator*, or, as one might call him in the common tongue, *harmostes*.¹³ *Moderator* is another ancient title, consonant with the dignity of Rome; and a *harmost* was a magistrate sent from ancient Sparta to govern a subject territory.

3

Thus the person taking up this governorship will be called '*moderator Justinianus* of Helenopontus'. The military force stationed in the province will take its orders from him, though he is also to have an *ad responsum*,¹⁴

⁹ I.e. the remains of the True Cross, which were believed to have been discovered in Jerusalem in 326–327.

¹⁰ For this and the other cities of the region, see Bryer and Winfield (1985), pp. 111–15.

¹¹ See Bryer and Winfield (1985), pp. 107–10.

¹² Normally only one metropolitan bishop would be appointed to each province: here, despite merging two provinces, Justinian leaves the existing episcopal structures intact.

¹³ 'The common tongue' = Greek.

¹⁴ '*Ad responsum*': a military aide de camp or liaison officer assisting the governor in carrying out his orders (see *Edict* 8 c. 3), or with the execution of writs and judgments (Jones (1964), p. 488; Avotins (1992), pp. 5–7).

and people of every rank will defer to him, without being able to put up any privilege against him. He is also to hear financial, criminal and other cases, the least important ones without written documentation and free of charge,¹⁵ but the more serious ones with written documentation, at the charge decreed in our divine constitution.

The person taking up this governorship is to receive the combined stipends of each post, totalling seven hundred and twenty-five gold pieces. He is to have a single staff; and the running of, and liability for, the office are to belong jointly to the office-holder and his staff, which will be merged into unitary form, and fitted together as directed by the governor. The assessor for the office will receive seventy-two gold pieces from the public treasury, and the staff, now single instead of double, will earn four hundred and forty-seven and one-third gold pieces.

4

The office-holder will not send out deputies to the cities; this is something that he will observe in accordance with what is also contained in our divine instructions. Instead, he will himself tour the cities, without impediment from any possible law or divine pragmatic directive, despite any such order from the past. He will be present both in the metropolitan cities and in the rest, wherever he so decides, with the general proviso that the city is one that is capable of receiving him; but he will abstain from all profit and every kind of extra charge. Neither he himself, nor any city councillor or soldier in his retinue, will take anything from the taxpayers, incur costs at others' expense, oppress our taxpayers, or let the soldiers escorting him do so; that, too, is part of our divine instructions. Bearing in mind the oath that he has sworn, and the facts that he has taken up his post without charge and has such increased stipends, he would never dare to take anything – unless he were prepared to pay for doing so with a heavy fine – nor would he allow his staff to do any such thing, or take anything for any such reason. Should he fail to ensure that the soldiers escorting him confine themselves to their own stipends, he himself will not escape just indignation, and will be obliged to exact from their stipends the extra expenditure they have inflicted on our taxpayers, and repay it to them.

1. In making these offices higher and more impressive, both in the number of those under them and in the grandeur of their rank – we intend him to have one hundred civil servants, and we are making the post

¹⁵ For such hearings without written documentation in other provinces, see *J. Nov.* 17 c. 3.

spectabilis –, our purpose is to have office-holders of higher status available at times of need, capable of carrying out our commands. When men had taken up command of provinces under the form prior to ours, what could they actually do? There were not many of them, they had very few people under their command, their income from the public treasury was very moderate, and their outgoings were heavy; thus their one concern was the gradual repayment, to the creditors at their backs, of the instalments on the loan they had taken out to pay for their office, and they were compelled to steal – with the usual result that they have devised impious, and at the same time perilous, ways of making money for themselves by defrauding our taxpayers.

2. All this has constrained us not just to renounce the revenues from this source, but actually to incur heavy extra expenditure from our own resources, by buying out any whose official post had been purchased from our predecessors, thus setting our taxpayers free from this kind of imposition; and by replacing out of our own resources the remuneration of those taking one up, in order to impart freedom to them, too. It seems that, by the gift of God, it was reserved to ourselves not merely to bestow freedom on Africa and the nations there, but also to free those in the very heart of our realm from such disgraceful defalcation, year by year; they had not even been allowed to remain under the same person who had originally defrauded them, but had been constantly passing, at short intervals, from one ruler's power to another.¹⁶

This is the thank-offering we have thought it proper to dedicate to God, who has conferred on us the crown of sovereignty, given us the purple from our father by popular election, and honoured us with such great and generous gifts as he has given to none of our predecessors.

5

Accordingly, the person taking up this appointment, knowing how many people and how many cities he has under his command, and how august he will be in his change from the position of consular governor to the higher rank of *spectabilis* must be forbearing to our subjects at all points, protecting them from depredation, and at all points keeping his hands clean. He

¹⁶ Here Justinian re-states his sense of providential mission to restore order at home and Roman rule to rightly Roman territories abroad, thereby echoing the rhetoric found in the constitution with which he had promulgated the *Institutes*, in which he had advertised his determination to 'stand victorious not only over enemies in war, but also trouble-makers at home' (*C. Imperiam Maiestatem*).

must enrich the public treasury, taking every care for its interests, and refraining from accepting anything for himself. He must tour the cities, taking remedial action, and his arbitrations in them, whether on public or private affairs, must be just. He must take no action whatsoever, great or small, for gain, but must aspire to a high reputation, keeping his oath consistently and earning our favour in all respects.

1. He will see to it that no-one is allowed to commit the crime, particularly prevalent in Pontus, of putting up notice-boards claiming title to estate properties or buildings belonging to others;¹⁷ the right to do that belongs solely to the public treasury and to the royal households, our own and that of the most pious Augusta. Should he find boards put up in anyone else's name, he will remove them at once, and will track down the person who set them up. Should it be the one claiming to be the owner who has done so in person, the governor will at once put up 'Public' notices on his property, and smash over that person's own head the boards he put up; but if it should be an agent acting in someone else's interest, the governor will break the notice-boards over his head in the manner we have just described, and subject him to severe tortures. Thus, when the person concerned finds out about this, he will realise that he is not allowed to commit crimes against our subjects, either in person or through any bodyguards, or confederates in racketeering.

6

Similarly, the Admirable *moderator* must also suppress banditry, swindling, and abduction of women, possessions, livestock and so on, in order to keep justice undefiled, and to show that our opinion of him was correct; and also to prevent us from regretting our decision to abolish bandit-hunters and *biocolytae*,¹⁸ if there are people overrunning the country unchecked by himself. Our purpose in including soldiers under his command was to provide him with a force that evildoers could not defeat.

¹⁷ Justinian thus records members of the local aristocracy seizing the estates of others. For discussion of this provision, and Justinian's evident 'need to explain the educative rationale behind the punishment' in the context of his broader attitude to criminal penalties and moral reform, see Hillner (2015), pp. 99–100.

¹⁸ βιοκωλύται were local police or gendarmes who were evidently deemed less reliable by Justinian than full-time soldiers: see *J. Nov.* 8 c. 12 and, for epigraphic attestations, Feissel (2009), pp. 111–12.

7

Those, in summary, are our general behests to him; the details he will know clearly from the law that we have laid down for all alike, in which we have regulated governorships, and from the instructions from the Sovereign which we shall be giving him as guidance on how to conduct his office. By carrying them out, he will both avoid our displeasure, and dedicate his own soul to God and to our law, and have good prospects for his whole administration. Subjoined to this divine law of ours, there will also be a list in which it will be made clear what he, his assessor and his staff are to receive from the public treasury, and also what he is to pay for his warrants of office. This is in order that, apprised of the generosity of what has been given him, and of the limited cost payable by him for his warrants, he may handle affairs as he should, with the expectation of governing more extensive provinces and larger populations, if he should deal properly with the one he has in hand.

8

We are also granting that appeals from him are to be judged in place of judges of Admirable rank, by *consultatio*,¹⁹ before the Most Illustrious prefects and our Most Illustrious *quaestor*; and that he is himself to try, in place of the sacred courtroom,²⁰ any cases below the value of five

¹⁹ '*Consultatio*' = originally, a 'request' addressed by a lower judge in a proceeding to his superior (the future appellate judge in the case) for a case or issue to be decided upon before judgment (Latin '*ante sententiam*') (Berger (1953), p. 412 and Pergami (2011), pp. 259–79). This had come to mean a procedure for the upward referral of a case to the emperor. As Buckland notes, 'the process was used where an official, in doubt, before deciding, sent a *relatio* [= the full accompanying *dossier* including a description setting out the case and the written submissions of the parties concerned], to the emperor, the parties being informed, and any document they wished to send being included . . . The answer, which was in the form of a rescript, usually gave a final judgement, but might state a principle and remit the matter for actual judgement. In later law, the *relatio* went, sometimes not to the emperor himself, but to his principal minister(s) . . . It was mainly used in cases of judgements of high officials not ordinarily appealable' (Buckland (1963), p. 671: see also Kaser (1980), p. 433). The same procedure came to be used for appeals to the imperial court (known as *appellationes more consultationis* = 'appeals after the manner of a *consultatio*' or *consultationes post sententiam* = 'requests post-judgment'). According to *Codex* 7.62.34, however, Justin I had permitted the parties to a case to attend such appeal hearings before the emperor and his representative(s), and this remained the case under Justinian (see *J. Nov.* 126 and Van Der Wal (1998), p. 182, note 102). The form of *consultatio* referred to here is *consultatio post sententiam*. *Consultatio ante sententiam* would be implicitly abolished by *J. Nov.* 125 (see Van Der Wal (1998), p. 184, note 112).

²⁰ 'In place of the sacred courtroom' = '*vice sacra*': for cases worth less than 500 *solidi*, the *moderator* would sit in place of the emperor and the highest appeal courts of Constantinople (see Van Der Wal (1998), p.180 (entry 1169) and *J. Nov.* 24, note 14).

hundred gold pieces that are launched before judges in his province (even if pleaded by delegation,²¹ but not before *spectabiles*), if they are subject to appeal. With this additional distinction as well, he is to be mindful of the advancement we have given him, and to handle affairs in such a way as to make himself blameless in the eyes both of our subjects and of ourselves, and, even before ourselves, of God and the law.

Conclusion

Your excellency, in awareness of all this, is accordingly both to provide the post with such high stipends, and to know that it has been made of such distinction, that it will be rightly aspired to by many, in their desire for the glory and rank now granted it by us.

*Given at Constantinople, 16th July, consulship of the Most Distinguished
Belisarius*

535

²¹ 'Delegation' = the governor will be able to hear an appeal *vice sacra* even if he or a higher authority had initially delegated the case which is subject to appeal to the judge of first instance to hear it in his stead.

The same Sovereign to John, prefect of praetoria

Preamble

The Paphlagonian nation is an ancient one, and not without fame, having, in fact, been great enough to send out large colonies, and to have populated the regions of Venetia in Italy;² there Aquileia was founded, the largest city in the West,³ which has frequently been a residence of sovereigns.

1

In the time of Honorius⁴ of pious destiny the province of Paphlagonia was reduced in size, losing some cities; and it also, for no functional reason, received some reduction in importance. We have deemed it necessary to restore it to its previous form, re-creating a unified Paphlagonia, and making the same arrangements as we did for the two provinces of Pontus. Thus, in place of the previous two provinces, namely Paphlagonia and Honorias, there will be a single, unified post, whose holder will be called '*praetor*', that also being a Roman title for those in

¹ Justinian here overhauls the provincial administration of Paphlagonia along the same lines and with a view to combatting the same abuses as set out in *J. Nov.* 28. The region of Paphlagonia extended from the Pontic territories, the needs of which were addressed in *J. Nov.* 28, along the Black Sea coastline towards Bithynia and the land approaches to Constantinople. Throughout the Byzantine Middle Ages, the fertile river valleys of this otherwise mountainous terrain represented a landscape across which great landowners sought to project their authority (see Sarris (2012), pp. 435–7 and, for the geography, climate and history of the region down to the Justinianic period, Belke (1996), pp. 57–69).

² The origin myth provided here is as fantastical (and inaccurate) as many of the others provided in the preambles to these laws (on which see Maas (1986)). With respect to the Paphlagonians, see Homer II. 2.852.

³ The city of Aquileia, at the head of the Adriatic, had indeed been one of the greatest cities in the Roman West. In 403, however, it had been sacked by the Goths, and then again, in 452, by the armies of Attila the Hun. As a result, many of its inhabitants had migrated to the islands and lagoons of Venetia, where they were less vulnerable to attack. This migration set the scene for the emergence of the settlement of Venice (Nicol (1988), pp. 1–2).

⁴ Honorius was appointed Western emperor in 393, whilst his brother Arcadius was appointed to rule in the East in 395. Imperial constitutions, however (such as the one to which Justinian alludes here), would have been formally promulgated in the names of both emperors.

command of provinces. He will have a single staff, combined from the previous two, amounting to a hundred men. He will also be in charge of all the taxes that were paid by the inhabitants of Paphlagonia and the former Honorias, and will have in his care all the cities that belonged to both provinces. In Honorias, these are Prusias, Crateia, Adrianopolis, Tius, Claudiopolis and Heracleia.⁵ Even though some of these, for example Prusias, Heracleia and the actual metropolis of the province, namely Claudiopolis, were taken previously from Bithynia, we thought it a quite uncalled-for, wilful intervention to confuse the arrangement by putting them back in Bithynia again, once they had been transferred. Thus these said six cities, formerly belonging to Honorias, will now be among those forming part of Paphlagonia. In Paphlagonia itself, the governor will have jurisdiction over another six cities, those that belonged to that province before, namely Germanicopolis by Gangra, Pompeiopolis, Dadybra, Sora, Amastris and Ionopolis;⁶ there will be twelve cities in the province as a whole. We are making no changes in its priesthood: the metropolitans who have previously received their high priestly office there will remain in the same rank, with no change to their appointments in the region.⁷ They are appointed by the most blessed patriarch of this fortunate city, while they will themselves continue to appoint those under them, whom they have been appointing hitherto; there will be no disputes between them, and no overlapping. For the future it will be one province containing more than one metropolis, just as in other provinces of ours.

2

Notwithstanding any previous decrees that may have forbidden such a practice, the governor of the entire province (the whole of it to be known, as it had previously been, as Paphlagonia) will tour the cities. He will not send out deputies to them; that is something we absolutely forbid him to do, as it is unacceptable for him to confer his position on someone else, illegally, while simultaneously being paid for his governorship. Instead, he will administer everything himself. He will be wholeheartedly zealous over bringing in the taxes, demanding neither too much nor too little but maintaining

⁵ For these settlements, see Belke (1996), pp. 264–6, 239–40 and 119–23, 155–7, 276–8, 119 and 208–16.

⁶ See Belke (1996), pp. 196, 260–2, 66, 272–3, 161–70 and 219–21.

⁷ As with the preceding provincial reforms, although provinces were to be merged, Justinian decrees that the number of metropolitan bishops and the underlying structures of episcopal authority were to remain the same.

equitable justice, taking care to rectify anything that has been done to the detriment of the public treasury, and protecting the cities against depredations, both public and private. The stipend he receives will be what both office-holders previously drew, making a combined total of seven hundred and twenty-five gold pieces, with his assessor⁸ drawing seventy-two gold pieces; and his staff, amalgamated from both into one and making a total of a hundred men, will receive from the public treasury, as its remuneration, four hundred and forty-seven and one-third gold pieces.

He receives his post without charge, and it is without charge that he runs it and its affairs. Here, too, we shall be buying our taxpayers' freedom by ourselves paying off those who used, by custom, to receive money for what was called *suffragium*.⁹ We shall give them that, through your high office, out of the taxes of the province; we are not going to permit our subjects to be reduced to slavery by a covert form of sale. We, who have liberated those who had been our taxpayers from barbarians, and restored to them their ancient freedom, will not let those who are our own be slaves to others. Instead, as far as is in our power, we shall make an offering of the freedom of our subjects, who have constantly been being sold, to this God, who has, through us, granted freedom to many nations. And we shall do so without harming those who have been being paid, as we shall instead be paying them the customary subvention, and without allowing office-holders, by means of a so-called 'gift', to buy our subjects from sellers, as if they were some sort of slaves, and sell them to law-breakers.

Thus you are to have this province, also, as a single province among those of the Pontic diocese, although previously, for some reason of which we are unaware, it had been made into two. As we have said before, you will use the title '*praetor Justinianus of Paphlagonia*' for its governor; in Greek, however, he may also be known as 'general'.¹⁰

3

You will keep him constantly in mind of the oath under which he will take up the post:¹¹ to have clean hands, not dirtying them with unacceptable

⁸ 'Assessor' = legal secretary or adviser.

⁹ '*Suffragium*' = bribe or payment for office (see *J. Nov.* 8 and discussion in de Ste Croix (1954)).

¹⁰ 'General' = Greek στρατηγός. The local terminological practice in Paphlagonia alluded to here may provide a point of origin to the middle Byzantine practice whereby all provincial governors (entrusted with both civil and military command) were accorded the title of *stratēgoi* (see discussion in Brubaker and Haldon (2011), pp. 723–71).

¹¹ The oath referred to is that recorded in *J. Nov.* 8.

gains; to benefit the public treasury, augmenting it by accretions that are just and in all respects impeccable; and to administer equity and justice to our subjects in matters of taxation, in their business dealings and in litigation between them. His tours of the cities will be without cost to them: neither he, nor his assessors or the retinue at his service, whether of officials, soldiers or slaves, are to make any gain, or to incur costs at others' expense. Their mode of life must be appropriately moderate, and they must meet its expenses out of the stipends we are paying them from the public treasury; and the soldiers in their retinue must be aware that if they have the temerity to wrong our taxpayers, involve any of them in losses, or incur costs at others' expense, instead of meeting their travelling-expenses from their own stipends, our taxpayers will be indemnified by the governor's demanding payment out of their stipends: at his own peril, he will indemnify the taxpayers from that source.

4

This law that we have laid down on Paphlagonia is another one that is to enhance the importance of its governorship by including it among the Admirables,¹² and by conferring on it command over the forces there, for whatever duties it may justly require of them, as well as over everyone else in the province; whether high or low, they can claim no exemption, even should the possessions they own characterise them as powerful people. In particular, he will see to it that no-one is allowed to commit the offence, prevalent in the region, of putting up notice-boards claiming ownership of any estate properties in any other name than those of the public treasury or the sovereign households.¹³ Should he find anything of the kind taking place, he will at once remove the notice-boards and, without fail, place boards on the offender's estates claiming them in the name of the public treasury. Should the offender be doing this in person, the governor will begin by smashing the boards that have been removed over the offender's head; but should he be elsewhere, the governor will arrest the person managing the estate properties and subject him to physical tortures, in this case also removing the boards immediately, and breaking them over the manager's head. The office-holder is to be aware that should he overlook such an act, and should we find out that there are notice-boards up that have been put there by anyone other than the public treasury and the sovereign households, our own and that of

¹² 'Admirables': i.e. he will be of *spectabilis* rank.

¹³ Here, as in the Pontus, powerful landowners are accused of asserting ownership over the properties of others.

the most pious Augusta, he will himself suffer confiscation, on the ground that he deliberately overlooked the offences when, by the use of his important authority, he could easily have put a stop to them.

5

We wish him also to see that he takes action against all bandits, and against those who plunder others' livelihoods, or their womenfolk, or who commit other crimes; he is to arrest them, and subject them to appropriate punishments. He is to suppress all wrongdoing, and permit no wrong to be done to the law-abiding, to such effect that we have no further need of others to act against such criminals, nor again have to tolerate *biocolytae*,¹⁴ bandit-hunters and others with such titles and functions. It is because we have set our face against them that we have raised the governor to this rank, and made his office such an honourable one, by means of having appeals that are allowed from his findings sent* up to your excellency, and those who will in due course hold that position, and to the all-praiseworthy *quaestor* of our divine Palace, who will hear them under the procedure of *consultatio*;¹⁵ also by taking to him, in the place of the divine court, cases below the value of five hundred *solidi* that are launched in his province before other judges, not of *spectabilis* rank, even by delegation, when they are subject to appeal.¹⁶ This is so that this post, too, shall in all respects be one of those that have been devised by us and raised to a more exalted form. These will also be more important and respected than before, and will have no difficulty in serving us for matters of higher importance. There is a saying of our predecessors that nothing great stands on a small base; we have ourselves accepted that, and proved it true, in actual practice.

* Accepting Zachariae's supplement of e.g. παραπέμπεσθαι [S/K, p. 222, line 38].

¹⁴ 'βιοκωλύται' = locally raised gendarmes and irregulars whom Justinian attempted to replace with professional soldiers: see *J. Nov.* 8 c. 12, *J. Nov.* 28 c. 6 and, for epigraphic evidence, Feissel (2009), pp. 111–12.

¹⁵ 'Consultatio' = the upward referral of a case or issue from the judge of first instance to the emperor or his representative (known as *consultatio ante sententiam*) or an appeal against judgment (known as *consultatio post sententiam*). Here the law is concerned with *consultatio post sententiam*, although the procedural requirements for each were the same (those for the latter having been based on those for the former). See *J. Nov.* 28, note 19.

¹⁶ I.e. the governor will hear appeals from the courts of lower-ranking governors or judges (concerning cases worth less than 500 *solidi*) *vice sacra* or in place of the emperor and the highest appeal courts of Constantinople: see Van Der Wal (1998), p. 180 (entry 1169) and *J. Nov.* 24, note 14. 'Delegation': i.e. the governor will be able to hear an appeal *vice sacra* even if he or a higher authority had initially delegated the case which is subject to appeal to the judge of first instance.

A schedule will be attached to this law, as well, showing what the person directing the province, his assessor and his staff will receive from the public treasury; and also what he will pay to receive his codicils of office.

1. The manner in which he will govern has been set down here in brief, but will also be made clear to him from the law enacted for all provinces in general, and from our instructions from the Sovereign, which we shall give him when we also give him his codicils of office, and put to him the oath incorporated in the text of our law.

Conclusion

Accordingly your excellency, in awareness of all the above, is both to provide the post with such high stipends, and to know that it has been made of such distinction, that it will be justly aspired to by many, in their desire for the glory and rank now granted it by us.

Given 16th July, consulship of the Most Distinguished Belisarius

535

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

The greatness of the name and nation of Cappadocia, and the difficulties that its original acquisition caused to Rome,² are matters of which devotees of ancient scholarship have not been unaware. It used to rule almost the whole of Pontus, and some very famous men, who won great regard at Rome, had their origins there. The land itself is extensive and admirable, and it is so high in the esteem of the Sovereignty as to prompt the setting over it of an authority appropriate to our possessions there: one no lower, or in fact higher, than that of Pontus. Its population is very numerous, and it boasts a very large city named after our much-loved Caesar, who gave our monarchy a good beginning.³ It is through him that the name of Caesar is so famous among all nations of the earth; and his name, rather than any other of our tokens of sovereignty, is the one in which we take pride.

¹ Cappadocia was primarily of significance to the imperial government for the extensive imperial estates located there (which were assigned to the imperial household or *domus divina*) and its centrality to the broader mastery and defence of the Anatolian plateau. In this law, Justinian attempts to claw back ownership and control of estates that had been taken possession of by members of the local aristocracy, whose lawlessness and violence he decries. The law provides a useful insight into the extent of imperial revenues from estates assigned to the Empress Theodora and expresses Justinian's ambition to reconquer all lost Roman territory (a sign of how high imperial spirits were riding in the aftermath of the recent conquest of Sicily, to which the constitution alludes). Justinian's attempts to impose order on Cappadocian society, would, however, seemingly achieve little and late in the sixth century the Emperor Tiberius II would be forced to legislate yet again in a further attempt to curtail the illicit privatisation of imperial properties (see Kaplan (1981) and Cooper and Decker (2012), p. 221). On Cappadocia in general in late antiquity, see especially Hild and Restle (1981), pp. 62–70, Métivier (2005) and Cooper and Decker (2012).

² For the incorporation of Cappadocia into the Roman Empire, see Van Dam (2002).

³ I.e. Caesarea. This city (the population of which in late antiquity is estimated to have reached some 50,000 or so inhabitants) stood at the nodal point of the major Roman road networks that traversed the Anatolian plateau, and was thus crucial to the empire's ability to control the surrounding landscape. As a result, it was a major recipient of imperial investment and a prime target of Persian attack. Justinian, for example, is recorded to have invested heavily in the city's defences (see Hild and Restle (1981), pp. 193–6 and Cooper and Decker (2012), pp. 12–13 and 28–9).

1

For this province to have been put under a minor authority has seemed to us to be far short of what is proper, especially as we observe that there is constant unrest against the official set over our own household domains.⁴ Further, its city's affairs are partitioned, part of it being under the crown treasury, and part being known as 'free'; a city within a single perimeter is divided in its attitudes. That, in our opinion at least, is what gives rise to unrest and discord, and is the source of every other trouble that vexes mankind. By doing away with that, we shall simultaneously be conferring on it both strength and concord, than which human life could not conceivably have any finer boon.

1. Whereas the other posts that we have recently established in Pisidia, Lycaonia and Thrace were formed as an amalgamation of two components, the sphere of authority that we are conferring on Cappadocia is a triple one, in our desire to enhance its status. The future governor of this post will, for one thing, be in charge of the law and of the whole civil administration; but the troops under his command will comprise not only those in the said province, but also all those stationed in the other provinces of the Pontic diocese that contain the estate properties under the crown treasury, exactly as if he himself held a military commission. Not only shall we be giving him authority over all the crown treasury people, but everyone in the former comital staff (i.e. *summarii*⁵ and anything else of that kind) will also be under him. The combined form of his post will be triple: the same person will be both civil and military governor, and head of crown treasury affairs.⁶ Both staffs will serve under him, the comital (which will conduct its own business, quite independently of the civil administration) and that of the Most Distinguished provincial governor. We wish the post, as a whole, to become proconsular, and to be known as such, and his staff to have a single title, namely 'proconsular', but with the former comital staff and the former civil staff each conducting its own business: the civil staff

⁴ Cappadocia, as noted in the introduction to the novel, was home to extensive imperial estates assigned to the imperial household or *domus divina*, on which see Cooper and Decker (2012), pp. 51–2, 91–2, 217–18 and note 36 below. It is the *domus divina* which is being referred to when Justinian speaks of the 'crown treasury' and its assets (see Delmaire (1989), pp. 638–9).

⁵ '*Summarii*' probably refers to fiscal administrators known in Latin as *tabularii summarum rationum* (Berger (1953), p. 724).

⁶ This combination of responsibilities for both tax-collection and the administration of imperial estates was unique to the governor of Cappadocia (see Cooper and Decker (2012), p. 219).

seeing to all tax and civil matters which we know fell to it in the past, and the former comital staff being in charge of administration of the Sovereignty's affairs and of making the tax-collection, in the manner which we shall now explain.

2

The titles of manager and administrator⁷ are ones that we wish not to exist at all, in view of past examples, and of the severe oppression inflicted by the holders on our unhappy taxpayers. Our wish is that, on the liability of the comital staff as a whole, and of its thirteen heads known as first and second *magistri*,⁸ a further thirteen should be named as immediately answerable under them, one for each household, as stated; and these, under the first thirteen, should conduct the tax-collection and protect the interests of the public treasury.⁹ They are also to see to the protection of our taxpayers from suffering any harm at anyone's hands; they are to be aware that ensuing loss to the taxpayers will have regard much more to their own property, inasmuch as liability for the whole tax-collection rests on them.

Neither those formerly called first and second *magistri*, nor the new thirteen under them who, as we have determined, are to effect the collection of the taxes, nor any other member of the comital staff, are to make any payment at all to the Admirable proconsul at the time,¹⁰ either for their nomination or for any other cause whatever;¹¹ the only payments to be made are fifty *solidi* from each of the thirteen collectors to the first thirteen *magistri*.

⁷ 'Manager' (Greek ἐπίτροπος) = Latin *Curator (domus divinae)*; 'administrator' (Greek τρακτεντής) = Latin *tractator*. The former was a manager-in-chief of the estates of the imperial household and the latter an imperial fiscal official one of whom was appointed to each province: see Feissel (1985), Kaplan (1986) and Zuckerman (2004), pp. 124–5. This provision of the law may be the basis of John Lydus' claim that John the Cappadocian was responsible for undermining the institution of the *tractator*: see John Lydus, *De Magistratibus* 3.68. For the parallel administration of estates of the *domus divina* in Egypt, see Azzarello (2012), pp. 9–28.

⁸ 'Magistri' = 'masters'.

⁹ The imperial estates or households (Greek οἴκοι) were thus to serve as centres for tax-collection in the surrounding fiscal districts, partially paralleling the situation in contemporary Egypt, where the households or estates of local landowners known as 'pagarchs' (παγάρχοι) were entrusted or charged with the collection of local tax revenues (see *J. Edict* 13).

¹⁰ 'Admirable' = *spectabilis*: the proconsul is thus to be of the same rank as the *comes* (see c. 4).

¹¹ Justinian here upholds the prohibition on payment for office recently enacted in *J. Nov.* 8.

3

The tax-collectors themselves are not to collect from the agricultural workers, or, speaking generally, from those who are subject to exactions through them, anything but the sums defined for tax-collectors that are contained in the directives of Nicetas, of glorious memory.¹² They cannot invent words by which to inflict deprivations for ‘aspastica’, ‘tracteutica’,¹³ or on any other pretext whatsoever attributed to some supposed custom, or to any other oppressive practice. We wish our taxpayers to be kept free of all those; in particular, we are freeing them from the wicked and ruinous ‘levy’,¹⁴ payment of which to successive administrators has left them too poor either to pay their tax or to support themselves. Even if there was some directive intending some payment to the administrators, or a long-standing custom, we are abolishing that too. In doing away with the actual title of administrator, we are also, logically, getting rid of everything that went with it, and making a specific gift of that to our taxpayers. Should any tax-collector have the temerity to take any payment other than those defined in the decree of the most blessed Nicetas – those being the only ones that we permit them to receive – he is to know that he will forfeit his position in the service, his rank and his property.

4

As among the thirteen tax-collectors there may well be one who is not fit enough for the task – given that we are decreeing that they are to proceed to this rank by stages – we permit him, nevertheless, to keep the income due for his level, but decree that the first thirteen *magistri*, and also those next after them, may in addition nominate someone else, at their own risk and that of their property, to discharge the duty properly, in such a way that the public treasury does not suffer from the other person’s infirmity, nor does he forfeit the remuneration due to him by his length and level of service. It is to be understood that, as has been stated, the appointment of the assistant for the person not fit enough for the task is to be made at the risk of the thirteen *magistri* and the others below them. The collectors of

¹² The Nicetas referred to here is otherwise unknown. The ‘directives’ (Greek τύποι) may be the same as the ‘directives’ or ‘deeds of the pagarchy’ referred to in the sixth-century *P. Oxy.* XVI 1829 which appear to have set out the fiscal obligations of members of the Apion family acting as pagarchs around the city of Oxyrhynchus, with members of the family agreeing to guarantee fiscal revenues to local tax-collectors up to a set limit.

¹³ ‘ἀσπαστικά’ and ‘τρακτευτικά’ = ‘welcome fees’ and ‘administration fees’.

¹⁴ ‘Levy’ = δασμός.

taxes will have to acknowledge that they owe a great debt of gratitude to us for ridding them of the numerous payments that they previously used to make to the *magistri*, to the Admirable *comes* at the time, and to his staff.¹⁵ Our purpose in freeing them from all these payments is to ensure that they themselves commit no injustice on our taxpayers, on the pretexts that they have devised for oppression – those they call *introita*,¹⁶ and others – to the ruin of the agricultural workers' livelihood; but so that they remain content, instead, with the payments to managers authorised by the directive of Nicetas of glorious memory, and forgo all others.

5

As it is our intention to give the province a governor more important, in fact, than other provinces, the Admirable proconsul himself will have complete charge of everything alike, whether it is some civil matter, or has regard to his military command, or to his authority over the crown treasury. It was customary in ancient Rome to allocate provinces by lot, either to those becoming consuls or to those sent out in their stead, known as proconsuls; that is why we wish the governorship of Cappadocia to be a proconsular one, as well. That was the title formerly awarded by Rome to the governorship of Africa, which we have now so far enhanced as to count the man taking it up together with the Most Illustrious prefects of our sacred *praetoria*. In the ancestral language,¹⁷ the governor of this province is to be known as '*proconsul Justinianus Cappadociae*', so as to have both the individual title of his office, and, jointly with that, the name of its originator. This is a status that the person taking over this office would find easy to accept, because of the wide power it has, which extends, on account of the holdings of the crown treasury, over other areas as well. It will be an altogether distinguished one, in view of its authority over such important spheres and such a large population; and the coupling with it of military strength will facilitate the whole of his administration. He will carry out its civil role, of course, in the usual manner; and he will find it very easy to command the troops, as they too are subject to him.

1. He will pay particular attention to the administration of the properties of the crown treasury, which have fallen into such terribly run-down state, and been sold off in every direction, that they are practically valueless; our

¹⁵ 'The Admirable *comes*' = *comes domorum per Cappadociam* or count in charge of the imperial estates: see Delmaire (1989), pp. 220–3.

¹⁶ '*introita*' = 'entrance fees'.

¹⁷ 'The ancestral language' = Latin.

understanding is that so much is wrong in the province that it will hardly be easy to put it right, even for a very great man, because the managers of holdings belonging to powerful personages – no, at this point we feel too embarrassed even to speak of the enormity of these people's errant behaviour, and of how they have bodyguards protecting them and an intolerable number of people behind them, all committing barefaced banditry; in fact, we are amazed that the local subject-population has survived this criminal treatment till now.¹⁸ That is why, every day, both when we are at prayer and when we are occupied in public affairs, there is a throng of wronged Cappadocians petitioning us – priests, many of them, and women in extremely large numbers – all with tearful complaints of having been robbed of their possessions, because there is no-one at hand with the power to put a stop to this kind of thing. Practically every holding of the crown treasury has fallen into private hands through being broken up and seized, along with their stock of horses;¹⁹ and no-one at all has been raising a voice in opposition, because their mouths have been stuffed with gold.²⁰

6

Those, then, are the reasons for our wishing to put over this province one of those best known to us, who will be at the head of this triple office, carrying, in himself alone, complete authority and power. He will have the silver chair, the axe, the rods and all other ancient insignia of the law; he will give the troops their orders; and he will take care of the revenues of the crown treasury, in such a way that they keep coming in unfailingly to all the officials in charge of them, and, all the more, to our Sovereignty, just as they are still coming in even now, in respect of what we and the sharer of our life, the most pious Augusta, are receiving in money and in clothing: we do not wish there to be any reduction in that.²¹

1. Yet this is not to be given us by the sort of means that it has been hitherto, by thefts and oppression of our subjects, and by so-called 'gifts' – all that is abhorrent to us, and is what we are ejecting from our realm –; but

¹⁸ A reference to the private armed retainers of the provincial aristocracy, also known as *buccellarii*: see Sarris (2006), pp. 162–75. The emotive language which Justinian deploys here is characteristic of the novels (see discussion in Lanata (1989), p. 38).

¹⁹ Cappadocia was prime horse-rearing country: see Cooper and Decker (2012), pp. 76–93.

²⁰ Justinian here provides an especially vivid image of provincial corruption at work.

²¹ The proceeds of the imperial estates assigned to the *domus divina* was treated as the private fortune of the emperor (and empress): see Delmaire (1989), pp. 220–3 and 708–9. The reference to clothing is especially interesting, indicating the presence of extensive textile production on imperial estates (see Cooper and Decker (2012), pp. 50–3 and 219).

only for just and lawful causes, which we have also ordered to be subjoined to this divine law of ours. With that list in their possession, successive holders of this post are to bring in, as has been stated, the fifty pounds of gold to the sharer of our life, the most divine Augusta.²² We are establishing the post free of charge, and making the appointments to it entirely without payment; there will be absolutely no-one at all who receives anything for it.

2. As listed below, we are granting him a stipend at twenty pounds of gold, and paying his assessor²³ at two pounds. Each staff will receive from the public treasury what it has hitherto been earning, with absolutely no reduction; for this post, we are making no reduction in any respect, most especially in the case of the Most Illustrious *praepositus* of our divine bedchambers.²⁴ We decree that that post, with the *schola* under it of consecrated *palatini*,²⁵ is to remain with similar authority and establishment in Cappadocia, and the same organisation; but it is not to receive anything from there at all, nor from the proconsul at the time, nor from their staff, either on account of fees or *annonae*,²⁶ whether in gold, clothing or any other kinds. Otherwise, integrity would not be preserved. It is to avoid the province's being torn to pieces by plundering that we are putting the whole thing under a single authority.

7

The person sent out by us will therefore, in person, take great care over the estate of the crown treasury. He will see what has been abstracted from crown land and is being held unauthorisedly by others – whether it consists in pasture-lands, arable, vineyards, estate settlements, or buildings –, and

²² Indicating an overall income from the estates assigned to the Empress Theodora of some 3,600 *solidi*. For estates assigned to the Empress Theodora in Egypt, see Azzarello (2012), pp. 4–8 and 29–31.

²³ 'Assessor' = legal secretary or adviser.

²⁴ A reference to the *praepositus sacri cubiculi* or chamberlain of the imperial household charged with overall administration of the receipts of the Cappadocian estates of the *domus divina* (see *Codex* 12.5 and Delmaire (1989), pp. 220–3). The holder of this position was usually a eunuch (see Kazhdan (1991) 3, p. 1709).

²⁵ The *scholae palatinae* ('palace corps') were units of palace guards under the command of the 'Master of Offices' (*magister officiorum*) (see Kazhdan (1991) 3, pp. 1851–2) rather than financial or other officers of the palatine bureaux (see Delmaire (1989), p. 127). They were founded by the Emperor Constantine to serve as the emperor's personal guardsmen and agents, but by the early sixth century are normally supposed to have ceased to have much experience of battle, serving more as a privileged parade and household guard (see Treadgold (1995), pp. 10 and 90–5). See, however, note 33 below.

²⁶ '*Annonae*' = stipends (see *J. Nov.* 8, note 15).

will reclaim for it its original land. No defence on the grounds of the passage of time will be put up against him, as nothing of the kind could be put up by anyone against the public treasury, either for financial gain or with a view to enlarging his own estate.²⁷ The idea of making some gain with dirty hands is not gain, but loss: it will be paid for later, many times over, in impiety and disgrace.

1. He will also keep the city entirely free of disturbances, not permitting unrest to damage the civic administration. He will exact the public taxes vigilantly and justly, neglecting no aspect of them, and permitting neither public treasury nor individuals to suffer any loss to what is theirs, seeing that he has complete power over everyone, whether they are soldiers, or are *scriniarii*²⁸ of the Most Illustrious prefects or the most gallant generals, or are in the civil service, or have a post in the crown treasury, and whether they are of higher or of lower rank, or belong to the priesthood. This one man will be the commanding authority over them all; and he will bear in mind his own reputation, our laws and, before all, God. Using his proconsular rank, he will see to the bringing in of the public taxes, unfailingly; he will collect the revenues of the crown treasury by means of the persons previously under that high office; and he will also pay attention to the orders customarily issued by the Most Illustrious *praepositus* of our divine bedchambers. None of the *canonicarii*²⁹ sent out from time to time by the Most Illustrious *praepositus* are to be able to take so much as a single obol,³⁰ as fees or for any other cause whatever, from the *summarius*³¹ of the time, or from those making the tax-exactions, or from the Admirable proconsul or his staff, or from the quarter-masters as they are called, or from the *praepositus*, or from any person whatsoever pertaining to our divine property. The military arm will support him in both these spheres of responsibility: it will suppress the bodyguards of the powerful, and it will not allow the estate properties to be plundered and forcibly expropriated; nor will he himself overlook such things, as the previous *comites* used to do. Nor yet will he send out deputies; instead, he will use the services of the local defenders,³² and of members of his own staff.

²⁷ I.e. nobody would be able to claim ownership of land from imperial estates on the basis of *temporis praescriptio* (= unchallenged possession of that land across a number of years: see Berger (1953), p. 645).

²⁸ '*Scriniarii*' = officials employed in the bureaux of the imperial chancery: see *Codex* 12.49.

²⁹ '*Canonicarii*' = tax-collectors.

³⁰ The 'obol' was no longer legal currency, and usage of the term here is merely proverbial.

³¹ '*Summarius*': see note 5.

³² For the 'defenders of the cities', see *J. Nov.* 15.

2. If he should ever require troops anywhere, he will summon the support of those in the area where the necessity calls. These will carry out all their operations at their own expense, inflicting no heavy charges on the subjects, and incurring no costs without paying for them. He himself will also avoid doing that, by meeting his own expenses wherever he is, even if we should give him orders to go to another province; so too will his assessor, the rest of his proconsular and military service, and whatever else these all have with them in the way of slaves and pack-animals. As we have said before, his troops, and any possible *scholarii* or *domestici*³³ they have out there, are required to obey his orders, for fear of the peril to their office, and their property; we are giving him freedom to deprive them of that, too, should they not carry out his orders, because we wish the holder of this office to be both feared and respected by the subjects. Should any soldier, be he under the proconsul, or be he a *scholarius* or *domesticus*, inflict any loss on a taxpayer of ours in carrying out his orders, that person is to be personally liable for compensating the injured party, by deduction from his own stipends. He will let no-one at all, even an emissary from here, commit an injustice on our taxpayers.

3. There being nothing that we exclude from his jurisdiction, he will also preserve the system of mounted public transportation³⁴ from abuse; he will proceed against any emissary to his province, from any court whatsoever, who commits an offence by making demands beyond what is authorised.

8

Another of his concerns will be the city, together with what are known as its ‘*sitonica*’,³⁵ and its public works; he will ensure that the keeping of written

³³ Both *scholarii* and *domestici* were palace and household guards, some of whom, in this instance, appear to have been garrisoned on or despatched to imperial estates: see *Codex* 12.17, Frank (1969), pp. 81–98, and 167–219 and Treadgold (1995), p. 92. This is revealing, in that emphasis is often placed in both contemporary sources and the modern secondary literature on the extent to which such palace or household guards ceased to be effective battlefield troops in the sixth century (see, for example, Agathias, *Histories* 5.15 and Frank (1969), pp. 213–14). This novel would suggest, however, that whilst that may be true, they instead came to play an important supervisory role with respect to the expanding estates of the *domus divina* (see note 36 below). The *scholarii* were the largest contingent of the palace guard (numbering some 5,500 at the start of Justinian’s reign, to which the emperor then added a further 2,000 ‘super-numeraries’) and were stationed both within and outside of Constantinople, as were the *domestici et protectores* who were a separate and more highly remunerated guards division (see Haldon (1984), pp. 119–41).

³⁴ I.e. the *cursus velox*: the system of mounts and public stables and hostels that state officials could use when on imperial business (see Hendy (1985), pp. 603–9).

³⁵ ‘σιτωνικά’ = the public grain fund for the city.

accounts, and the disbursements for both the crown treasury and the city, are in accordance with our law. Should he find any of those who try to put so-called ‘customary’ orders on record, because someone is diverting water from aqueducts, or concerning the condition of the city wall, of any bridges there are in the province or of all its roads, or for any other cause resulting from past maladministration, he will in all cases expel him from the province, not permitting him to record any such order, or make any gain whatsoever by doing so. Should we decide that there should be some supervision, we shall arrange for it ourselves by means of a divine pragmatic directive addressed to the holder of this office, informing your eminence of it, so that no-one has easily accessible and unobstructed access to such ways of making money. The holder of the office will preferably stop all malpractice with his own resources; should he, however, need something more forceful, he will inform your excellency, the Most Illustrious *praepositus*³⁶ and the other all-praiseworthy office-holders who have some connection with the matter, and ourselves, and we shall instruct him as to what is to be done.

1. His measures to prevent the putting up, in the province of which he is governor, of placards with the name of anyone except the Sovereignty, or the crown treasury, will extend both to confiscation of the property of the persons attempting any such action, and to the amputation of the hands of those who put them up, if they dared to do so on their own account; otherwise, if it was done in their absence by agents of theirs, he will subject those to severe tortures.³⁷ Whoever it was who dared to put up the notice-boards, whether acting for themselves or in the name of someone absent,

³⁶ *Praepositus* = the *praepositus sacri cubiculi* on whom see note 24. Broadly speaking, the income derived from imperial estates placed under the control of the *res privata* was hypothecated to contribute to ‘supply the land and the gold for the munificence traditionally demanded of the crown’, whilst that derived from estates assigned to the imperial household (*domus divina*) met the direct needs of the emperor, the imperial family, the palace, and court as a ‘yet more personal source of income’ (Jones (1964), pp. 425–6). Under Justinian, however, the *domus divina* began to cease to be conceived of as deriving its revenues from imperial estates placed at the disposal of the emperor assigned from the *res privata*, and came instead to be regarded as the administrative centre of estates which represented the emperor’s personal fortune, ultimately overseen from the imperial Bedchamber (*cubiculum*) at the heart of the palace (see Delmaire (1989), pp. 699 and 708–9). For this separation of the *domus divina* from the *res privata*, see *J. Nov.* 69 c. 4 dating to the year 538 and Delmaire (1989), p. 231. Delmaire suggests that this hiving off can be dated to around 536 (*ibid.*, p. 232). From the 530s, there was also a marked tendency for the *domus divina* to expand at the expense of the broader resources of the *res privata* (see *ibid.*, pp. 708–9, Lounghis (2000) and Karayanopoulos (1958), pp. 54–72).

³⁷ Here, as in the previous two constitutions (*J. Nov.* 28 and *J. Nov.* 29) Justinian orders the governor to punish landowners for erecting placards asserting ownership over the estates and properties of their neighbours.

he will at once take the boards down and smash them over the heads of those who put them up; he is to know that should he be negligent in this after having been informed of it, he will find that the property confiscated is his own.

9

He will put every effort into the conduct of legal cases, and will not let the agricultural population suffer injustice, as it has hitherto. We will not have Cappadocians troubling us any more with their numerous outcries, prostrations and lamentations; instead, he will arbitrate for them himself.³⁸ Should we see that someone has appeared who has not first put his grievances before the governor, we shall send him over to the province again in ignominy, for having abandoned the governor and come running directly to us. But take the opposite case, that plaintiffs have been petitioning him and naming those committing offences against them, while he has lapsed into a life of spoil dissipation, and pays no heed to their pleas, but just leaves his suppliants in the lurch: should they be thus compelled to come running to us, particularly if they are women, and we find out that they brought their case but he did not assist, we shall immediately suspect that this is for some motive of profit, or of doing someone a favour or a service. We shall then oppose him ourselves in every way, our opposition being threefold, in view of his triple office: warring against him will be justice, ourselves and the laws.

1. In fear of them, and in mindfulness of our instructions (*mandata principis*,³⁹ as they were called in antiquity) which we shall be giving him along with his codicils of office, it will be for him to conduct all affairs in accordance with our aim, keeping his mind impartial and his hands clean, and respecting justice, than which there is nothing in the world stronger, finer and better able to bring one close to God and to the Sovereign. That is how we wish him to be, and to be attested by us, while he, alone, conducts all the affairs of his province; no-one else is even to hear cases, nor are we lightly going to prefer to delegate them to anyone else, nor to send emissaries, either for suppression of violence or for any other cause whatsoever. Furthermore, even if any such thing should have happened hitherto, either by divine pragmatic directives of ours or by office-holders' orders, we wish it to lapse altogether; he is to take over the entire

³⁸ Justinian thus repeats his determination to curtail the flow of appeals to Constantinople.

³⁹ For such *mandata* see *J. Nov.* 17.

administration of the province, permitting no-one else to have any access to it at all.

10

This post is another that we are ranking as Admirable,⁴⁰ a fitting distinction for proconsuls. We wish your excellency, in conjunction with the Most Illustrious quaestor of our divine Sovereignty, to judge appeals from him according to the procedure for *consultationes*.⁴¹ Any appeal-case of a value below five hundred gold pieces arising in either Cappadocia, even if the judge was assigned to it on a command from us or from any office-holder other than an Admirable, will be heard by the Admirable proconsul himself, in place of the divine judge and the divine courtroom.⁴² This is another right we are conferring on him; we are enhancing his office with a privilege no-one has seen hitherto in Cappadocia. For that reason, he is to be upright and high-minded, paying regard both to us and to the law, and being aware that, should he keep to that, he will remain in office for a long period, and perhaps an even higher office will be receiving him in turn; whereas, if he ignores our commands and puts himself at the service of certain powerful figures, instead of at that of the law and ourselves, he will soon forfeit what has been given him, and will in future, having proved unworthy of our choice of him, be classed as under condemnation.

11

His punishment of adultery, abduction of virgins, robbery with violence, murder and any similar offences is to be so harsh as to bring lasting reform for all time to come, by means of retribution against a few people; with the law's aid, he is to be a severe chastiser of offenders. This is not inhumanity, but rather the highest form of humaneness, in that it is a large number that is saved by the correction of just a few. Should he tolerate an attempt, by anyone accused of such a crime, to shield himself by pleading his office, rank, priesthood or anything of the kind, in the hope of extracting himself

⁴⁰ I.e. will carry the rank of *spectabilis*.

⁴¹ 'Appeals from him according to the procedure for *consultationes*' = appeals which were known in Latin as *appellationes more consultationis* or *consultatio post sententiam*: see *J. Nov.* 28, note 19.

⁴² I.e. the governor will sit *vice sacra* or in place of the emperor and the highest appeal courts of Constantinople (see Van Der Wal (1998), p. 180 (entry 1169)).

from his grasp, he is to know that he will be proving himself unworthy of our favourable opinion of him; no-one will escape the law by protecting himself for such crimes either with any power of his own, or with patronage from another. And, if anyone should have the temerity to interpose himself with such forms of patronage, he too will be subject to a penalty like that of the offender; aiming to rescue from the hands of the law one who has committed such grave criminal offences is the same thing as committing an offence oneself.

1. A schedule will also be subjoined to the law showing what the governor himself, and his staff, are due to receive from the public treasury, what they are to pay for their codicils, and what contribution they are to make to the household of the sharer of our life, the most divine Augusta: that is, fifty pounds of gold, brought in three instalments, as has been in force hitherto and for some time past.

2. As we have frequently stated, he will treat our subjects cleanly, a point to which we attach particular importance, and one that has caused us to disregard heavy cost despite our being involved in heavy expenditure and large-scale wars, by which God has granted to us to be at peace with Persia, to defeat the Vandals, the Alani and the Moors, to add all Africa, and Sicily as well, to our possessions, and to have good hopes that God will assent to our re-conquest of the rest of the lands that ancient Rome had conquered, from the bounds of one ocean to the other, but then lost through inertia.⁴³ Emboldened by having God on our side, we are making it our aim to put that right; we shun no extreme of discomfort, constantly enduring sleeplessness, fasting and every other form of hardship for the benefit of our subjects.⁴⁴

He will also find our instructions, which, as we have stated above, we shall be giving him along with his warrants of office. Should he carry out all his duties in accordance with those, he will be admired, and will prove himself in every way deserving of the office we have given him, and of our choice of him.

⁴³ Peace with Persia had been secured through the negotiation of the so-called treaty of 'Endless Peace' of 532. Despite its name, however, the agreement would only hold until 539 (see Sarris (2011a), pp. 145–52). Here, Justinian sets out the rhetorical ambition to re-conquer all lost Roman territory, and re-states his sense of providential mission.

⁴⁴ Justinian's self-presentation as the 'sleepless emperor' would be used by Procopius in his *Secret History* as a motif with which to attack him: 'And how could this man fail to be some wicked demon, he who never had a sufficiency of food or drink or sleep?' (*Anecdota* 12.27).

Conclusion

Your excellency, in awareness of all the above provisions manifested by this divine law of ours, is accordingly both to pay the stated stipends to this governor's high office, and to know that it has been made of such distinction that it will be justly aspired to by many, in their desire for the glory and rank now granted it by us.

<Given at Constantinople, 18th March, after consulship of the Most Distinguished Belisarius > [The Greek is undated; this date is in Auth.]

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

If arrangements that are inert, ineffective and disorderly could be brought into the proper state of sound organisation, things would look quite different: better, instead of worse; instead of disordered, ordered; properly sorted out and tidy, instead of what was previously disorganised and confused.² This being what we have found wrong with the province of Armenia, too, we have thought it necessary to bring it into one harmonious order, and, as a result of proper organisation, to endow it with the strength it needs, and put it into due order.

1

To this end, we have made Armenia into four.

First is the one furthest into the interior, whose metropolis, formerly called Bozanis or Leontopolis,³ has been distinguished by being named after our Piety. We have also honoured it with a proconsular governorship, held by the Most Magnificent Acacius,⁴ and have made it *spectabilis*,

¹ This constitution seeks to fully integrate into the empire the frontier territories of Roman Armenia, abolishing their native political and administrative institutions, securing the military supply line from the Black Sea coast to the Armenian–Persian frontier, and introducing new provincial structures. This reform played a vital part in consolidating the empire’s military position in the Western Caucasus – a primary objective of the imperial authorities since the revival of Roman–Persian warfare in 502, which had been initiated by an unprovoked Persian assault on the Armenian frontier city of Theodosiopolis (modern Ezerum): see Sarris (2011a), pp. 134–45 and Greatrex and Lieu (2002), p. 100. Procopius informs us that the tightening of Roman control over Armenia that ensued served to alienate members of the Armenian nobility, who invited the Persians to intervene (see Procopius, *Wars* 2.3). The constitution places great emphasis on which province each of the main cities of Armenia was to be placed under. As well as being centres of administration, these cities were vital to control of the river valleys across Armenia which potentially granted any marauding enemy access to the Anatolian plateau, and served as fortified redoubts for the Roman army. For Armenia in this period, see especially Adontz (1970) (who discusses this law at pp. 130–9), Zuckerman (1998) and Greatrex (2005).

² The imposition of order on chaos is a common motif of Justinianic legislation.

³ For this city, see Adontz (1970,) pp. 116–17.

⁴ Acacius was a native of Armenia who had hitherto served as governor of Greater Armenia (*Armenia Magna*), and was promoted by this law to the higher-ranking post of governor of the First Armenia (*Armenia Prima*). According to Procopius (*Wars* 2.2.3) he denounced

endowing it with all that is due to a proconsulship: we have distinguished it with the proconsular robe, and instructed that it is to have all that goes with that.⁵ As well as Theodosiopolis,⁶ which it had before, we have given it the cities of Satalas,⁷ Nicopolis⁸ and Coloneia,⁹ from what was previously called the First Armenia, and Trapezus¹⁰ and Cerasus¹¹ from what was previously called Polemoniac Pontus; by detaching these from the Most Illustrious provincial governor and the Admirable *moderator*, respectively, we have provided the province as a whole with seven cities, together with all their surrounding territory.¹²

1. The Second Armenia in our re-organisation is what was previously called First Armenia, whose chief city is Sebasteia.¹³ The cities we have assigned to it, in addition to Sebasteia, which it had before, are Comana, from what was previously called Polemoniac Pontus,¹⁴ and Zela from Helenopontus; also Brisa.¹⁵ Thus this province comprises five cities. We have left its governorship in the same form as before, as presidial, and have not enhanced its governor with any higher title, but have left him with what he had before.

2. In addition to those, we have made the former Second into Third Armenia. Its chief city is the ancient, notable city of Melitene,¹⁶ favourably placed as to both soil and climate, not far from the courses of the Euphrates. We have thought it needful to enhance this at the present time by raising it to *spectabilis* form, calling its governor Justinianic *comes*, and also, as *annonae*, giving him seven hundred¹⁷ *solidi*, his assessor

his friend Amazaspes for conspiring with the Persians and had him killed, before himself falling victim to an assassination plot (*Wars* 2.3.6–7). His unpopularity amongst the Armenians was largely the result of his having levied imperial taxes in a region where they had hitherto been unknown. His son, Adolius, urged Justinian to avenge his father, and served loyally in the imperial army in the Caucasus, before falling victim to an ambush whilst returning from Persian territory (*Wars* 2.25.35): see *PLREIIIA*, pp. 8–9 (Acacius 1) and 16–17 (Adolius).

⁵ I.e. the governor will be of *spectabilis* rank.

⁶ For Theodosiopolis, see Adontz (1970), pp. 112–24.

⁷ See *ibid.*, pp. 49–53, 61–5, and 109–11.

⁸ See *ibid.*, pp. 61–8.

⁹ See *ibid.*, p. 49.

¹⁰ See *ibid.*, p. 50 and Bryer and Winfield (1985), pp. 178–250.

¹¹ See Adontz (1970), pp. 137–8 and Bryer and Winfield (1985), pp. 126–34.

¹² This arrangement served to secure the lines of communication and supply from the Black Sea coast and Trebizond (Trapezus, now Trabzon) to the Armenian frontier.

¹³ See Adontz (1970), pp. 61–4 and 67–8.

¹⁴ See *ibid.*, pp. 58 and 73.

¹⁵ See *ibid.*, pp. 134 and 136–7.

¹⁶ See *ibid.*, pp. 29–30, 60–3, 66–9, 73–4, 79–80, and 112–13.

¹⁷ These numbers are given in Latin in the Greek text. The *annonae* were stipends given by way of remuneration.

seventy-two *solidi*, and his office sixty *solidi*, with all the attributes proper to such high offices. Those previously called his 'civil servants' will have all the same duties as before, in particular over the tax-exaction, but will change their title to '*comitiales*', although everything will be kept the same for them as when they were officially 'civil servants'. The cities we have put under it are Arca¹⁸ and Arabissus,¹⁹ Ariarathea²⁰ and another Comana (also called Chryse),²¹ and Cucusus,²² which it had previously, when it comprised six cities.

3. We have also established a Fourth Armenia. This was not previously unified into the form of a province, but was tribal, and a collection of various races, with barbarian names – Tzophanene,²³ Anzetene (or Tzophene)²⁴ and Asthianene (also called Balabitenene)²⁵ – under satraps, that being a title of office not even Roman, nor yet a traditional one of ours, but imported from a foreign state.²⁶ Accordingly, we have enhanced it, too, with the form of a civil governorship, appointing a civilian governor for it, and giving it Martyropolis²⁷ and the garrison town of Citharizon.²⁸ It, too, has been established as one of the posts of *ordinarius* status, made consular by us.

Thus, of the four Armenias, two are *spectabiles*, one being proconsular and one comital: the governor of the First Armenia is a proconsul, while that of the Third is a *comes*. Those of the Second and Fourth are *ordinarii*. As we have made a particular point of not having appeals up to five hundred *solidi* brought to this fortunate city, but to neighbouring *spectabiles* governors, a further direction of ours is that appeals up to the stated amount from the Second Armenia, that is from Sebasteia, are to go before the governor of the First Armenia, that is the proconsul, while those from the Fourth Armenia are to go to the *comes* of the Third Armenia, in Melitene.

¹⁸ See Adontz (1970), pp. 69, 73–4, 134 and 137.

¹⁹ See *ibid.*, pp. 20, 61, 68–9, 73–4, 134 and 137.

²⁰ See *ibid.*, pp. 61, 72–4, and 137.

²¹ See *ibid.*, pp. 59, 61, 72–4, 134 and 137.

²² See *ibid.*, pp. 61, 68–9, 73–4, 134 and 137.

²³ See *ibid.*, pp. 13–14, 26–7, 32–5, 91–3, 107, 134, 137, 257 and 284.

²⁴ See *ibid.*, pp. 16, 26–9, 31–5, 107, 134, 137 and 284.

²⁵ See *ibid.*, pp. 14–18, 20–1, 26–8, 32, 35–7, 107, 134 and 137.

²⁶ 'Satrapies' were an institution of Persian origin, Armenia originally having formed part of a broader Persian commonwealth. Effectively, Justinian is here dismantling the traditional (princely-led) political and military organisation of the frontier territories of the Roman sector of Armenia and more fully integrating them into the empire through the extension over them of a more standard form of Roman administration.

²⁷ See Adontz (1970), pp. 9–10, 12–13, 26–7, 33, 35, 92–3, 107, 109, 112–15 and 284.

²⁸ On the garrison and associated fortress at Citharizon see Howard-Johnston (1989).

2

Those, then, are the arrangements we have made. There is a further provision we think it right to add, by which to put over the Third Armenia a distinguished man who has already served under us, and who is worthy of the burden and the dignity of the post. Thus, finding that the Most Magnificent Thomas²⁹ has already held posts in Armenia, and is, furthermore, a good man who has served, and is serving, us with integrity, we are appointing him to the administration of this office. For one thing, then, he is to be at the head of this province, in the form we have stated; but in addition, he is to see to all other matters that we may entrust to him, by means of divine *commonitoria*³⁰ concerning either the province we have assigned to him, or others. This we have actually done, by having made divine *commonitoria* to him on a number of different actions, which it is his duty to put into effect in other regions as well.

1. We wish high priesthoods to remain in their previous form, as we have frequently stated, without any alteration or re-organisation in the right of the metropolis, or in its appointments: those who had previously been making appointments are still to retain the authority to appoint, and those who were metropolitans previously are to remain in their position.³¹ Thus, as far as they are concerned, there has been no re-organisation.

3

It goes without saying that, as we have made the post of *comes* of the Third Armenia not just a civil one, but military as well, the troops stationed there must necessarily be under his command. Just as army commanders are allowed to do, he has licence to call them to account, to hold enquiries, to see to their stipends and to proceed against any offences on their part. He is not to permit soldiers to commit any offence against the subjects; he is also to hear criminal charges against them for any graver offences on their part, despite their being soldiers. All that we have given army commanders to do, he is to do; and just as we have put the military arm, too, under the *comites* of Isauria and of Phrygia Pacatiana, and also the praetors of Lycaonia, Pisidia and Thrace, so he is to have not only the direction of

²⁹ Thomas is otherwise unattested: see *PLREIIIB*, p. 1315 (Thomas 6).

³⁰ '*Commonitoria*' = orders issued by the emperor to officials (akin to *mandata*): see Berger (1953), p. 400.

³¹ I.e. the re-organisation of provincial administration is not to have any effect on episcopal structures.

civil affairs, but military authority and command as well. His post being a unified one, his command over both soldiers and civilians, and his conduct of all affairs, will make him a respected figure.

His sole concern is to be that no crime should be committed in his province without also being subjected to the appropriate corrective measures. We do not deprive him of this authority over anyone at all in the province, whether civilian, military or under the crown treasury; we wish uniform and unbroken peace to be kept among all our subjects, and we are not giving access to any contempt for the law arising from discrimination between persons.

Conclusion

Accordingly, your excellency is to take pains, both now and for all future time, for these decisions of ours to be observed in respect of the constitution of the four Armenias, and especially of the Third Armenia, which has been the occasion for our making the present divine law. All the annual amounts that we have ordered to be paid are to be put into effect, and to be recorded in the individual directions of your colleagues in high office.

Given at Constantinople, 18th March, after consulship of the Most Distinguished Belisarius

536

32 | **No lender to an agricultural worker to hold his land; amount of interest they should receive from agricultural workers¹** [Greek only]

*Emperor Justinian Augustus to Agerochius, Most Distinguished governor of Haemimontus in Thrace.*²

Preamble

There is a terrible thing that has been taking place, beyond all impiety and avarice, which we have decided to remedy by means of a general law, capable of use not merely in the present necessity, but for all future time.

We have become aware that certain people in the province of which you are governor have dared to seize the opportunity of a failed harvest to make loans to certain people at interest of a very low amount of grain, and then, in default of that, to seize all their land; that as a result, some agricultural workers are becoming refugees, and some have starved to death; and that there has been devastation no less terrible than that of a barbarian invasion.³

¹ This law records that creditors in Thrace had taken advantage of a recent famine caused by harvest failure to strip peasants of their land in return for lending them grain or money. Justinian prohibits such creditors from any further acquisitions of this sort, forbidding them from accepting land as security. In return, however, he allows them to lend out grain and dried produce at a strikingly high rate of interest (see discussion in Cassimatis (1931), pp. 56–9). For further discussion of this law alongside *J. Novs.* 33, 34 and 65, see Sarantis (2016), pp. 200–2.

² On Thrace and its history down to the Justinianic period, see Soustal (1991) – esp. pp. 53–73 and Sarantis (2016), pp. 137–48. On Agerochius, see *PLREIIIA*, p. 26 (Agerochius). The territory of Haemimontus was to the south of the province of Second Moesia (*Moesia Secunda*), which the Latin version of this law found in the *Authenticum* and published as *J. Nov.* 34 describes Agerochius as also administering. Either his authority extended over both territories, or the translator who produced the *Authenticum* introduced an error of detail.

³ The context to this law would appear to have been a famine that encompassed much of the northern Balkans (see Stathakopoulos (2004), p. 265). The comparison between the destructive effects on rural communities of the demands of unscrupulous creditors and the destruction wrought by barbarian invaders would have been especially poignant in a Balkan context by virtue of the region’s vulnerability to (and recent experience of) barbarian attack (see Sarris (2011a), pp. 169–71). For agrarian economic and social conditions in the region, see Sarantis (2016), pp. 198–209.

1

We therefore decree that all who have made loans of dry produce, to whatsoever amount and of whatsoever kind, are now to return the agricultural workers their small-holdings, on repayment, with no additional charge whatever.⁴ No-one at all is to have the temerity to retain anyone's land on account of the said loans, whether recorded in writing or not. If the loan was in produce, they are to receive, as interest, one-eighth of a *modius* for each *modius*, at the end of a full year; if it was in cash, one *keration* annually per *solidus*.⁵ For the future, creditors are to be satisfied with the repayment of one-eighth of a *modius* for each *modius* for one year, or at the same rate for as long as interest remains payable, or with the *keration*, whether it should happen to be land or anything else that they have received as security; perhaps cattle, sheep or slaves.⁶

This law is to be a general one, applicable to all. It is simultaneously humane and pious; it supplies a remedy for the needs of the impoverished, while bringing a fair remuneration for the lenders.

Conclusion

Accordingly, your distinction is to take pains to put these decisions of ours into practical effect. The lender is to be aware that, should he have the temerity to act in any contravention of it, he will forfeit his right of recovery; and the recipient who was then wronged will have the satisfaction of being rid of his troubles, while seeing the lender suffer loss to his own finances.

Given at Constantinople, June 15th, consulship of the Most Distinguished Belisarius 535

⁴ The present constitution was interpreted by contemporary legal scholars as a prohibition on creditors taking the land of a peasant as surety for a loan (see Julian, *Nov.* 33, Athanasius, 16.1 and Theodore, *Nov.* 32). However, all the text of this law (as well as that of *J. Nov.* 33 which turns it into a law of general effect) actually states is that creditors could not hold on to any land pledged by way of security once the loan had been repaid. That they should have even considered doing so is a remarkable sign of the confidence of such creditors amid the troubled circumstances of the times (see Van Der Wal (1998), p. 101, note 36).

⁵ The permitted annual rate of interest on a loan in kind thus stood at 12.5 per cent, and 4 per cent for loans in the form of money. The former was remarkably high – comparable to the 12 per cent permitted with respect to maritime loans (which Justinian would increase to 12.5 per cent in *J. Nov.* 106; see Consentino (2015), p. 252). A *keration* (or ‘carat’) was one-twenty-fourth of a *solidus*, whilst a *modius* was a unit of dry measure equal to 8.8615 litres.

⁶ On the ownership of such capital by agricultural workers in an Egyptian context, see Sarris (2006), p. 73.

The same Augustus to Dominicus,² Most Distinguished praetorian prefect of Illyricum

By reason of the avarice of creditors who have taken advantage of a time of hardship to take possession for themselves of the small-holdings of unfortunate agricultural workers in default of just a small amount of grain, and are keeping all that they had to live on, we have laid down a law directed in the first instance to Thrace and all its provinces, but now also to the countries of Illyricum. We are ordering a copy of it to be subjoined also to the present law, to the end that neither should civilians think that the law is laid down against them alone, nor should soldiers rely on their higher status to suppose that it was not promulgated against them.

Your magnificence, therefore, is to know that the law is a general one, made for provincials, soldiers and people of every position, and no excuse will be applicable to anybody; that is our purpose in addressing it to your excellency, as well. Soldiers who suppose that they do not have to obey the present law are to know that they will be stripped of their rank and regarded as ordinary citizens, while nevertheless being subject to the penalties that we have laid down in the earlier law.

*Given at Constantinople, June 15th, consulship of the Most Distinguished
Belisarius*

535

¹ This constitution extends the provisions of *J. Nov. 32* to Illyricum and establishes it as a law of general effect. It adds the useful detail that soldiers were amongst those engaging in such illegal credit arrangements. For further discussion, see Sarantis (2016), pp. 200–2.

² On Dominicus (or Domnicus), see *PLREIIIA*, p. 415.

34 | **No creditor of an agricultural worker to hold
his land**

Note

This is the *Authenticum* Latin version of the Greek *J. Nov. 32*, differing materially only by the addition of 'Moesia Secunda' before 'the province of which you are governor'.

535

The same Augustus to Tribonian,² quaestor

Preamble

We are aware that in the time of Thomas³ of most glorious memory, when he was, of late, in charge of the *quaestoria censura*⁴ of both the *sacrum scrinium memoriae* and that of *epistolae*,⁵ numerous doubtful issues arose between the *adiutores* of his excellency, the quaestor at the time; that is, the pious *memoriales* of our *sacrum scrinium memoriae*, along with the *epistolares*, and the *libellenses* as well. The *adiutores* maintained that in the *sacrum scrinium memoriae* there had, historically, been twelve *adiutores*, while in each of the other two *scrinia*, those of the sacred *epistolae* and the sacred *libelli*, there were seven; but that subsequently there had been such abandoned extravagance that in the time of the Magnificent quaestor John,⁶ the

¹ *Adiutores* were administrative clerks in this instance in the office of the empire's chief legal officer or *Quaestor* (for whom see Honoré (1978) and (1998)). Their numbers had originally been limited to twelve *memoriales* (clerks), seven *epistulares* (letter writers) and seven *libellenses* (primarily dealing with petitions), but the numbers employed had swollen such that the Emperor Justin had decreed that nobody should be appointed to these offices until they had been reduced to the number originally ordained through death or retirement. Exceptions were then made, however, with respect to the quaestor's three senior assistants (the *laterculenses* of the office of the *memoriales* and the so-called *melloproximi* of the two other offices), who were allowed to nominate their own successors, whilst it was also agreed that aged or infirm *adiutores* could nominate substitutes, thereby further complicating matters of promotion and inducing the senior assistants to effectively auction off their nominations. In this law, Justinian attempts to reinstate the numerical cap on the office of the *adiutores*. Office-holders (or their heirs) were still to be permitted to sell their places on the staff, but henceforth only at a fixed rate of 100 *solidi*. Only the three highest office-holders would retain the privilege of selling their post to the highest bidder, and those *memoriales* who had assisted Tribonian in the compilation of the *Digest* and the *Codex* (who are named in c. 8) were to be given preference in promotion (see Jones (1964), p. 577).

² On Tribonian, see *J. Nov.* 17, note 2.

³ Thomas would appear to have been Tribonian's predecessor in the post of *Quaestor Palatii*. In 529, however, he was arrested and charged with paganism (see Malalas, 18.42 and *PLREIIIB*, pp. 1314–15 (Thomas 3)).

⁴ '*Quaestoria censura*' = 'the quaestorian office', i.e. the post of *quaestor*.

⁵ I.e. of the departments of imperial clerks and letter-writers.

⁶ The John mentioned here (who served as *quaestor* some time before 522–523) is recorded to have served on the commission that produced the *Codex* (see *PLREIIIA*, p. 610 (Ioannes 68)).

number of *adiutores* became, over the prolonged period of his tenure of office, virtually uncountable.

1. They said that Proculus⁷ of sublime memory had brought the disorganisation among the *adiutores* before his imperial Eminence, and that, by divine consent, a sacred constitution had been promulgated ruling that the number of quaestor's *adiutores* was to be confined to the original 26, with no licence for any replacement to be brought in until the complement of *adiutores* had been reduced, by the gradual fall in the number of supernumeraries, to the aforesaid amount. Only the highest-ranking *adiutores* had licence to appoint replacements for themselves: that is, in the *sacrum scrinium memoriae*, the person ranking third and going on to the title of *laterculensis*; and in the other two *scrinia*, of *epistolae* and *libelli*, those reaching the second rank by becoming *melloproximi*. These alone were to have licence to appoint someone else to replace them.

2. Subsequently, they said, that same man of most prudent memory rightly came to take the view that there were many to be found who were incapable, on account of the various problems that beset mankind, of performing their divine duties in person. He again, in a verbal report, put this before his imperial Highness; and a pragmatic directive ensued by which they, too, were allowed to put someone else in their place, suited for the performance of such duty, worthy of appointment by the quaestor, and receiving the said licence from the quaestor of the time.

3. That is what ensued in the time of Proculus, of magnificent memory. However, the quaestor's task changed hands; and then, as a result of altercations between certain *memoriales*, the said licence was abolished by another constitution, to the effect that no-one was allowed to appoint a substitute in his place. This was to avoid a practice that looked like venality, and sordid trafficking, among persons recognised as being servants of our sacred voice. Only three persons were excepted: those to whom the aforementioned constitution provided such licence.

4. Therefore, as we have at the present time found that those who have given their service in the compilation of the laws, improved by us and digested into order by your excellency, deserve to hold office as *adiutores*, we think it by no means just for them to be cheated of such prospects,

⁷ A native of the city of Constantinople and a practising lawyer by background, Proclus served as *quaestor* under Justin I. Procopius presents him as the effective power behind the throne at the time, and an official of unusual candour and integrity, whilst the Greek Anthology records a verse composed to adorn the base of a bronze statue of him erected to celebrate his honorary consulship (see Procopius, *Anecdota* 6.12–16, *Anth. Gr.* 16.48 and Pazdernik (2015)).

notwithstanding our desire that the aforesaid number of *adiutores* should fall with its proper regularity.

5. Accordingly, we are renewing the pragmatic directive rightly devised by Proculus of exalted memory, laid before the imperial Eminence and promulgated from there, but then, at the contentious instance of certain people, rescinded. We give licence to all 26 *adiutores* to substitute others in their place. They must, however, be suitable; the quaestor of the time must appoint them, with the holy gospels displayed; and he must provide them with written commissions. Then, on payment of only one hundred *solidi* each, persons adjudged worthy of the aforesaid duty are to have licence to take up the positions of those deceased or otherwise retiring, and to perform the duty of an *adiutor*. Those who have risen to three positions, namely those promoted as *laterculensis* in the *sacrum scrinium memoriae*, and *melloproximus* in the other two *scrinia*, even if they are not enrolled within the number of 26 *adiutores*, are to have licence to bring in *adiutores* to take their places; . . .

6. . . . but, as it is unfair to take something away from people who have been given nothing extra by us, the *laterculensis* and the *melloproximi* are to have licence to sell their places for what they can get; this is because they had had permission to transfer their office to others, even before this law. Thus they have the right both to sell, and to sell for a price as high as they can reach agreement on, whereas others to whom we have granted the right of sale are not to have licence to do so for a sum in excess of one hundred *solidi*.

7. However, whether it is the *laterculensis* who has preferred to transfer his post to another, or the *melloproximi*, or others given this concession by the law, the person to be taken on as substitute must be of the quality required for appointment by the *quaestoria censura*; the administration of the Most Illustrious *quaestor* of the time is not to fall into less than suitable hands because of this licence. If the men we have just enumerated are to receive rewards in keeping with their efforts, that will not lead to any lasting disorder in the number of *adiutores*.

8. The men whom we wish to have priority of enrolment, in places that have become vacant for any reason, are those who have rendered their service to your excellency in the compilation of the laws, namely Theodosius, Epictetus, Quirillus, Sabbatius and Perigenes.⁸ We are therefore granting them priority over all others of succession, on payment of one

⁸ For the individuals named, see *PLREIIIA*, pp. 444–5 (Epictetus); *PLREIIIB*, pp. 991 (Perigenes 1), 1072 (Quirillus), 1105 (Sabbatius) and 1291 (Theodosius 2).

hundred *solidi* each, to the places of *adiutores* who have preferred, of their own volition, to retire. Thus each of these five *memoriales* will fill the post of *adiutor* in his own *scrinium*.

9. Another principle to be observed is that, even on the departure from this life of one of the 26 *adiutores*, he is to pass on to his heirs, or to his children even if they should not be his heirs, the benefit that another *adiutor* may be taken on in his place on tendering one hundred *solidi*, and on appointment made by the most sublime quaestor of the time, in the manner stated above.

10. The prerogative that we have given to the five *memoriales*, as a special benefit, is presented to them on the condition that the *adiutor* who is dropping out has as yet no son who can serve, who is now fit to carry out the duty of *adiutor*, and who has been adjudged entirely suitable by the Most Illustrious quaestor, in accordance with the principle stated above. This is because it would be quite harsh and inhumane for such a son to be spurned, and for resort to be made to someone else from outside.

It is to be understood that any other provisions contained in the above-mentioned constitutions are to remain in their own force.

11. Your sincerity is, accordingly, to take pains to make known what our Eternity has directed to the *scrinia* concerned, so that they may know both what has been decreed by our Majesty, and what they have gained from your proposal and our generosity.

Given at Constantinople, May 23rd, consulship of the Most Distinguished Belisarius

535

36 | Africa: inhabitants' claims for restitution of property pertaining to them must be within a five-year period, and only up to a certain degree¹ [Latin only]

The same Augustus to Solomon, praetorian prefect of Africa²

Preamble

In our justified belief that anything undefined, and lacking proper limits, is impolitic and untidy, we deem it right to set our own acts within defined bounds. Thus, we recently promulgated a divine pragmatic directive for our Africa – which, thanks to our own lucubrations, God has brought under Roman rule – by which everyone is to be able to take back what they have now lost during the Vandal period, and to reclaim it for themselves from those in unlawful possession; and we fixed a five-year period within which it was to be lawful to do so. We wish this directive to remain in its own force, but with a definite restriction, and a definite limit. This is so that it shall not be lawful for Africans, after the passage of so many long years, during which old families have been almost wiped out, to revive ancient grounds of vexatious litigation, bringing trouble down on their own heads in return, and fighting internal wars amid so great a peace.

¹ The Vandal conquest of Africa in the fifth century had been associated with a series of land grabs by the Vandal elite that are likely to have been primarily targeted at the estates of absentee landowners and members of the senatorial aristocracy (see Sarris (2011a), pp. 89–96). Aristocratic African *émigrés* had lobbied in Constantinople for the re-conquest of the region, and were evidently keen to re-claim their estates. However, Justinian was equally eager to take advantage of the re-conquest of Africa to enrich the state and crown by seizing property that had fallen into Vandal hands (see Procopius, *Wars* 4.14.9–11), and it may at least in part have been with that objective in mind that the emperor promulgated the statute of limitation with respect to property claims in Africa which is enacted here. On Africa in this period, see also Merrills and Miles (2010) and Conant (2013).

² A native of the Roman–Persian frontier zone, and a eunuch by virtue of an accident he suffered in childhood, Solomon appears to have carved out a distinguished career for himself as a military administrator prior to being appointed to accompany Belisarius on the African campaign in 533. Charged with consolidating Roman control in the re-conquered territories, he served as both supreme military commander (*magister utriusque militiae*) and praetorian prefect of Africa. He would die in battle in 544 fighting against Moorish insurgents (see *PLREIIIB*, pp. 1167–77 (Solomon 1)).

1. Accordingly, we decree by this law, firstly, that should anyone claim that property belonging either to himself, or to his father or grandfather, is being unjustly held by others in contravention of our laws, he can recover them, after first, of course, providing proofs recognised by the law, either by the recital of legal instruments, or by the production of appropriate witnesses, whose reliability is acceptable to the judges – of course, after the launching of a legal action; and secondly, that this constitution of ours is to extend only to fathers and grandfathers, not to any remoter degree.

2. This decree of ours applies to both sexes, so that each person, whether male or female, is to regain from the unjustified possessors what he or she has shown to have belonged to a father, mother, grandfather or grandmother. Reclaim further back is to be inoperative: no-one is to bring down a heap of vexatious litigation on an unfortunate posterity by adducing a great-grandfather, great-great-grandfather or great-great-great-grandfather. We order that the same degree is also to be observed in collateral relationships: they are to be limited to the third degree only, i.e. to brothers and sisters, and to uncles and aunts, on both their mother's and their father's side, but not to agnates and cognates in any remoter degree.

3. Further, should anyone be ready to bring such an action, he is to provide such proofs, in formal court proceedings, nowhere else but only in your excellency's court, or that of the governors of provinces and islands. And the proceedings are not to be one-sided; nor are they to be in other provinces, nor in this most fortunate city: they are to be solely in the diocese of Africa, and in the presence of his opponents. Only then is he to merit the assistance of our Divinity, and of our constitution.

4. In no way do we allow proofs to be offered on the word of the family, and on one side only. Should anyone demonstrate that proceedings of that kind have apparently been conducted in this most fortunate city, or elsewhere, we deem that they are not to be taken into consideration, even though it was previously permitted. A very high degree of cunning has been detected in such reclaims, and we decree that machinations of that kind are to be eschewed, lest, in our desire to give each back what is his, we allow him to gain the property of others by fraud.

5. We wish the reclaim of property to take place before your excellency or the provincial governors, in the form referred to above, within our directive's set period, that is for a quinquennium; the year that has elapsed from the publication of the previous pragmatic directive is to be included in the computation of the quinquennium. Thus the litigant has a four-year period left for an inquiry of this kind – that is, if the computation of time

outruns the legitimate exceptions;³ we are in no way allowing him to exceed the limits of such a four-year period, lest the completion of the cases should take for ever.

6. By means of your edicts, to be published over the whole region of Africa, your excellency is to make known to all African citizens what my Eternity has decreed for Africa's protection, so that all may know the principles to be observed for the years that are past, and take pains to observe them. For any other such case that arises, we lay it down that all successions, and all time-limits, should proceed in the same way as the most sacred laws lay down for all the lands that our world comprises: the degrees of descendants, ascendants and all collaterals, and the time-limits, are all to remain unaffected, just as our Divinity's general laws have handed them down for all.

Given at Constantinople, January 1st, consulship of the Most Distinguished Belisarius

535

³ *Exceptionales (temporales/dilatoriae)* = claims valid for a limited period of time (see Berger (1953), p. 460).

The same Augustus to Solomon, praetorian prefect of Africa²

Preamble

We take pains by night and day to support the venerable church of our Carthago Justiniana,³ and all the other churches of the diocese of Africa, with marks of imperial favour, so that, now they have been seized from tyrants, by God's protection, and united with our realm, they may also experience acts of munificence from us.

[Below are two versions of par.1: the first is in a single sentence, to illustrate the elaborate syntax characteristic of the original language of the novels; the second breaks it up into three, and represents the degree to which the syntax has normally been adjusted for easier reading, throughout the work.]

1. Whereas the most holy Reparatus,⁴ priest of that same city of our Carthago Justiniana, and acknowledged president of the venerable council of the most holy churches of all Africa, together with the other most reverend bishops of the same province, have, in a personal letter delivered

¹ This law permits the imperial or Catholic Church in Africa to reclaim property it had lost during the period of Arian Vandal rule. It also seeks to re-enforce the confessional boundaries between Catholics and others (primarily Arians and Donatists) that had perhaps broken down during the era of Vandal overlordship, and orders the destruction of synagogues in a concerted move against the region's Jewish community. The inference must be that the imperial authorities regarded the Jews as implicated in Vandal rule. The anti-Jewish measures taken by the Byzantines in Africa may have inspired the harsh anti-Jewish legislation of the Visigothic Kings in Spain (see Donaldson (2012), pp. 215–29). The Donatists were a rigorist faction within the African Church that dated back to the fourth century and the aftermath of the 'Great Persecution' under Diocletian (284–305), whilst Arianism argued that within the Holy Trinity, God the Father preceded and was separate and superior in authority to God the Son (for the Donatists, see Paas (2005), and on the Arian Church in Africa, see Whelan (2014)). The re-assertion of Catholic control over places of worship enjoined by this novel is reflected in the archaeological evidence (Leone (2012), p. 25). The law is alluded to by Procopius (*Wars* 4.14.14). For further discussion of this novel and both its African and ecclesiastical context, see especially Kaiser (2007), pp. 76–88.

² On Solomon, see *J. Nov.* 36, note 2 and *PLREIIIB*, pp. 1167–77 (Solomon 1).

³ Justinian had re-named Carthage in his own honour after its liberation from the Vandals in 533. In the *Secret History*, Procopius is scathing of this tendency on the part of Justinian to re-name things after himself; see *Anecdota* 11.2.

⁴ Reparatus was bishop of Carthage: see Kaiser (2007), pp. 81, 95 and 103 (including note 276).

by the religious Theodorus,⁵ deacon and *apocrisiarius* of the same venerable church of the city of *Carthago Justiniana*, besought our Majesty that the properties of the church in the whole region of Africa, taken from them in the time of the tyrants, but returned to them by the pious ordinance of our Divinity after the victories against the Vandals that have been granted us through God's aid, should – that is, without impairment to the payment of the tax anywhere imposed – be in their secure possession, in accordance with the purport of the law already promulgated on this matter, we have considered that we should readily and gladly accede to their petitions.

1. A personal letter has been delivered by the religious Theodorus, deacon and *apocrisiarius* of the same venerable church of the city of *Carthago Justiniana*, from the most holy Reparatus, priest of that same city of our *Carthago Justiniana* and acknowledged president of the venerable council of the most holy churches of all Africa, as well as from the other most reverend bishops of the same province. In it, they have besought our Majesty that the properties of the church in the whole region of Africa, taken from them in the time of the tyrants, but returned to them, by the pious ordinance of our Divinity, after the victories against the Vandals that have been granted us through God's aid, should – that is, without impairment to the payment of the tax anywhere imposed – be in their secure possession, in accordance with the purport of the law already promulgated on this matter.⁶ We have considered that we should readily and gladly accede to their petitions.

2. We accordingly command your excellency to ordain, in instructions of your own, that without impairment to the tax-system, as has been stated, the venerable churches both of our *Carthago Justiniana*, and of all the cities of Africa, are to have secure and entirely unshaken possession of the aforesaid properties, of which no-one is to deprive them.

3. If it is proved that any other possessions, houses or church ornaments are being held by certain persons, whether Arians, pagans, or any others whatsoever, these are in all circumstances to be wrested from them, without any delay, and assigned to holy churches of the orthodox faith.⁷ Those holding these possessions unjustifiably are not to be allowed to plead any

⁵ Theodorus is otherwise unattested.

⁶ As well as members of the senatorial aristocracy, the Vandals had also targeted the estates of the imperial Church for confiscation (see Victor of Vita 2.39). The Vandals themselves were predominantly Arians.

⁷ The confiscation of properties owned by the Arian community is described in detail by Procopius (*Anecdota* 11.18–20), who claims they were seized by the crown.

length of tenure,⁸ but are to be compelled to make restitution of them, every evasion being dismissed out of hand; we do not allow most holy vessels or ornaments belonging to venerable churches, or any other possessions of theirs, to be held among pagans, or other persons. The law that we have issued previously gives ground enough and to spare for such a provision.

4. Further, we rule that the venerable churches of Africa should have full right to the prerogative in the other constitution of ours that we have made for the benefit of ecclesiastical properties and possessions;⁹ by the terms of that, we grant them licence to recover properties and possessions of their own that have been appropriated by any person whatever in the province. They are thus to be able to claim from unjustified holders anything belonging to them that has been, or shall be, taken from them.

5. It will also be your excellency's concern that no communion at all in ecclesiastical rites shall be granted to Arians, Donatists, Jews or others known not to follow the orthodox religion at all; the ungodly are to be excluded altogether from services, and from churches. No licence at all is to be allowed them to appoint either bishops or clergy, or to baptise any persons whatever and drag them into their own madness. Such sects have been condemned not only by us, but also by previous laws; their adherents are utterly criminal, and depraved as well.

6. In accordance with our laws that we have laid down, all heretics are to be dismissed from public functions.¹⁰ Heretics are to not be allowed to conduct any public proceeding at all, nor to take up any office, by any kind of canvassing. This is to avoid those who are heretics appearing to have authority over the orthodox; it is enough that they have their lives, without claiming any position of authority for themselves and using it to inflict any kind of detriments on orthodox people, the perfectly true worshippers of almighty God.¹¹

7. We absolutely forbid the rebaptised to hold any position in our service. However, if they choose to come to the orthodox faith in complete sincerity of purpose, we give them licence to do so, and do not reject their repentance; to almighty God, also, there is nothing so acceptable as the repentance of sinners.

⁸ 'Length of tenure', i.e. those holding such properties could not claim ownership of them by right of unchallenged possession over a number of years (*temporis praescriptio*).

⁹ A reference to *J. Nov. 7*.

¹⁰ Justinian is here concerned with driving out of the imperial administration in Africa both actual Arians and pragmatic Catholics who had been prepared to work with them.

¹¹ See *Codex* 1.5.18 and 1.9.

Additionally, we forbid Jews to have Christians as slaves. That is something disallowed by previous laws, which it is our desire to keep unimpaired. They are not to have slaves of the orthodox religion, nor, should they receive catechumens, are they to dare to have them circumcised.¹²

8. We do not allow their synagogues to remain standing; we wish them to be rebuilt in the form of churches. Nor do we permit Jews, pagans, Donatists, Arians, or any other heretics whatever, either to have conventicles, or to do anything resembling an ecclesiastical rite; to allow the performance of sacred rites by the impious is quite unacceptable.

9. In addition, we grant to the holy church of our *Carthago Justiniana* all the privileges that metropolitan cities and their primates are acknowledged to have, and that are also separately acknowledged, in Book 1 of our Code,¹³ as assigning to sacred churches their due honour. This is in order that the city which we have decided is to be honoured with the appellation of our Divinity shall flourish by being adorned with imperial privileges, as well.

10. If fugitives take the step of fleeing for sanctuary to venerable churches and their precincts to save their lives, no-one at all is to lay sacrilegious hands on them and drag them away.¹⁴ They may continue securely in the venerable places, with due reverence, unless they are murderers, abductors of virgins or violators of the Christian faith; who would not admit that those who commit such crimes deserve no privileges? The holy church cannot both help the wicked and offer its assistance to the victims of harm.

11. Any further offering that has been, or shall be, made to the holy church of our oft-mentioned city of *Carthago Justiniana*, or to any other venerable churches of the African diocese, by any person, for the salvation of his soul, in any lawful form, whether in possessions or in any other kinds whatever, is also to remain securely with the same venerable churches, and is not to be taken away by anyone's wicked hands. Those who take pains to perform actions so praiseworthy and so acceptable to God, and to make pious oblations, are well praised by us, and are also rewarded by the mercy of God in heaven.

12. Accordingly, in the knowledge of all these grants that we have made for the honour of the holy churches of the whole diocese of Africa, by means of the present most pious law, to be valid in perpetuity, which we have decided is to be dedicated to almighty God, your excellency is to take

¹² See *Codex* 1.10.1. For Justinian's treatment of Jews, see de Lange (2005).

¹³ See *Codex* 1.3–4.

¹⁴ See *Codex* 1.12.

pains to keep them secure and unimpaired, and to make them manifest to all by the publication of edicts everywhere, in the usual manner, so that our commands, which have in view the utmost piety, are preserved intact in every respect; while those who infringe them are to be subjected to a fine of ten pounds of gold, and all who try to violate our decree in any way or at any time, or who allow it to be violated, are also to be smitten by our Divinity's gravest displeasure.

Given at Constantinople, August 1st, consulship of the Most Distinguished Belisarius

535

38 | City councillors to leave a share of nine *unciae* to their children who are city councillors¹

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

The founders of our realm, long ago, thought it necessary to assemble the well-born in each city, on the model of the sovereign city, and make them into a local Senate, or council, by means of which all public business was to be transacted, and everything was to proceed in due order. This was such a flourishing institution, and proved so distinguished, that the most prolific, as well as the greatest, families were those of the city councillors. The curial class was a very large one, and the apparent burden of the liturgies² was not beyond the ability of anyone at all to bear; the division of the burden between a large number made it almost imperceptible by those on whom it lay. However, certain persons, a few at a time, began to have themselves removed from the curial membership list, devising excuses by means of which they could somehow be free of them; then, gradually, the councils dwindled, as innumerable excuses were devised by which private fortunes would benefit, but the common interest of the community would suffer, permanently. In this way liturgies devolved on only a few people, ruining them financially, and also reducing the cities to such straits that they are in the hands of the damnable mercenaries for whom they use the appellation *vindices*!³ The result was a civic administration full of shortcomings, and full of every kind of injustice.

¹ I.e. nine-twelfths (= three-quarters) of their estate must be left to such children or in the absence of such children to the city council itself (throughout this novel, the Latin word *uncia*, plural *unciae*, is used to mean a twelfth of an inheritance). Prior to this constitution, that share had stood at one-quarter (see Van Der Wal (1998), p. 144 (entry 973) and note 80). This law thus expresses Justinian's absolute determination to maintain the cohesion of the institutions of civic administration upon which the empire's governance had traditionally rested but which were coming under increasing pressure (see Liebeschuetz (1996)). The measure was the subject of bitter criticism by Procopius in his *Secret History* (*Anecdota* 29.19–21).

² The 'liturgies' (Latin *munera*) were the administrative and civic obligations undertaken by members of the council.

³ '*Vindices*' in Latin meant 'champions' or 'defenders', thus Justinian's contemptuous tone. The institution of the *vindex* appears to have been created in the late fifth century to

1. We have gone into this situation repeatedly, and have thought it necessary to apply a remedy for it; but the more we have been working at this, the more the city councillors have brought every artifice to bear against our just and proper legislation, and against the public treasury. Once they saw themselves compelled to reserve a quarter-share, at all events, for the city council, that provision had hardly been enshrined in our law before they began to dissipate their wealth, so as to die destitute and leave to the city council not a quarter-share, but just their complete and utter destitution. Next, they decided to deprive the city council of their persons, as well, and they hit on the most impious idea of all: they refrained from lawful marriage, preferring to die childless, in the eyes of the law, rather than prove themselves valuable members of both their family and the council. Then again, not long ago, they brought about the enactment of a law allowing them to give away their property without a *decretum*,⁴ despite the law's intention that a *decretum* was required for them to sell it; so paradoxical was this law that it was sale alone that it brought under the requirement of a *decretum*, with its consequent obligations, while letting them conduct any other transaction in any way they liked. These transactions transferred the estates of city councillors into ever-changing hands, while the council had nothing from them. That is the reason why, should one conduct a count in the city councils of our realm, one will find them extremely small; some of them have neither members nor money, and some have a few members, perhaps, but certainly no money.

2. We have so far made laws one part at a time.⁵ Their intention was that sales, simple gifts, and any transaction involving alienation of the immovable property of city councillors should be subject to a *decretum*, made according to the terms laid down in the law on that. Subsequently, when they started making gifts on spurious grounds, we then entirely abolished the very right of a councillor to make a simple gift to any person whatsoever;⁶ we did, however, make a justifiable exception for pre-nuptial gifts, as these are not actually mere gifts but include a transactional element, and afford the opportunity of raising the birth-rate, an object dear to our heart especially in the case of city councillors. Then, observing that numerous circumventions were taking place over this, as well, we laid

oversee the collection of taxes that had hitherto been entrusted to the city councillors. Such *vindices* were centrally appointed by the praetorian prefect (see John Lydus, *De Magistratibus* 3.49).

⁴ 'Decretum' = a decree of authorisation.

⁵ The laws referred to (which the emperor then goes on to discuss) appear to be *Codex* 10.34.4–5 and 10.35.3–5. Of these, only the text of *Codex* 10.35.3 actually survives.

⁶ *Codex* 10.35.3.

down a law to the effect that the council must in all circumstances have a three-*unciae* share, whether that came with a member or without one; either if there were a son who became a member, or if it were the council by itself that received the three-*unciae* share, no-one was to be allowed to leave the council less than that, nor to devise any evasion or diminution of any kind.

3. Nor did we stop there; we went on to decree that females also had to give a portion of their own institution, so as to ensure that there could be no reason for there being anything less for the council than its quarter-share of the estate of the former city councillor, as we have just said. Further, we also did away with all those numerous exorbitant gifts of honour; and we are permitting no withdrawals from a council except on attainment of the highest ranks, consisting of patriciate, consulship, and prefecture whether civil or military – the law recognises the post of general⁷ as being also a prefectorial rank. Thus if anyone holds a prefectorial office and is actually discharging its duties, whether as civil governor or as general, he is dispensed from councillor status under our law; but all other exceptions have been abolished. When given solely on an honorary basis, such ranks (that is those of prefect or, equivalently, of general) do not, by our decree, exempt their recipients from the membership list of city councillors.⁸

That is all included in our previous legislation, along with much else that can be found from among the laws already laid down. We have also exempted certain people from councillor status by the honorific grant to them of various pragmatic laws, all of which we wish to remain in force. The present legislation takes effect from the eleventh indiction, just past: that is, from the time when this law has been under our consideration.

4. It is because we observe that certain people are so unpatriotic as to prefer to leave their estate to others, with barely a quarter to the council – and even that only because of our law – that we have thought it necessary to increase that share in a case of childlessness.

1

Accordingly, if after this law a city councillor dies without children, either male or female, he is to leave three-quarters of his estate to the council, and

⁷ ‘General’ = the post of *magister militum* (in supreme military command of a region), which conveyed the highest senatorial rank of *illustis*. See Lee (2005), p. 117, Treadgold (1995), pp. 152–3, and Van Der Wal (1998), p.19 (entry 119).

⁸ See *Codex* 10.32.67.

one-quarter to anyone he wishes. The council as a whole will be in the position of what might have been one or more children of his; which is as much as to say that the city's whole population takes the place of his children, and he will have lasting honour and an undying memory, a great harvest such as he would not have reaped from children.

Should someone have no legitimate children, but some illegitimate ones, he is to be able to appoint even them as his heirs, together with the burden of the council. That act of appointment is to take the place of any presentation; there is to be no need of any additional payment – as there was under ancient laws – or presentation in his lifetime, because, provided that they are free, they are automatically to become city councillors as well as heirs, and are themselves to have the nine-*unciae* share of the estate, as their father may apportion between them. It would be an even better action if he were willing to leave them the entire estate; but, come what may, he is to leave them the full nine-*unciae* share, in the knowledge that even should he leave less, the amount is in any case going to be made up, under the law, to nine *unciae* of the estate. For their part, if they want to receive any of the property, they are to become city councillors as well. Should some of them make that choice while some decline, the shares of those declining are to go to those accepting. Should all decline, the nine *unciae* are then to go to the city council, as if it were a case of childlessness.

2

Should he make no statement, and have no issue of legitimate children, in that case the quarter is to go to his heirs in intestacy, while his illegitimate children, should they be willing to make a presentation of themselves to the council, are – all or some of them, according to how they opt – to be admitted to it; but in any case nine *unciae* of the estate is to devolve on the city councillors, or councillor.

1. Even if he should have children by a slave-woman, and then free them, either in his lifetime or under his will, and make a presentation of them, in those circumstances also they are to be admitted and to become city councillors in accordance with the testator's wish (or in fulfilment of their own desire, should they have made a presentation of themselves to the council);⁹ they will then receive the nine *unciae*, as stated. It is our wish that in every case, whether he should have made a will or have departed

⁹ This had hitherto been denied to those were deemed 'slave-born' (see Evans Grubbs (2014), p. 46).

without making a decision, those joining the council should receive the nine *unciae*. Should he have merely freed them without having made a presentation of them, and they (one or more of them) are willing to consider membership of the council, the nine *unciae* are to be given to the city councillor, or to the councillors in equal proportion. Should none of the illegitimate children either be willing or be the subject of a presentation, the council is then to receive the nine *unciae*.

3

Should he be the father of legitimate children, a distinction must then be made as to whether they are males only, females only or a combination of the two sexes; in every case, the result must be that the law has its full effect of giving the council its due.

Should his children be all male, or there perhaps be grandsons through predeceased sons, he is to divide the nine *unciae* between them all as he wishes, provided that the law on unduteous wills¹⁰ is in no respect infringed, unless by reason of ingratitude; we are not totally abolishing the law's provisions on that. What must at all events be observed is that he is to divide the nine *unciae* between the children not ungrateful, and that each is to undertake the same proportion of his father's curial liturgies as his father has assigned to him of the estate. Only the three *unciae* are to be left at the father's discretion, to go wherever he wishes, whether to his children or to another.

4

If they should all be female, should they be married to city councillors of the same city, their father will have licence to assign his whole estate to them, given that (as stated) they have married councillors, or else at least the nine *unciae*, as he wishes, here too paying attention to the law

¹⁰ 'Unduteous wills' = a reference to the *querela inofficiosi testamenti*, whereby an heir who would have been legitimate in intestacy but who had been left out of the will or unjustifiably disinherited could bring an action to have the will declared void (Berger (1953), p. 665). If the testator was deemed not to have been in his right mind (*color insaniae*) the will was rendered totally invalid. The *querela* might also be used, however, if the complainant had received less than the due share of the Falcidian fourth, and the complaint was then settled by payment of the requisite sum, leaving the will otherwise intact (cf. Pliny, *Ep.* 5.1 and Gardner (1986), p. 186). In such cases, the *querela inofficiosi testamenti* was in later law replaced by an *actio ad supplendam legitimam*. See Buckland (1963), pp. 327–9.

governing successions in intestacy; but should only some of them be married to city councillors, and others to non-members, the nine *unciae*, at all events, is to be left by the father to the wives of the councillors, distributed in this case also as the father may wish, and the remainder to those married to non-members of the council of their native city, or to others, provided that at least their legal minimum share must be kept for them, too. If they had not yet reached marriage, it is then only on the express condition that they must marry city councillors of the same city that he is to appoint them (either one, or some of them) as heirs to the nine *unciae*. Alternatively, if he is himself unwilling to do that, or if he should institute them but they do not accept, the nine *unciae* are to go to the council, with only the three *unciae* to be divided between them all as the law directs, their dowries being taken into the account as well.

5

Should there be both males and females, the males are to have at all events half of the estate. The females are to have the other half, but not a complete half, because unless all or some of them should be the wives of city councillors, they will pay a quarter to their brothers who are city councillors; should they make such a marriage, and become united to councillors of their own native city, they will in that case be absolved of that quarter, on the ground that, through their husbands, they will be regarded as contributing to the liturgy throughout their lives.

We have thought this legislation necessary, not so as to deprive people of the disposal of their own property, but so that our cities do not become completely devoid of a council, and that the council itself does not suffer by reason of certain perhaps impious schemes of evasion; it is for such reasons, as we have learnt, that some have engaged in forms of matrimony that are forbidden by law, so as to have children by them that are illegitimate instead of legitimate, and then to make bequests to those as if they were outsiders, and thus deprive the council of the property that is owed to it.¹¹

6

There is something else that we have found, by actual experience, is being done against the interests of councils. Numerous people are alleging that one of their parents was classed as belonging to the crown treasury, a village, a

¹¹ 'Outsiders' = *extranei* (see *J. Nov.* 1, note 1).

murex-fishery or some other body, and trying to avoid the council by attaching themselves to the crown treasury, a village, a murex-fishery or other bodies of whatever kind.¹² We decree, accordingly, that there is to be no such artifice against the public interest, but that if a councillor has a child by a mother belonging to the crown treasury, a murex-fishery or a village, it is in all cases the status of councillor that we wish to prevail. This is because city councillors are in very short supply throughout our realm, whereas the number of members of the crown treasury, a village or a murex-fishery have grown to an exorbitant extent; and it is more appropriate that the cities' councils, which have been attenuated to only a few members, should be enlarged than that there should be large additions to a large number.¹³ If anyone has attempted, or may attempt, to exempt himself from curial status on the strength of his mother's status as belonging to the crown treasury, a murex-fishery or a village, actions concluded on that basis, either from the divine court or from elsewhere, are, from and including the tenth indiction just ended, to be null and void; we wish that such persons should in future be city councillors, whereas we wish anything concluded before the tenth indiction to remain unshaken and in its own force.

However, we are excepting Theodosius and his brothers, and the sons of John known as Xiscon, from our present divine constitution.¹⁴ It was before the tenth indiction that these enrolled themselves in the crown treasury, despite their fathers' having been city councillors; but we are cancelling any action taken for the purpose of freeing them. It is our wish that they should not enjoy any of the concessions offered, but should be city councillors, carry out the functions of councillors, and attend to curial obligations. They are not to be able to have any recourse against this, as we have just stated, even should any concession have been offered them from the Court or elsewhere.

Conclusion

Accordingly, your excellency is to take pains to observe, and to put into effect, our decisions made with the aim of benefiting cities and their

¹² The constitution here casts interesting light on the range of interests encompassed by imperial estates and properties. Murex fisheries (on which see Delmaire (1989), pp. 459–61) produced the highly prized 'imperial purple' that was primarily reserved for the emperor and his court. See *J. Nov. Appendix 5*, note 1.

¹³ Procopius presents the expansion of imperial estates as a central objective of imperial policy (see, for example, *Anecdota* 18.10–12). Here, however, Justinian gives priority to councils over the crown.

¹⁴ None of these individuals are otherwise attested.

councils, and manifested in this divine law. The fine imposed on those who have the temerity to contravene this law of ours is twenty pounds of gold.

Given at Constantinople, February 15th, after consulship of the Most Distinguished Belisarius

536

PROOF

1. Restitution of effects in dowry and pre-nuptial gift

2. Woman who gave birth 11 months after husband's death¹

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

The instability and complexity of human nature necessitates gradual corrective action; even should one have kept control from the very outset, there is no way for it to return to a satisfactory state other than finding a solution as it arises, bit by bit, and so calming it into tranquillity and conformity with law.² It is such a situation that has now supervened, and has put us to the need of a law.

We are aware that this is not the first time that there has been dispute over the issue of restitution.³ In the event that people burdened with it had taken out certain hypothecs, there was much confusion over whether it was only the effects of the person burdened with restitution that had to be at risk, or whether it was also the effects on which restitution had been

¹ Justinian had already made extensive changes to dowry and inheritance law, aimed at protecting the financial interests of widows and children, as well as those of the household in the event of the death of either spouse (see *Codex* 5.13.10–11, *J. Nov.* 1, *J. Nov.* 2, *J. Nov.* 18 and *J. Nov.* 22, and discussion in Buckland (1963), pp. 107–12). The present law pursues many of the same themes. It serves, firstly, to safeguard the interests of spouses by protecting dowries and ante-nuptial gifts to which a spouse was entitled from claims made against the estate of their deceased partner by beneficiaries and legatees, affording such dowries and gifts the same protection that had traditionally been afforded the Falcidian share. Secondly, it imposes on women who become sexually active less than a year after the death of their husband the same penalty as applied to women who re-married during the year-long period of mourning (i.e. forfeiture of the ante-nuptial gift). A man, by contrast, could re-marry immediately upon the death of his wife. The law thus re-emphasises Justinian's concern for widows and his high regard for chastity in widowhood (also evident in *J. Nov.* 18).

² A standard Justinianic justification for legislation: see discussion in Lanata (1984a), pp. 165–88.

³ 'Restitution': the Latin verb *restituere* meant to restore a thing (*rem*) or inheritance (*hereditatem*), along with all the proceeds or income associated therewith, to the person for whom they were meant. As this law exemplifies, it could be used both in the context of fideicommissary arrangements, and also with respect to ante-nuptial and dotal gifts upon the death of the partner (see Berger (1953), p. 682).

directed.⁴ There was also much enquiry into a difference in the actual wording: did the decedent direct that it was what remained on the death of the person charged with restitution that had to be repaid, or did he simply order restitution to be made of the bequest as a whole, after retention of the legal share?⁵ Then *fideicommissi persecutiones* were introduced, and *in rem missiones*⁶ arising from insolvency, and those numerous complicated and almost inextricable convolutions of the said *in rem missiones*; also the fact that we had previously enacted a law to remedy this, which absolutely prohibited the alienation or hypothecation of effects on which there was a burden of restitution: they were to go their own way, not remaining securely with whomever they might come to, but returning to the person to whom the instruction was that they were to be given. That law is by now quite long-established, and has continued to be respected in the courts; but time, whose nature, as we have said before, is to keep everything in motion, was bound to reveal the need of some unavoidable exception to the law.

We have been petitioned by both men and women who have suffered injustice from these causes.⁷ A case has been launched in which a woman, on the death of her husband, was claiming payment both of her dowry and of the portion of the gift before marriage, or in respect of marriage, which her husband's death conferred on her. The deceased's brother, on the other hand, laid a counter-claim to the effects with the aim of seizing them from the woman, contending in support that that was his father's intention.⁸ He

⁴ The issue of to what extent the property of heirs charged with putting legacies and trusts into effect could be claimed against by disgruntled beneficiaries had arisen in *J. Nov.* 1 c. 2.2.

⁵ 'Legal share' or *portio legitima*: this had traditionally consisted of one-quarter of an estate to which legitimate heirs who would succeed under the law on intestacy were automatically entitled, but had been increased by Justinian in *J. Nov.* 18 to one-third or one-half of an estate, depending on the number of such heirs surviving. The issue in dispute alluded to here was whether, when such an heir was entrusted with discharging a *fideicommissum* by the deceased testator which had the effect of diminishing the estate or alienating a share thereof, the net value of his legitimate portion was either diminished by or exempted from the effects of the *fideicommissum*. In this novel, Justinian upholds the concept of exemption, which had long applied to the *pars Falcidia*: see *J. Nov.* 18 c. 2, *J. Nov.* 1 c. 2.2, and discussion in Urbanik (2008) and Van Der Wal (1998), p. 141, note 64.

⁶ '*Fideicommissi persecutiones*' and '*in rem missiones*': the former were actions for the recovery of trusts, whilst the latter were coercive measures whereby a claimant was given possession of a single thing belonging to his adversary (see Berger (1953), p. 584 and *Codex* 6.43.3). The *missio in rem* had already been abolished by Justinian in *Codex* 6.43.1, and that abolition is re-stated here (see Van Der Wal (1998), p. 152 (entry 1010) and note 118).

⁷ Note the responsive nature of imperial legislation as evidenced by this preamble.

⁸ The ante-nuptial gift and dowry were clearly the legal property of the wife. However, her family by marriage were claiming that because the actual property that had comprised the dowry and gift had been spent, alienated or used up by the deceased, the widow no longer had a claim to any of the family property. In point of law, the deceased's family was clearly

asserted that, though his brother had spent the effects, those he could see in her possession were his father's; he said his father had ordered them to be restored to him in the event of her childlessness, and that he would continue to claim them indefinitely, not giving up until our law had been complied with in full. The woman was justly unhappy, asserting that it was unjust for her husband to become secure possessor of the whole dowry in what amounted to a fraudulent manner, and take the gain from it, according to the agreement, in the event that his wife died first: whereas, now that it was her husband that had died without her having known about the substitution,⁹ she risked losing it.

On that case, a decision has been handed down that we thought satisfactory; but then again, a suppliant appeared, saying that his wife's father had given his estate to his other children by substitution, directing that only a very small amount was to be left to her; and that he was in a very dangerous position, if his own property were to be at risk over restitution of the dowry and of the entire gift before marriage agreed under the marital contract, while no part of either could come to him, because he was deprived of them by the restitution. Justifiably impelled by this, we have thought it better to amend our law than to ignore a danger to our subjects, particularly over marriage, which, being the only thing capable of procreating human beings, is the greatest boon mankind can have.¹⁰

1

That is our reason for making the present law. We wish all other provisions of the constitution previously enacted by us to remain in force; the one innovation we are making is that in future, should anyone impose a duty of

wrong, but in general terms Roman law and social institutions were strongly attached to the 'agnatic principle' which sought to prevent patrimonies moving between families (see Johnston (1999), p. 34), and this may have informed their line of thinking.

⁹ 'Substitution' (Latin *substitutio*) = the appointment of another heir.

¹⁰ Classical Roman law had held that, on the wife's death, the dowry had to be returned to her father, if still alive; but if her father was already dead, the dowry remained with the husband (Ulp.*Reg.* 6.4; *Frag. Vat.* 108). Justinian had changed this, to allow the wife's heirs to take the dowry (*Codex* 5.13.1.6), and the husband in the present case thus evidently expected to lose it (implying that she had indeed left heirs, either testamentary or on intestacy). Only a very small amount of property had been left to her in her father's will (presumably by virtue of the fact that her father had provided her with a dowry) and the husband apparently now expected to inherit that small amount. He was entitled to do so on intestacy, provided that there were no children or relatives with a prior claim (see *Codex* 6.18.1), but in the absence of such claimants, the widower would also have been fully entitled to the dowry. It is conceivable therefore, that the petitioner's primary problem was his lack of understanding of his rights, rather than an absence of rights *per se*.

restitution of his own property, he must, for one thing, reserve to his child its legal share. (That is not a quarter, because we have corrected that, condemning it as seriously inadequate; it is a third at least, or a half, depending on the number of children.)¹¹ Secondly, in that the share required by law may be insufficient for a respectable endowment of dowry or pre-nuptial gift, compatible with the quality of the persons, the bequeathed portion of his estate is also to be exempt from the restitution, up to the amount that, when added to the share required by law, makes up the dowry or pre-nuptial gift; because we are decreeing that marital contracts, and alienations and hypothecs on them, are in this way to be in all respects excluded from restitution. Even should either person, husband or wife, be burdened with such restitution, the gift in respect of marriage, called 'pre-nuptial', is even so able to be endowed without the restitution affecting those effects at all; nor, should the wife be charged with restitution, is that to be any impediment to the endowment of the dowry. This is because we give preference to the general good over the personal gains of individuals.

This is to be a privileged exception for marriage-endowments and claims arising from them. Given that our predecessors made numerous exclusions from general hypothecs by presumption,¹² though they were not so essential for us, how shall we not make an exclusion for the gains from marriage, for a much stronger and better motive?

1. All these concessions are our gift to the future, for restitutions that there will be after the making of this law. There is also an injurious practice that we are disallowing, of striving for a circumvention of restitutions: should a wife with a small dowry subsequently find out about our law, or should a husband who has made only a moderate pre-nuptial gift wish to put an extra amount into the dowry or pre-nuptial gift, and, in so doing, to circumvent our law,¹³ that is another fraud that we are doing away with. By granting no advantage to those making increases, as far as impediment to restitution is concerned, we are keeping our law flawless for the future.

That, then, will be the first head of the present law.

2

This second head concerns women who, after their first marriage, rush into a second union before the end of the year of mourning, as the law calls it.

¹¹ *J. Nov.* 18 c. 1.

¹² 'Presumption' (Latin *praesumptio*): a fact or assertion the veracity of which is accepted in the absence of a counter-proof (Berger (1953), pp. 646–7).

¹³ I.e. to place his property beyond the reach of creditors.

There have been three constitutions of our predecessors as emperor that penalise these women, and we have ourselves recently added the enactments on them to a small part of our own legislation, in the law on this subject that we have laid down, with certain amendments.¹⁴ But there has now been an utterly shameless occurrence, one which we would wish not to have happened in our times, and which we have justifiably seen as deserving correction.

A woman lost her husband after her marriage. She had apparently been meditating infidelity even during his lifetime, because before the year was out, towards the end of the eleventh month, she gave birth. It was thus impossible to say that the baby was the deceased's, because the pregnancy would not have been protracted to that extent. As one of the penalties for contracting a premature marriage is that the wife automatically forfeits the pre-nuptial gift settled on her by her husband – losing it at once, and not even having the use –, her children, seriously wronged by their mother's giving birth in this shocking way, justifiably claimed that they should at least receive their father's pre-nuptial gift, and that a wife who had so quickly dishonoured her husband ought not to make any gain from him. She – though we are embarrassed at how to put her argument into words – said that she did not deserve to forfeit it, because she knew very well that what the law was discussing was legitimate marriages, whereas in her case there had been no other marriage after the first: this birth was simply a by-product of physical lust.¹⁵ It goes without saying that there are innumerable other chastisements to which she is liable for having committed *stuprum*,¹⁶ and we are not releasing her from the penalties for that; meanwhile, however, out of consideration for the children of the deceased, in this case too we are imposing on her forfeiture of the gift before marriage, just as the law has directed for women proceeding to a legitimate marriage within the period of mourning. The law has not left these women immune from punishment, despite that being a legitimate marriage, perhaps because it suspected that there may already have been an ugly suspicion in connection with the man who became her second husband, and that that was the reason for her being in a hurry to marry him so soon; that being so, how shall we leave her unpunished in this case, in which it is not a matter of

¹⁴ See *Codex* 2.11.15; *Codex* 5.9.1; *Codex* 6.56.4 and *J. Nov.* 22 c. 22.

¹⁵ I.e. the law instituted penalties against those women who re-married less than a year after the death of their husband, whereas the woman concerned here had simply engaged in wanton sexual activity.

¹⁶ *Stuprum* = an illicit sexual union.

mere suspicion, because this most impious of all births has been given as precise, irrefutable proof of the misdemeanour?

1. We thus decree that in any such case that may occur, where a woman gives birth within the period of mourning and near the end of the year, so that the conception, indisputably, cannot be from her former marriage, she is (as well as all the other penalties that she would have incurred by entering a second marriage within the period of mourning) to be, in all circumstances, deprived of her pre-nuptial gift, both as regards ownership and as regards use. Immorality is never to be more advantageous than chastity! No; so that she should not lust after a premature marriage, nor evade legitimate marriage by means of a more serious misdeed, she too is to be subject to the same punishment, as well as having to expect an indictment for *stuprum*.

Conclusion

Your excellency, in the knowledge of these decisions of ours manifested by this divine law, is accordingly to make them public to all, as usual, by means of proclamations of your own.

Law written for John, for the second time Most Illustrious prefect of the sacred *praetoria* of the East, ex-consul, patrician

Given at Constantinople, April 18th, after consulship of the Most Distinguished Belisarius

40 | Church of the Holy Resurrection: alienation of buildings situated in that city¹

The same Sovereign to the most holy and most blessed Peter, archbishop of Jerusalem²

Preamble

The subject of prohibition of alienations of church property has already been explicitly treated by us in a general law,³ which we certainly wish both to be in force, and to hold good in all cases. However, as due care is to be exercised for the good of all churches, but in particular for that of the Holy Resurrection, and the place where the Creator of the world deigned to be born in human form, we have for that reason thought it right to enact the

¹ This law casts interesting light on the economic status of the Church, the growth of pilgrimage to the Holy Land, and the operations of the property market in Palestine in the 520s and 530s. Thirteen years prior to the issuing of this law (i.e. c. 523) a large loan had been taken out on behalf of the Church in Jerusalem. This had been used to purchase urban properties, the rental incomes from which were used to provide for the burgeoning influx of pilgrims. After thirteen years, the rental income had come to exceed the sums initially paid out for or borrowed to acquire the property, and demand for urban property was such that it could now be sold by the Church at a massive mark-up, which Justinian here permits the Church to do, despite the standard prohibition against the alienation of ecclesiastical property. The Church in Jerusalem (and its associated monastic communities) had long been primarily dependent on imperial and aristocratic patronage, and it is likely that cash-rich members of the imperial aristocracy were those most eager to acquire property in the city. The pilgrimage industry, however, was now growing in size sufficiently that soon monastic institutions would be able to support themselves largely through the donations derived from more humble pilgrims. In the late sixth century, this would lead to an expansion of monastic communities in the Judaeen desert, which would draw pilgrims away from Jerusalem and allow such monasteries to acquire greater economic and theological autonomy (see Booth (2014), p. 97 and note 29 and Krueger (2005), pp. 302–5).

² Peter was a hard-line pro-Chalcedonian Patriarch of Jerusalem (from 524–552) who in the September of 536 (four months after the promulgation of the present law) would convene a synod in support of Chalcedonian Christology and later the same year would support Justinian's deposition of Anthimus as Patriarch of Constantinople. Justinian's willingness to advance the economic interests of the Patriarchate of Jerusalem at this time may well have been in recognition of Peter's aggressive brand of Chalcedonian orthodoxy. Peter's theological inflexibility would, however, cause the emperor some difficulties in 544 in the context of the 'Three Chapters' controversy (see Millar (2008) and (2009) and Price (2009) 1, pp. 23 and 45; 2, p. 277).

³ See *J. Nov.* 7.

present law; it is not to overturn our previous legislation, but is to provide a practical benefit that is both fitting and necessary.⁴

It is public knowledge to all mankind that the most Holy Resurrection welcomes and feeds those who flock to it from all over the world, whose numbers are too infinite to state, and that it has expenses which are both enormous, and yet sufficient, contrary to all expectations, for those who throng the city; every day, it actually receives the miracle of our great God and Saviour Jesus Christ, who fed an infinite multitude on only a few loaves.⁵ It thus needs an increase in its revenues, and pious means whereby it may be capable of assisting so large a number of people.

1. We know that at the present time the most God-beloved presbyter Eusebius, treasurer of the most holy church in this sovereign city, has given a further instance of his high and God-beloved character, through which, on a visit to the said city of Jerusalem, he has made numerous large and lawful increases in the income of the most holy church: he succeeded in procuring an income of a little more or less than thirty pounds of gold from an investment of three hundred and eighty pounds of gold.⁶ Some of that money was from pious fund-raising on his part, and the rest was from a loan which he prompted the most God-beloved stewards of the said Holy Resurrection to take out. He has informed us that the lenders are demanding repayment of what is due to them; and also that he has discovered an unexpected source of revenue. It is this: with the great influx of visitors to the said city of Jerusalem, as the result of a yearning for the sites consecrated to God, there is a demand for the purchase, at a high price, of housing belonging to the church, so as to be able to have the benefit of living in the said place; but the authorities of the Holy Resurrection are unable to put this into practice, for fear of the law laid down by us on ecclesiastical alienations. Yet the benefit would be so great that there are those who are prepared to buy these premises at fifty years' purchase, which would yield an indescribably large differential, seeing that the investment by the most holy church has brought in the sum (itself admirable) of about thirty pounds of gold over barely thirteen years, whereas the

⁴ The Church of the Holy Resurrection (also known as the Church of the Holy Sepulchre) in Jerusalem and that of the Nativity in Bethlehem were both founded in 326–327 by the Empress Helena, mother of the Emperor Constantine, whilst on pilgrimage to the Holy Land (see Drijvers (1992) and Biddle (2001)).

⁵ An allusion to Matthew 15.34–38; Mark 6.38–44; Luke 9.13–17.

⁶ The income described would appear to have been annual, meaning that the Church was deriving a return at close to the 8 per cent maximum rate of interest permitted on commercial loans (see Jones (1964), p. 868). The sum initially invested would have amounted to 27,360 *solidi*.

sale of the buildings will be at fifty years' purchase.⁷ Moreover, this consists of property in buildings, which are subject to every chance occurrence; and in such circumstances, they instantly lose all their value, and cannot easily retain a single vestige of it, should they (though this is hardly even to be mentioned) collapse in some disaster, or be destroyed in some other way.⁸

1

That is what has caused us to arrive at the present law, which we dedicate to the Lord God, and to the Resurrection, the most holy of all churches. By means of it, we decree that all the other provisions of the law on ecclesiastical alienations are to remain in force also for the estate properties of the most holy Resurrection, as we are absolutely not allowing even that church to make any sale of estate properties; but that, in the case of its buildings, we are making some relaxation in the strictness of the law. Given that we enacted that for the benefit of the most holy churches, and that we can see that there is so large a benefit in the transaction, how shall we not make this concession to them by means of the present law, giving full licence to the sellers and full protection to the buyers? – and all the more so, in that we know quite well that time will soon bring the buildings back to it again; just as it is out of religious zeal, as it were, that the buyers have bought them, so too they will bequeath them to it at their death.⁹ It is accordingly to be allowable for this particular most holy church to effect the sale of buildings, without being apprehensive about the general law laid down on that, because by a newer law it has obtained a special dispensation. No penalty attaches thereby to any person at all, . . .

1. . . . and it is to be able to do just the same in time to come, if in future any advantage should come to light such that a benefit many times as large accrues to the most holy Resurrection from the alienation, in exchange for something very small. The purchasers of these properties are to have complete security, both now and for all future time, and neither they

⁷ 'At fifty years' purchase' means that the purchasers were willing to pay a price equal to fifty times the annual rental income derived from the properties. See, by contrast, *J. Nov.* 7 c. 3, where the annual rent on a property is ascertained by dividing its value by twenty. Given that the properties are described as bringing in 30 pounds weight of gold a year, the implication is that the sale price would be in excess of 1,500 pounds of gold. The investment that generated the income appears to have been made thirteen years earlier than this law, indicating that it had generated a gross income of some 390 pounds of gold (i.e. somewhat more than the 380 pounds of gold initially invested).

⁸ Palestine and Syria were highly prone to earthquakes, many of which struck in the sixth century (see Meier (2003), pp. 656–70).

⁹ A pious hope rather than an imperial injunction, as the following provision makes clear.

themselves, nor their heirs or their successors, have to be apprehensive of any deprivation, either now or at another time; by the present law, those undertaking the purchase may be confident of being justified in doing so without any disturbance, censure, penalty or forfeiture. This is on condition that a *decretum*¹⁰ is executed before your beatitude, in the presence of the holy clergy, and the cause for the alienation of the buildings is shown: that is, that their sale is desirable for the sake of larger benefits, in that the alienations are not many, while the resulting accruals are more, and better. Another condition is that the proceeds raised from the sale of the dwellings for fifty years' purchase are, for the present, spent on paying off the loans the lenders have made for the acquisition of the said source of income.

Since God, at once both Lord and Creator of all, saw fit to give such privilege to it over other cities as to make it the site of his bodily resurrection, it is quite clear that we have, as far as is humanly possible, followed the Lord God and his great miracles in having granted it some privilege over the other churches. It can thus profit from this law that we are bringing to it, as being a kind of oblation, in our constant care and respect for its advantage.

Conclusion

Accordingly, your beatitude, in the knowledge of our decisions, both <manifested> by means of this special law, and itself also to be inscribed in our volumes of laws, is to make it public to all in Jerusalem, and to reveal to them the favour that our Majesty has for the most holy Resurrection, justly venerated by the whole human race.¹¹ We are offering this to the Lord God, who has each day honoured us, and still honours us, with blessings so numerous and so great, above all our predecessors as Sovereigns.

Special law enacted for the most holy and blessed archbishop Peter, patriarch of the city of Jerusalem

Given at Constantinople, May 18th, after consulship of the Most Distinguished Belisarius 536

¹⁰ *Decretum* = an enactment.

¹¹ It was common for imperial laws to be advertised inside and outside churches, and the same is envisaged here (see *J. Nov.* 8).

[Latin only; just the opening words of the title and of the preamble survive, followed by the summary, below]

*The same Augustus to Bonus,*² quaestor exercitus

Rightly, to us . . .

This constitution appointed the magnificent Bonus as *quaestor exercitus*. In ancient practice, too, there were two quaestorian offices: one quaestor was at the emperor's side, while the other commanded the army. The present constitution also laid down the *annonae*³ of the quaestor and his assessor; it also provided him with an establishment quite similar to that of a praetorian prefect, i.e. *scriniarii*⁴, an *ab actis*, *praecones*, *commentarienses*, *lampadarii* and a complete staff under them. It also directed how the *annonae* of the troops, both *comitatenses*⁵ and *limitatenses*, should be allocated. It put five provinces under him: Scythia, Moesia, Caria, all the Cyclades islands and the whole of Cyprus. It also allowed him the hearing of cases without objection by *praescriptio fori*.⁶ It subjoined a notification of payments.

This constitution was promulgated on May 18th, indiction 14, after consulship of Belisarius 536⁷

Novel 41 in Greek, wrongly placed here in some mss and printed in full by S/K, is the same as Novel 50; the wording here is identical with that, except for the addition, in the title, that it is addressed to Bonus, *quaestor exercitus*.

¹ For discussion of this measure, see *J. Nov. 50*, Sarantis (2016), p. 143 and Lokin (1985).

² On Bonus, see *PLREIIIA*, pp. 240–1 (Bonus 4). The historian Agathias praises him as clever and capable in both civil and military affairs (*Histories* 1.19.1).

³ I.e. the stipend given by way of remuneration in coin or kind.

⁴ '*scriniarii*' = officials employed in the bureaux of the imperial chancery: see *Codex* 12.49; '*ab actis*' = an official concerned with the drawing up of official records or reports (*acta* or *gesta*) (Berger (1953), p. 340); '*praecones*' = heralds or announcers; '*commentarienses*' = a term for officials employed in record offices (Berger (1953), p. 398); '*lampadarii*' = torch-bearers.

⁵ '*comitatenses*' = a class of soldiers instituted by Diocletian or Constantine to fight in foreign wars (i.e. field troops), as opposed to *ripenses* or *limitanei* who were primarily defensive (Souter (1949), p. 60); *limitatenses* = *limitanei*, those on frontier duties (i.e. frontier troops).

⁶ '*praescriptio fori*' = 'special plea' (for which the Greek uses παραγραφή): a formal objection to a claim on the basis that the prosecuting party or tribunal does not possess jurisdiction by virtue of the fact that the defendant had been granted the privilege of only having to appear before a special or higher court (see Garbarino (2000)).

⁷ Lounghis, Blysidu and Lampakes (2005), pp. 280–1 (under entry 1123) suggest a date-range of 536–537.

42 | Anthimus, Severus, Peter, Zoaras and others: deposition¹

The same Sovereign to the most holy and most blessed archbishop Menas, ecumenical patriarch²

Preamble

In proceeding to the present law, we too have followed a practice not unusual for the Sovereignty. Every time that any persons unworthy of

¹ This constitution heralded an important shift in imperial ecclesiastical policy. As noted in the Introduction, ever since the Council of Chalcedon in 451, the imperial Church had been divided over the nature of the relationship between the human and divine in the person of Christ, with opponents to the Council, who were especially numerous in Syria, Palestine and Egypt, rejecting the definition of the faith proposed at Chalcedon, which was strongly supported by the leaders of the Church in Constantinople and Rome. Justinian's uncle Justin had been a committed supporter of Chalcedonian orthodoxy, and consequently in 518, upon coming to the throne, he had deposed the anti-Chalcedonian Patriarch of Antioch, Severus. Justinian (whose wife Theodora is reported to have possessed anti-Chalcedonian sympathies) had initially attempted to reach out to the dissidents. Accordingly, in 532 he presided over a debate between pro- and anti-Chalcedonian spokesmen, as a result of which he made it clear that he did not regard the opponents of Chalcedon as heretics (and thus outside the body of the Church and liable to persecution). Even after the failure of those negotiations to restore unity to the Church, the emperor permitted his wife to channel her patronage towards leading anti-Chalcedonians, and in 535 he appointed as Patriarch of Constantinople Anthimus, the retired but theologically pragmatic bishop of Trebizond (whose appointment was irregular under canon law). Anthimus was permitted to continue exploring Christological issues with the opponents of Chalcedon, and entered into communion with Severus and the leaders of the anti-Chalcedonians in Alexandria. Anthimus thus initially appeared to be making some headway. In early 536, however, the stridently pro-Chalcedonian Pope Agapetus was sent on embassy to Constantinople by the Ostrogothic King Theodahad, to try to persuade the East Roman authorities to refrain from launching an assault on the Italian mainland. Whilst in Constantinople, Agapetus was petitioned by rigorist supporters of Chalcedon suspicious of Anthimus' pragmatic instincts. Accordingly, Agapetus lobbied Justinian to depose the Patriarch. Eager to ensure the support of the Papacy in the context of the planned Italian campaign, Justinian acceded to this request and Anthimus was deposed at a synod held in Constantinople, which also condemned Severus, his supporter Peter bishop of Apamea, and a troublesome anti-Chalcedonian Syrian monk by the name of Zoaras. This constitution serves to promulgate the decrees of the synod as imperial law, and is significant not only with respect to a general (and circumstantially driven) hardening of imperial policy, but also for the fact that within the body of the law Justinian expressly identifies the leaders of opposition to the Chalcedonian definition of the faith as heretics (see Price (2009) 1, pp. 8–15 and Millar (2008)).

² On Menas, see Price (2009) 1, pp. 161–4.

their priesthood have been deposed from their high sacerdotal offices by priestly sentence, as have Nestorius, Eutyches, Arius, Macedonius and Eunomius,³ and also some others no less wicked than they, the Sovereignty has been at one with the priests' authority in its sentence; the divine and the human have thus run parallel, creating unanimity in correct sentencing. This has, we know, been recently the case with Anthimus, who was expelled from his high office in this sovereign city by Agapetus of holy and celebrated memory, the late⁴ primate of the most holy church in the elder Rome, for having precipitately thrust himself, contrary to all the holy canons, onto a throne to which he was in no way entitled. By a general decision, first from that man of holy memory, and, furthermore, from the holy council which met here, he was condemned and deposed for departing from orthodox doctrines, and for having, by various subterfuges, later abandoned beliefs with which he had previously shown himself generally satisfied. He pretended to adhere to the four holy councils – those of the three hundred and eighteen fathers at Nicaea, the hundred and fifty at this fortunate city, the two hundred at the first gathering at Ephesus and the six hundred and thirty most God-beloved fathers at Chalcedon – but did not in fact adhere to their decisions.⁵ He did not agree, either, to accept our generous condescension, which we had arrived at in the interests of his salvation, nor yet to join in denouncing those ringleaders in impious doctrines who were expelled by the earlier holy councils: instead, he thought that those who had been condemned and those who condemned them should be regarded as on an equal footing, with no difference between them. Once enslaved by ideas alien to the most holy church, he was estranged from orthodox doctrines; and, as a logical consequence of that, he failed to return to their orthodoxy, even despite every effort we expended both in urging him towards his own salvation, and in showing him the way to it.

³ Justinian here seeks rhetorically to associate Anthimus and Severus with other famous 'heresiarchs' who were condemned for their theology and removed from office by Church councils: Nestorius (patriarch of Constantinople, condemned and deposed in 431); Eutyches (presbyter and archimandrite of Constantinople, condemned and deposed in 451); Arius (presbyter of Alexandria, condemned and removed from office in 325); Macedonius (patriarch of Constantinople, deposed in 360); and Eunomius (bishop of Cyzicus, who was banished in 383).

⁴ Pope Agapetus had died during the course of his visit to Constantinople.

⁵ A reference to the Ecumenical Councils of Nicaea (325), Constantinople (381), Ephesus (431) and Chalcedon (451).

1

For all these reasons, then, our Sovereignty confirms the sentence of deposition passed on him by the holy council, for his seizure of the priestly throne of this sovereign city in a manner not lawful and not approved by the holy canons, and for his apostasy from orthodox and true doctrines; and enacts the present law, in the following terms. We forbid him to live either in this fortunate city and its environs, or in any other notable city. Our decree is that he is to remain silent, and acquiesce in the position into which he has deservedly put himself. He is not to communicate with anyone, or involve them in the perdition that pertains to forbidden doctrines.

1. Nor are we leaving unconfirmed by sovereign ratification the sentence justly issued on Severus,⁶ which imposed on him an anathematisation proceeding from practically all the hierarchic and patriarchal authorities, with monastic approval. He had previously, against the sacred ordinances, seized the see of the most holy church of Theoupolis,⁷ and created such complete turmoil, such all-pervading disorder, as to precipitate the most holy churches into a sort of truceless general warfare with each other, despite having been written to by our predecessors on the throne. His doctrines were involved, deceitful, blasphemous and foreign to orthodoxy; he created complete turmoil, and clung solely to the loathsome, unholy doctrines pertaining to the error of the two heresiarchs, Nestorius and Eutyches, and the mentors of each – doctrines that, while apparently quite opposed to each other, are actually heading towards a single impious end; and he stamped himself with their characteristic arguments.⁸ Each of the two doctrines we have just mentioned, those of Nestorius and Eutyches, which were derived from the pollutions of the Arians and Apollinarius, leads alike to the perdition of the soul,⁹ but they are mutually conflicting;

⁶ Severus had been deposed as Patriarch of Antioch by Justin I in 518.

⁷ Theoupolis = Antioch (on which see Foss (2001)).

⁸ As an opponent of the Council of Chalcedon, Severus was a proponent of a 'one nature' theology with respect to the person of Christ (emphasising the unity of the human and divine). As such, it was perhaps reasonable to associate him with the figure of Eutyches, who was a hard-line supporter of this 'miaphysite' position. Such miaphysites, however, were the sworn enemies of Nestorius, whose theology had sought to maintain a sharp distinction between the human and divine in the person of Christ, and was thus regarded as an exponent of a rigorously 'two-nature' (or 'duophysite') Christology. To accuse Severus of any association with or similarity to Nestorius, therefore, was simply meant as a gratuitous insult.

⁹ Severus' dispute with the imperial Church concerned the nature of the relationship between the human and divine in the person of Christ and was thus a matter of

he has nevertheless fallen, by some paradoxical malady, into both alike. Giving pride of place now to one, now to the other, he has seemed to make himself and his teachings into a collective sump for such aberrations.

2. Accordingly, he too is to be under the said anathematisation, justly imposed on him by virtually the whole patriarchal, priestly and monastic body of our realm, and to be expelled from Theoupolis. The holder of that see has ousted him for having taken control of it improperly in the first place: the previous holder of the high priestly office was still alive, and had had the acclamation of the most holy churches in his support, but had been deposed from office by his successor. Nor did he stop at that; but he has eventually been placed under general anathematisation from the orthodox catholic church, after filling our state with a quantity of blasphemous and forbidden books. We thus also forbid everyone to own any of his books. Just as it is not allowed to copy, or to own, books by Nestorius (because our predecessors as emperor, in constitutions of their own, decided that they were to be in the same category as Porphyry's¹⁰ discourses against Christianity), so no Christian is to keep the utterances or writings of Severus, either; they are to be profane, and foreign to the catholic church, and are to be burnt by their possessors – unless those who keep them are prepared to be in peril. They are not to be copied in future by any copyist, whether of fine copies or of rapidly produced ones, nor by anyone else at all; they are to know that the penalty for those who copy his works will be amputation of the hand. We do not wish to let the blasphemy of his works leave its filthy mark on the time to come, as well.

3. Similarly, we comprehensively forbid him, too, to set foot in this sovereign city or its environs, or in any other of the more notable cities. He is to sit in solitary inactivity, not corrupting others or leading them into blasphemy, and not constantly scheming some new attack on true

Christological doctrine. The fourth-century theologian Arius, by contrast, had primarily been concerned with the relationship between God the Father and God the Son within the Holy Trinity, and was thus primarily concerned with Trinitarian doctrine. There was no necessary connection between these issues, and thus here Justinian makes the connection for essentially invective purposes (Arius had argued that, within the Trinity, the Father was superior to and pre-existed the Son). Apollinaris, bishop of Laodicea in the late fourth century, had denied the full humanity of Christ by arguing that although He had assumed a human body and soul, He did not share a human spirit. In his polemic against Severus, Justinian was drawing upon an invective tradition within the Church that all heresies were ultimately derived from a common diabolical source designed with a view to leading the minds of men into erroneous belief and consequently their souls into damnation (see Chadwick (2003), pp. 1–50).

¹⁰ Porphyry was a third-century pagan author who wrote a treatise known as 'Against the Christians', only fragments of which now survive (see Hoffmann (1994)).

doctrines, by which he might aim to throw our most holy churches into turmoil again.

2

Then there is Peter, former bishop of Apamea, who was simultaneously both deposed, and put under the said anathematisation, for the same reasons as Severus. He too is unacceptable to the Sovereignty, and the sentence passed on him, also, is to stand: as he has been put under general anathematisation, so he is to remain subject to it, and the sentence passed on him by the most holy hierarchy is to stand ratified. He, too, is not allowed by us to live in this sovereign city or its environs, or in any of the more important cities. He is also to copy the way of life of those whose error he followed, being banished to as remote a place as possible, and hiding himself away. Concealment is more to the advantage of people like him than being seen: unseen, the only people they will harm are themselves, but by appearing in public they make their doctrines a source of perdition for many simpler folk. For that to happen among God's Christian flock, and his orthodox people, is absolutely wrong, and is not permitted by the Sovereignty.

3

There is also Zoaras,¹¹ a minor appendage to these troubles; his involvement in them has certainly disqualified him from enjoying any favourable mention. With just judgment, the most venerable bishops deemed him to deserve being put under complete anathematisation; accordingly, Zoaras is to be a further insignificant appendage of this disreputable faction (that is to say Anthimus, Severus and Peter), and he too is to be placed among those anathematised. Priestly sentence deposed him, and the Sovereignty makes that sentence, conclusive in its own right, more conclusive still, by banishing him, along with the others, from this sovereign city and its environs, and from any residence in cities at all. Thus the only people with whom he is to live and confer are those we have mentioned before: blasphemers like himself, and banished like himself. We do also confirm the validity of any other provision that may be contained in the sentence of the most holy archbishops deposing and anathematising those mentioned

¹¹ Zoaras is described in the acts of the 536 synod as 'an uneducated Syrian, full of complete madness and craziness' (see Millar (2008), p. 74).

above, and ratify it as one of our sovereign laws, as if it in fact proceeded from the Sovereignty itself. Any of them who may in future be convicted of any contravention of what has been decreed is to know that he will also fall under the civil laws, which impose more serious pains on those who try to evade less serious penalties.

1. We forbid anyone to inflict disturbances on the most holy churches by making any pronouncement on faith according either to the teaching of the deranged Nestorius, or the senseless doctrine of Eutyches, or the blasphemy of Severus, a sufferer from the same disease as they, or of their followers, in an attempt to bring schism into God's catholic church.¹² We decree that every such person is to keep silence: they are not to call meetings or accept applicants, or have the temerity to perform unauthorised baptisms, defile the holy communion or administer it to others, or to give instruction in forbidden teachings, either in this sovereign city of ours or elsewhere. Should they do any such things, they are to expect every imaginable peril.

2. We also forbid everyone to receive these men; on the contrary, we decree that they are to eject them from the cities they are disrupting, in awareness of the penalties now contained in our divine constitutions, which attach the very buildings in which any such activity takes place, and the estate properties from which they are supplied with sustenance, to the most holy churches; they take them away from the owners, on the ground of their causing harm to the simpler folk, and put them, with justice, under the most holy orthodox churches.

3. It is for the general peace of the most holy churches that we make this legislation, and it is in pursuance of the doctrines of the holy fathers that we pass these judgments, so that our whole priesthood may remain free from disturbances in future; and when the priesthood is kept at peace, the rest of our state will also thrive in the possession of that peace from above which our great God and Saviour Jesus Christ, one of the Trinity, the only-begotten Word of God, proclaims and provides for all those found worthy to glorify and worship him in the genuine, truthful way.

Conclusion

Accordingly, your beatitude is to observe our correct decisions, and to put them into effect, communicating them by your God-beloved missives to all

¹² Here, by re-iteration of the condemnation of the writings of the hard-line duophysite Nestorius alongside the miaphysites Eutyches and Severus, Justinian attempts to convey his adherence to a Chalcedonian 'middle ground', condemning extremists at both ends of the spectrum of Christological debate.

the most holy metropolitans under you. It will become the concern of each of them to publish these decisions to the most holy churches under them, so that no-one at all may remain in ignorance of what has been decided by the hierarchy, and ratified by the Sovereignty.¹³

Given at Constantinople, August 6th, after consulship of the Most Distinguished Belisarius

536

¹³ I.e. the Patriarch of Constantinople was to send notice of the condemnation to the head (or 'metropolitan') bishop in each province.

Workshops in Constantinople: only 1100 workshops belonging to the Great Church to have exemption; the rest, irrespective of ownership, to render liturgies according to custom¹

In the name of the Lord Jesus Christ our God. Emperor Caesar Flavius Justinianus Alamanicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africanus,² pious fortunate glorious victor triumphator, ever revered Augustus, to Longinus, urban prefect³

¹ This constitution is important both for what it reveals of burial practices in sixth-century Constantinople, and also the history of Byzantine fiscal institutions. The law relates that the Emperors Constantine and Anastasius had charged eleven hundred workshops and commercial properties belonging to the Great Church (i.e. the Patriarchate of Constantinople) with the responsibility for arranging for and conducting funerals in the city. In return, these properties were exempted from taxation and other public burdens, the responsibility for which was distributed amongst those properties and guild members that were not involved in care for the dead. The law reveals, however, that the managers and owners of many other workshops (including members of the senatorial aristocracy) were claiming that their properties too were tax-exempt or free of civic obligations. The effect of this was to increase unfairly the burden of civic responsibilities and taxes on everybody else, leading to complaints on the part of the heads of the Constantinopolitan guilds. In this constitution, Justinian re-iterates that only the eleven hundred properties belonging to the Great Church were tax-exempt. The law is, therefore, effectively of a piece with the emperor's other legislation against tax evasion. In Roman law, certain individuals could claim a right to exemption from public or civic compulsory services (*excusationes a muneribus*: see Berger (1953), p. 461). By Justinian's day, this law reveals, that privilege had evidently been extended to institutions and to other forms of taxation. This fiscal arrangement was described in Greek through words derived from the Latin *excusatio* or *excusare*: thus the Greek heading to the novel relates that only the eleven hundred workshops belonging to the Great Church 'were to be excused' (Greek ἐξκουσέειν, rendered 'excusentur' in the contemporary Latin of the *Authenticum*). This law thus provides a bridge between the Roman legal institution of the *excusatio a muneribus* and the Middle Byzantine legal institution of the ἐξκουσεία, i.e. 'an exemption of any tax or charge apart from the basic property tax' which is otherwise unattested in the extant Middle Byzantine sources before the ninth century (see Bartusis (2012), pp. 76–7, and, for early Byzantine tax exemption, Laniado (2015), pp. 130 and 134–8). On this and related laws concerning burial practice, see also Dagron (1991) and Bond (2013).

² The emperor's bombastic titulature, which is identical to that used by him in *J. Nov.* 17, had by this point been justified by a series of victories in Sicily and Italy. See *J. Nov.* 17, note 7.

³ Longinus: see *PLREIIIB*, pp. 795–6 (Longinus 2). According to Procopius (*Anecdota* 28.10–15), he was sent to the city of Emesa, in Syria, to investigate claims made by the Church there that it was owed a great deal of property. Longinus' investigations, however,

Preamble

Our Majesty is concerned for our subjects, both in their lifetime and also, at their death, to see that their burials are not a burden for themselves, nor detrimental to the members of the deceased's household. For this reason, we have included in our decrees the appropriate procedure for their burial.

Both Constantine of divine memory, the founder of this great city of ours, and Anastasius of pious destiny,⁴ limited the number of what are called *lecticarii*, or *decani*,⁵ to a specific figure: they ruled that there should be eleven hundred *decani*, or workshops, with the condition that this number should at no time receive an addition; this was because the maximum number of *lecticarii* there should be in each guild was also subject to the constitution of Anastasius of divine memory. We wish these provisions to stand firm; we have, however, received a petition from the foremen of this fortunate sovereign city's guilds, for which we have a particular concern, informing our Majesty that they are in intolerably serious trouble.⁶

Here is what they say: the most holy great church enjoys complete freedom from tax for its eleven hundred workshops, and that is something they themselves concede to it very willingly indeed, as being a contribution

revealed these claims to be based on forged documentation. Two poems dedicated to Longinus are recorded in the *Cycle* of Agathias. One of these is described as having been inscribed on the base of his statue. In them, he is recorded to have travelled widely (from Persia, Armenia and the Caucasus to Ethiopia and the West) and is described as a fast-footed envoy of the emperor and a lover of peace, indicating an extensive diplomatic career: see *Anth. Gr.* 16.39 and 314, and Cameron (1966).

⁴ The legislation of Constantine and Anastasius referred to was not included in the *Codex* and thus is no longer extant. Further details concerning its provisions are to be found in *J. Nov.* 59. It is possible, however, that Justinian has confused a law of Theodosius II's for a law of Constantine's (see *Codex* 1.2.4) and a more general law of Anastasius' providing for free burials in Constantinople is preserved at *Codex* 1.2.18, but its provisions do not entirely match those described in the later law.

⁵ *Lecticarii* and *decani* were, in this context, undertakers charged with transporting and burying the dead (*lecticarius* originally meant a litter carrier and *decanus* a low-ranking soldier in charge of ten others, so, in this context, the 'chief of a group of corpse-bearers': see Lewis and Short (1879), pp. 516 and 1045.

⁶ Roman civic government traditionally operated on the basis of delegating certain civic responsibilities or duties ('liturgies' or *munera*) to members of the city council. These could include arranging the civic food supply, the provision of entertainments in the circus, or the maintenance of aqueducts. In the cities of Rome and Constantinople, however, where the senate took the place of the city council or *curia*, many such liturgies were delegated by the Urban Prefect to the professional guilds which he regulated, as well as other collective organisations such as the circus factions (see *Codex* 1.28). Those charged with burying the dead were exempted from other such 'liturgies' or *munera*, which was evidently why Anastasius had sought to cap the number of those appointed as undertakers.

to people's funerals for the common good of all; but the additional burdens are beyond their power to bear, because these eleven hundred are not the only ones of the numerous workshops in this fortunate city, in different lines of business and trade, which are exempt from the said public duty: there are many most holy churches that are exempt from taxes, as well as many holy hostels, monasteries and other holy houses – some of them formerly heretical, but subsequently converted to the orthodox faith –, and many crown buildings, and also ones belonging to office-holders, senators, *illustres* and *cubicularii*.⁷ The owners of all these derive income from them for themselves, and are wronging the community as a whole, because the large number of exemptions narrows things down to a situation where those carrying out public liturgies, or burdened with doing so, are extremely few, and the tax has often risen to three- or four-fold, and by now even ten-fold. Yet Anastasius of divine destiny, in the constitution laid down by him, gave tax-exemption to no-one else at all apart from the eleven hundred workshops granted to the great church for funerals for the dead.

For this reason, we have decided that we, too, should take action, by instructing our office-holders and, before them, the most blessed archbishop of this fortunate city,⁸ to meet together and to investigate the problem, referring their conclusions to us; and by making use of the present law addressed to your excellency, confirming the decisions on this matter of Anastasius of pious destiny.

1

We decree that the eleven hundred workshops are to be safeguarded for the most holy great church without detraction, clear of all payment, and designated as being for *decani* or *lecticarii*, and for funerals for the dead. Apart from it, no-one else can demand a *decanus* from a most holy church, of heretics or any other whatever. Our recent directive is to remain in force, to the effect that eight hundred workshops are to contribute the personnel, and three hundred are to be liable for meeting the expenses.⁹ A divine pragmatic directive of ours has already decreed the use to which the proceeds from that source are to be put, with the shortfall always put against them; the procedure for this making-up has been decreed by the

⁷ '*Illustres* and *cubicularii*' = holders of the highest imperial and palatine offices and ranks. The constitution here casts important light on the commercial interests of members of the early Byzantine aristocracy.

⁸ 'Archbishop' = the Patriarch of Constantinople.

⁹ Justinian refers here to a law which no longer survives.

orders of Anastasius of pious memory.¹⁰ We decree that these workshops shall remain not liable to tax, and exempt from all liturgies; neither the workshops themselves, nor the foremen of the guilds that provide them, shall be liable to any loss whatever, or undertake any tax-payment.

1. However, all the rest of the workshops in the fourteen districts of this fortunate city – whether they belong to a most holy church, or to hostels, monasteries, orphanages, children’s homes or almshouses, or are in any other ownership whatever, whether of sovereign households,¹¹ of office-holders whether high, intermediate or lower, of Most Illustrious senators, Most Magnificent *illustres*, Admirable *cubicularii* or any persons enrolled in the services – these are, one and all, to pay the public taxes imposed on them, and to take all other action, and to discharge all other duties, that appertain to each person, according to his guild. Payment is to be made to the public treasury unfailingly, through the guild foremen, and no-one is to be able to rely on any privilege as exemption from this liability, or to use any such excuse. We do not tolerate the transferring of some people’s burden onto others, nor the continuance in force of a constitution so harsh as to result in daily tax-rises, and, as we have now been informed, payments four, five or even ten times higher. Our Majesty makes a particular point of having no-one burdened with any new tax; and ‘new’ would mean, not just one now imposed for the first time, but also one at higher than its reasonable original level. Instead, everything is to stay in the same position and rating, because our divine pragmatic directive (which can also be called a law), common to all, is such that all are to have been granted freedom from distress. In view of the fact that no-one is exempt – except of course for the eleven hundred workshops, on account of funerals for the dead, which is something absolutely general, covering all human beings alike – no-one could be aggrieved.

2. Should anyone attempt to use any excuse, and to relieve himself of his tax-contribution, either refusing to permit his tenants to be given demands, or wishing to wield patronage, whether military, civil, ecclesiastical or of any other kind, he is to forfeit, by that very act, his ownership of the workshop; it is to be a public asset, accruing to the guild itself. In that way, they will be cautious, and will not engage in what is forbidden. By spreading the taxation in small amounts over everybody, each individual’s payment will be slight; in proportion as it is collected from a larger number of people, his contribution will be moderate, light, tolerable and easy to

¹⁰ A possible reference to *Codex* 1.2.18.

¹¹ ‘Sovereign households’ = crown or imperial properties or estates.

pay. What could be more unacceptable than burdening men with higher taxation, when they are working with their own hands, with wives and children to support, and striving to make the rest of their living by it? The higher the number relieved of it, the greater the sufferings that ensue; and the burden is an infinite one – it could have no stopping-point at all.

3. It is as a prevention of all this that we are laying down this divine pragmatic directive. We are threatening all our subjects alike, without exception, with the penalty of forfeiture, if they should prevent the foremen of each guild from collecting the customary taxes that have been laid down in the past, or should they try to divert the tax-payments into rents.¹² Each is to enjoy the income from his rents, but is to permit his workshops to perform the customary, legitimate public liturgies. Each cares for his own;* just so, we, too, have to take in hand what is advantageous and expedient for this great sovereign city. Only so would the outcome be to the common advantage, by releasing from so heavy a burden those who have hitherto been being compelled to bear it.

* This depends on a conjectural insertion of τῶν before ἑαυτοῦ [S/K, p. 273, line 5]. As the text stands it just means ‘each cares for himself’, which blunts the point of the analogy.

Conclusion

Accordingly, your distinction will keep inviolable our decisions, manifested by means of this divine pragmatic directive, as will those who will take up your office after you, and the staff answerable to you, now and for all time to come.

Given at Constantinople, May 17th, 2nd year after consulship of the Most Distinguished Belisarius 537¹³

¹² I.e. by not passing them on to the representatives of the government.

¹³ Or possibly 536: see Lounghis, Blysidu and Lampakes (2005), p. 281 (under entry 1125).

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

What has occasioned the present law is a case we heard a short time ago. A deed was being presented in the name of a woman, but without her writing on it, as she was illiterate.² It had been executed by a notary public, and the woman's signature had been added by a *tabularius*;³ it also certified the presence of witnesses. A controversy had then arisen over it, because the woman said that the wording on the papyrus was not what she had instructed. The trial judge, in an effort to find out the true facts from the notary public, had him actually brought in. This man said that he

¹ As noted in the Introduction, one of the features of Justinianic law was a growing emphasis on written instrument and proof in contractual relations and legal proceedings. The corollary to this was that legislation revealed growing concern for the authentication of documents (see Feissel (2010), pp. 509–16). In this law (which only survives in a fragmentary form), Justinian seeks to ensure the authenticity of legally binding documents by demanding that deeds and other contracts be drafted by authorised notaries public, and that, in Constantinople, they be written on officially supplied papyrus bearing the 'protocol' or official mark of the Count of the Sacred Largesses conveying the date of manufacture (on which see Bell (1917) and Diethart, Feissel and Gascou (1994)). These protocols were highly elaborate and the surviving papyrological examples of them are often extremely difficult to decipher (see image, for which we are indebted to Professor Peter Parsons). Their very complexity was evidently meant to act as a disincentive to forgers. Whilst there are extant examples of apparently Constantinopolitan contracts that lack the protocols demanded by this constitution, there are other examples from Egypt which possess them. The forging of legal documents also appears as an issue in the writings of Procopius (see *Anecdota* 28).

² On the use of written instruments in Roman law in late antiquity, see Everett (2013) and Meyer (2004), pp. 250–93.

³ 'Notary public' (= Greek συμβολαιογράφος, Latin *tabularius* or *tabellio*). These were private professionals who drafted private legal documents and applications to government officials. They conducted their trade in public (in market squares, etc.) or in offices termed *stationes*, where they were assisted by scribes and secretaries (*scribae* or *notarii*). Their trade was publicly regulated and officially supervised (*Codex* 4.21.17), with Justinian demanding that such notaries be licensed. In legal proceedings, such as those referred to in this law, the *tabellio* was obliged to vouch for the authenticity of any documentation that was submitted. *Tabularii* were earlier state notaries, charged with drawing up official documents. In late Roman law, they were permitted to assist private citizens after the manner of *tabelliones*, and from the sixth century the two terms effectively became interchangeable (see *Codex* 10.71 and Berger (1953), pp. 727–9).

recognised the writing in which the deed had been made out, but affirmed that he had no knowledge at all of the attendant circumstances: he himself had had nothing at all to do with receiving instructions in the first place, but had deputed one of his men to do that; nor had he subsequently been present at the execution, but again had deputed that to another. The one who had been present at the execution came forward, and he too said he knew nothing, either: he had not even been the writer of the deed, and all the information he could give was that he had been present when it had been passed as complete; nor, again, could the original recipient of the instructions be found. As a result, had not the presence of witnesses enabled the judge to deal with the case, there was a clear danger that knowledge of the facts would be completely lost to view. That particular case, then, did receive its due trial and judgment; . . .

1

. . . but we have decided that we must strengthen the whole position, and make a general law, with universal application, under which notaries public at the head of the office must, without fail, receive the instructions themselves, in person, and be present when the deed is passed as complete; or else, failing that, they are not to have the papyrus completed at all.⁴ In that way they will be able to know the case, and will be capable, if questioned by judges, of replying with knowledge of the circumstances, particularly when the persons giving the instructions are illiterate, which makes it easy for them to deny the true circumstances without refutation.

1. Our purpose in laying down this law, then, is to prevent all that. We wish these instructions to be observed, without exception, by notaries public, whether in this fortunate city or in the provinces. They are to be aware that, should they contravene them in any way, they will in all circumstances forfeit their *stationes*,⁵ as they are called, and the person whom they deputed to receive instructions for the deed, and who did so in person, will in future have secure possession of the headship of the *statio*; in a reversal of roles, he will in future take up the position in the *statio* which its former chief had held, while that person will drop out of it altogether, or

⁴ Papyrus was the main medium for writing in the empire and was produced in Egypt from the papyrus plant as a state regulated industry (see *Codex* 11.18.1, Delmaire (1989), pp. 303–3 and esp. Van Der Wal (1998), p. 41, note 70). The loss of Egypt to the Arabs in the seventh century inevitably made the acquisition of papyrus more difficult, and would lead to a growing reliance on parchment (which was considerably more expensive): see discussion in Bagnall (1995), pp. 9–15.

⁵ *Statio* = the office from which a notary plied his trade.

else will become one of his subordinate clerks. That is the penalty we impose on them for having, in the case of the first, disdained to do as he was told, while the second did what he did in compliance with the other's will. It is our purpose that, for fear of this, they should become law-abiding over deeds, and more reliable, instead of ruining other people's lives by their own dissolute slackness.

2. In the event that a person who, after this law, takes instruction for a deed in contravention of what we have laid down, may prove not to deserve to take over the headship of the *statio*, the notary public is still definitely to forfeit his position, but someone else is to be promoted as his replacement. However, should the head of the *statio* be someone from outside the profession, not himself a notary public, he is not to suffer any consequential deprivation, nor forfeit his income from the post; it is only the actual one who has been too self-important for such things, and has disdained to fulfil his proper function, who forfeits his position as chief. Apart from notaries public who have offended in such ways, heads of the *statio* are to have all other rights in connection with it preserved intact.

3. Notaries public are not to invent excuses, resorting, for instance, to ill-health or impediments of that kind; in case of any such problem, it is still possible for them to complete the work in person by sending for those with instructions to give. Especially, these rare occurrences would certainly be no obstacle to the generality of cases, because there is nothing in human affairs, however completely justified it may be, that is so indisputable as not to admit of some carefully thought-up objection, even so. Nor are they to plead that this will lead to a reduction in their income, because of there being a constant succession of persons with instructions to give; it is better to execute a few documents safely than to embark on a large number precariously.

4. All the same, to avoid their having the impression that the law is unduly harsh, we are taking human nature into consideration, and framing our laws in conformity with it:⁶ because of such possible objections on their part, we give each of them licence to nominate one substitute for this duty, on record executed in the usual form before the Most Distinguished *magister censuum*⁷ of this fortunate city, and to give that person licence to take instructions from those executing deeds in his *statio*, and to be present when they are being

⁶ The modification of law in conformity with human nature is a *topos* of Justinianic legislation.

⁷ The 'master of the census' (Latin *magister census* or *censuum*) was the chief officer of the civil servants who served under the Urban Prefect of Constantinople (or Rome) and who were responsible for matters pertaining to senatorial taxation and tax-lists. The *magister census* also presided over the opening of wills (see Berger (1953), p. 570).

passed as complete. Apart from either the notary public in authority himself, or the person nominated by him for this purpose, no other member of the *statio* at all is to have licence either to take instructions in the first place, or to be present at their being passed as complete. Should any other person take instructions in contravention of this, the notary public in authority is then to fall under the penalty previously laid down by us; however, for the benefit of the parties to the deed, the deed itself is not to be invalidated. We know that the notaries public, for fear of the law, will in future observe what we have decreed, and the deed will be safely valid.

2

There is an addition that we are making to the present law, to the effect that notaries public are not to write a deed on any blank papyrus other than one prefaced with what is called a protocol bearing the name of our Most Illustrious *comes* of the divine *largitiones*⁸ at the time, the date of production of the papyrus, and all the introductory matter used in such documents. They are not to cut this protocol off, but to leave it attached; this is because we are aware that numerous forgeries have in the past been detected from such papyri, and still are being so. Thus any papyrus with a protocol not inscribed in that way, but in a different script – that is something else that we have certainly seen – is also one to be rejected as forged, and unsuitable for such documents. Deeds are to be inscribed only on such papyrus as we have specified above.

We wish these dispositions of ours, on the type of papyrus and on the removal of the so-called ‘protocols’, to be in force only in this fortunate city, where there is a very large number of transactions and a plentiful supply of papyrus, and things can be done in the regular way, giving no-one cover for committing forgery. That is what they will reveal themselves as guilty of, should they have the temerity to act in any contravention of these provisions.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

*Given at Constantinople, August 17th, 2nd year after consulship of the
Most Distinguished Belisarius* 537

⁸ For discussion of such protocols, see Diethart, Feissel and Gascou (1994). The ‘Count of the Sacred Largesses’ (Latin *comes sacrarum largitionum*) was chief finance minister and also the highest judicial authority in fiscal disputes (Jones (1964), pp. 427–38).

45 | **Jews, Samaritans, heretics: not to be released by their religion from status as city councillors, but to be subject to curial liturgies, though not to enjoy their privileges; and to be able to give evidence against orthodox persons who are subject to curial status, so long as they are giving evidence honourably, on behalf of the orthodox realm¹**

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

Your excellency has recently given us a verbal notification that there is an issue on which a decision is called for: that, among city councillors, there are people such as Jews, Samaritans, Montanists or persons otherwise contemptible – on whom the light of our true, unblemished faith has still not shone, as they sit in darkness even now, with their souls in ignorance of

¹ In the sixth century the provincial administration of the Roman state continued to delegate many administrative responsibilities (concerned with issues such as tax-collection, for example) to local landowners who were enrolled on to their local city council. These official obligations (known as 'liturgies' or, in Latin, *munera*) could be extremely onerous, and as a result emperors had long been obliged to prevent city councillors from fleeing or abandoning civic responsibilities by denying their 'curial' status (i.e. their status as city councillors, known in Latin as *curiales*). With the on-going Christianisation of the state, non-Christians and those deemed heretical by the government were progressively excluded from holding governmental office (see *Codex* 1.5), and this constitution reveals that certain heretics and non-Christians had attempted to take advantage of this exclusion to escape from curial responsibilities. Justinian here re-asserts that such individuals were to be denied the honour and privileges associated with curial status, but could not divest themselves of curial obligations (thus upholding the provision contained in *Codex* 10.59.1). The emperor's legislation thus ensured the closing down of a legal loophole that had inadvertently provided city councillors with a perverse incentive to adopt heterodox religious positions (on which see Bond (2014), p. 23). The constitution's description of the empire as 'the orthodox realm' or 'the orthodox polity' (ὁρθόδοξος πολιτεία) marks a further milestone in Justinian's construction of a confessional state. On cities and city councils in this period, see especially Liebeschuetz (1996).

the true mysteries – who, because of our abhorrence of heretics, think that they are for that reason free from the liturgies of city councillors.²

We were surprised that your intelligence and acumen had been tolerating such arguments on their part, rather than tearing the proponents to pieces straight away. If there are people who think that their utterly unacceptable beliefs entitle them to privileges that we have reserved only for the highest ranks,³ who could but detest their abject folly?

The upshot is that all such people are to be city councillors, much to their chagrin, and to be subject to the liturgies of that status, as also, by previous legislation, for those of civil servants.⁴ No religious affiliation is to exempt them from such status; there has been no law, either ancient or recent, to that effect. They are, however, not to deserve any of the honour of city councillors. The law allows city councillors numerous privileged exemptions, such as from being beaten, produced for punishment or deported to another province, and innumerable others; these people are to enjoy none of them.⁵ Anything laid down on city councillors that does not grant them a privilege is to apply to these people also: they are to discharge personal and financial liturgies, from which no law is to rescue them, but they are not to enjoy any honour. Their status is to be one of disgrace, which is what they have desired for their souls as well.⁶

² On Justinian's treatment of Jewish communities, see de Lange (2005) and Klingenberg (1998) (who discusses this law at pp. 16–19). Justinian's increasing hostility towards the empire's large Jewish community would ultimately lead to a re-assertion of Jewish confessional identity and growing Jewish separation from and hostility to the Roman state and Roman culture over the course of the sixth century. The Samaritans claimed to be Hebrews who had separated from the Israelites in the eighth century BC and came to form a distinct religious community with a strong presence in Palestine (see Crown (1986)). The Montanists were charismatic Christian heretics with a strong presence in Phrygia. They originated in the second century AD and appear to have focused their devotions on the Holy Spirit (for further discussion, see Pelikan (1956)). For Justinian's persecution of Samaritans and Montanists, see also Procopius, *Anecdota* 11. 14–30.

³ Those accorded senatorial rank or high public office were exempted from curial obligations.

⁴ 'Civil servants' = Greek ταξῆωται or Latin *cohortales*: in this instance, the emperor is referring to local citizens charged with obligatory (and hereditary) responsibilities to the local governor and his staff. See *J. Nov.* 6, note 6.

⁵ Late Roman law distinguished between those citizens who were deemed 'more humble' (*humiliores*) and those who were 'more honourable' (*honestiores*). The latter (essentially consisting of city councillors and senators) were exempted from the most humiliating or painful punishments and legal proceedings (see discussion in Garnsey (1970), pp. 221–80 and Bond (2014)). Justinian thus signals that high-status Jews and heretics were to be subject to the same physical punishments and degradation as members of the lower classes and could claim no privileged physical protection.

⁶ 'Disgrace' = Greek ἀτιμία, Latin *infamia*. 'Infamia' in Roman law was a state of publicly declared shame (see *Digest* 3.2 and *Codex* 2.11) which carried with it specific legal

Accordingly, that is how you are to direct them on this matter.

1

There is, however, another subject which you have reported to us as deserving your consideration. We have barred heretics from giving evidence in lawsuits between the orthodox, though, by our constitution, we do allow them the ability to give evidence in cases where they are embroiled with each other, and each litigant, both plaintiff and defendant, is a heretic; there, litigants and witnesses are each as bad as the other.⁷ If, again, one is a heretic and the other is orthodox, they can most certainly give evidence for the orthodox against heretics, but not then against those who are orthodox; and their evidence is inadmissible altogether, under our constitution, if both parties are orthodox.

In this connection you have informed us that some of the orthodox are claiming not to be of curial status, and that it is necessary for persons who have kinship-ties with them, or who know of their status in some other way, to come forward to give evidence. As the law rules out evidence on the orthodox from heretics, judges have thus been hesitant to accept evidence from such witnesses; yet this fear, on the part of those refusing acceptance of such evidence, is an unfounded one. For one thing, it is being given in favour of the orthodox, which is something the laws do not prevent heretics from doing; for another, if someone is trying to force back into a council people who are councillors but are denying that status, and he is calling heretics to give evidence, how can that action not be in our state's interest? It is the state that is bringing the case, and it is orthodox, especially since God has granted us to reign over it; so those giving evidence for that purpose are giving it on behalf of the orthodox. Our citizen body is sound, and by now abounds in the orthodox faith, with all other, heretical, views being deservedly abhorred.

Conclusion

Accordingly, your excellency is to observe this also, in awareness of our intention, in pursuit of what is in the state's interest, and in full knowledge

penalties, such as the inability to act as an advocate in court, exclusion from tutorship or public office (see *Codex* 10.59), or from the role of accuser in a criminal trial. Most significantly, it could also affect one's ability to make a will or inherit (see Gardner (1993), pp. 111–27 and esp. 118–23). The extension of *infamia* to religious dissidents was a major legal innovation of emperors in late antiquity (on which see Bond (2014)).

⁷ A reference to *Codex* 1.5.21.

of the fact that all our painstaking actions and legislation have been for the benefit of the state.

Given at Constantinople, August 18th, 2nd year after consulship of the Most Distinguished Belisarius

537

PROOF

46 | Ecclesiastical immovable property, other than in Constantinople: alienation and payment¹

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

The purpose of our painstaking work on laws, and also of all the other products of our daily labour, is to devise what is to the advantage of our subjects, by putting an end to what is excessive and unrestrained, and replacing it with limitation and restraint. In many cases, previous lack of limitation has caused us deliberately to tighten up the law beyond the midpoint, in order to institute a balance for the future by pulling back past excess.²

In this connection, we recently enacted a law³ for all most holy churches, monasteries and other holy houses, to the effect that they had no licence for alienation of immovable property. This was because we could see that it had gone too far, with ecclesiastical possessions gradually passing to others at prices below their proper value, and without any unavoidably pressing need for their alienation; in fact, there were innumerable evasions going on of laws already laid down. We thus did away with the original route, by blocking access to the evasion of them for all alike. That has, for the most part, led to beneficial results for the possessions of the most holy churches and other holy houses, as no-one has had the temerity to detract from them; but despite that, there is also an actual difficulty that has come to light: loans, whether long-standing or supervening latterly under some

¹ In this constitution, Justinian is obliged to loosen his otherwise strict prohibition on the alienation of ecclesiastical property as set out in *J. Nov. 7*. Firstly, he here permits the Church to alienate immovable property (primarily land) in order to pay tax-bills which it otherwise would not have been able to meet, or to repay loans taken out with a view to enabling it to make tax-payments, whilst introducing procedures to ensure that such tax-debts could not simply be invented so as to circumvent the ban on alienation. Secondly, the emperor allows the Church to sell property in order to re-pay loans to creditors whom it does not have the cash in hand to repay. In doing so, the law reveals evidence for localised shortages of coin, as well as the important role of credit relations in the workings of the fiscal system. On coin shortages and imperial legislation in this period, see Lucks (1991).

² The emperor here introduces an interesting argument to justify the modification of recent legislation.

³ A reference to *J. Nov. 7*.

compelling need, mainly for reasons of taxation, have put the holy houses under compulsion to alienate.⁴ Those in charge of them,⁵ with no adequate movable property at their disposal, were in danger of getting into extreme duress because of neither being able to sell, nor capable of finding a source from which to clear their debts; yet to meet the debt by giving the lenders ecclesiastical possessions in lieu of payment, always provided that the payment is made under appropriately strict conditions, is something we have frequently allowed hitherto, as not in fact having explicitly forbidden it by our previous law. However, if the lender is not a private individual, but it is the public treasury that is pressing its demand for what is owed to it, and there is no money, we have thought fit in that case, given that the public treasury cannot accept immovable property, to make some relaxation in the strictness of the law: we have in fact decided, should there be such compelling reason, to allow alienation.

1

We accordingly decree that should one of the most holy churches, or other venerable houses, owe taxes and be without the wherewithal to pay them, there must be a meeting, attended by all the clergy, the most God-beloved bishop of that city itself and also the metropolitan,⁶ to examine the matter, with the divine scriptures displayed. Should it transpire that there are no adequate means at all capable of clearing the tax-debt, apart from alienation, they are then, after the issuing of a verdict to such effect, and with a *decretum*⁷ made before the provincial governor, to have licence to lay hands even on immovable property, and alienate it to clear the debt. The purchasers must make the payment to the public treasury, and be given proofs of receipt by it; they undertake the debt to the public treasury, and they receive their surety from it, with nothing to fear from the law previously laid down by us. Meanwhile those making the sale are without liability as far as the law is concerned; proofs of receipt of the taxes must be put on record, having been deposited by those who drew them up, so that the most holy churches, too, may have clear proof kept in their possession both that the taxes have been paid, and that everything has been done in

⁴ The law here casts light on the role of credit in enabling institutions and individuals to meet their tax-obligations.

⁵ 'Those in charge' = the stewards (Greek οἰκονόμοι) of ecclesiastical properties.

⁶ The metropolitan bishop was the senior bishop in the province, appointed to the provincial capital or *metropolis*.

⁷ '*Decretum*' = a decree or order.

accordance with our law. Thus no-one can resort to alienations of immovable property by inventing a fictitious tax-debt.

The purpose of our ordering a *decretum* to be made was that there would be evidence of the tax-debt, the date from which it was due, and the fact that it had not been cleared in cash, but an alienation had been necessitated. This is so that there should be full evidence of the truth, with the whole business being transacted on the holy gospels, and with the bishops, the clergy, and everyone else as well knowing that God would see what they were doing, and that, both during their lifetime and at their death, they would be taking on their own souls the consequences of any deceit, profiteering or subterfuge on their part.

2

Should the creditor be a private individual, he can accept immovable possessions on the formula *pro soluto*;⁸ here, too, a *decretum* must be made, and the possessions that accrue to him must be equivalent to the actual debt. Should it be a tax-debt, however, the authorities can resort to alienation of immovable property under the above procedure. Thus the demands of both strictness and public advantage are fully met.

3

From all these provisions, we entirely except the most holy great church of this fortunate city, its immediate surroundings and the houses of worship for which it has itself undertaken the responsibility;⁹ our existing legislation on that subject is to remain in its own force. We also do not include under the present law any monastery there may be that is under the most holy great church; we are applying it only to outlying regions where there is a serious shortage of money,¹⁰ thus making it impossible for the most holy churches to clear their debts in money.

⁸ 'The formula *pro soluto*' = *usucapio pro soluto*: the acquisition of ownership through possession of a piece of property from a debtor in repayment of a debt which could not otherwise be discharged due to some problem with or defect in the transaction (in this instance, a lack of cash on the part of the Church – see below): see Berger (1953), p. 753.

⁹ I.e. the foundation of the Patriarchate of Constantinople.

¹⁰ Here Justinian hints at provincial shortages of coinage, making it impossible to repay cash loans *in specie*, as the law would traditionally have demanded (see Lucks (1991)).

Conclusion

Your excellency, in awareness of our decisions, is accordingly to ensure that this is the manner in which alienations of sacred property are to proceed.

Given at Constantinople, August 18th, after consulship of the Most Distinguished Belisarius

536¹¹

¹¹ For an alternative dating of 537, see Lounghis, Blysidu and Lampakes (2005), p. 280 (under entry 1118). The later dating would make sense given the fact that *J. Nov. 55 Pr.* refers to this law, but describes it as having been issued subsequent to *J. Nov. 54*, which is dated to the September of 537. The preamble to *J. Nov. 55* does, however, appear to be somewhat confused.

Documents and records: to have the Sovereign's name prefixed; dates indicated in the Roman alphabet to be more clearly written¹

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

The most impressive document, record or whatever else that mankind has devised for keeping a date in memory, is one which is dignified by the express mention of the Sovereignty. Granted that consuls, indictions² and any other time-indication in use among us perhaps also show what one wants, we are certainly not doing away with those; but we are making a more important addition to them, so that the passage of time will be marked more importantly and perfectly.

If one were to look right back to our state's most ancient times of all, it is Aeneas, the Trojan, who was the realm's first king; from him, we are called

¹ In this constitution Justinian decrees that henceforth all official documents and legal proceedings were to be dated according to the regnal date of the reigning emperor, which was to come first and take precedence over dating by the consulship, fiscal indiction or any other local, civic or provincial practice (in effect, almost every major city in late antiquity had its own dating system or scheme). The main aim of the law appears to have been to give greater clarity to legal proceedings and court cases and to assist in the authentication of legal documents (on which see also *J. Nov. 44*) but the measure also appealed to Justinian's self-aggrandising tendencies which often resulted in his adding his name to things (a practice criticised by Procopius in his *Secret History*: see *Anecdota* 11.2). As noted in the Introduction, the documentary evidence from Palestine reveals the law to have been put into immediate effect, and in Middle Egypt it had come to inform documentary practice by 539. Its overall implementation, however, is often argued to have been sporadic: see Feissel (2010), p. 510 notes 31 and 33, and Bagnall and Worp (2004), pp. 45–54. In Egypt, however, it is worth noting that the rules set out in this law were to become sufficiently embedded that they would even inform Coptic documentary practice, with the earliest known Coptic will (*P.KRU 74*) containing 'a dating clause following the model introduced in the Justinianic novel' (Nowak (2015), p. 127). The Preamble to the constitution opens with a *bravura* evocation of Roman identity which epitomises the rhetorical antiquarianism of Justinian's reform legislation. The connection to Roman antiquity evoked in the Preamble, however, sits ill at ease with the admission at the end of the law that many of those who were obliged to handle legal or official documents had difficulty reading Latin script. For further discussion of related themes, see Maas (1986) and Pazdernik (2005).

² 'Indictions' were fifteen-year tax cycles which were commonly used as a dating device.

Aeneadae.³ Otherwise, if one were to consider its second beginnings, as a result of which the Roman name first shone out brightly in the world, its founders were king Romulus and king Numa: one built the city, and the other organised and enhanced it, by means of laws.⁴ Or again, as the third starting-point of its sovereignty, one could also take the great Caesar, and the august Augustus;⁵ one will thus find that this present victorious realm – and may it remain so immortally – descends from them. It is unbecoming, therefore, that the reign should not take the leading place on deeds, court proceedings and, in fact, all documents in which there is any mention of the date.

1

Hence, we decree that all those serving on proceedings, whether in law-courts or wherever records are kept, both notaries public⁶ and document-clerks, at whatever level, whether in this great city or in the other provinces over which God has granted us to rule, are to begin⁷ their documents like this: ‘In the . . . year of the reign of . . ., most divine Augustus and Emperor . . .’ After that, they are to add the name of the consul for that year, then thirdly the indiction, followed by the month and the day. In that way, the date would be permanently safeguarded; and the mention of the reign, the consular succession and the rest of the regular usage on the documents will make them in large part tamper-proof.

1. We are not begrudging any other procedure, as well, that may be observed among the inhabitants of the East, or other peoples, of marking their cities’ date; it is just that the Sovereignty must be put first, and the consulship, the indiction, the month and the day on which the proceedings take place and are recorded must, as stated, follow that. At that point, the

³ Aeneas – the legendary ancestor of the Romans – was a princely refugee from the fall of Troy whose adventures on his way to Italy were immortalised in the age of Augustus in Virgil’s epic poem the *Aeneid*.

⁴ Romulus and Numa Pompilius were the legendary first and second kings of Rome in the eighth century BC. Numa was believed to have founded many of Rome’s most important institutions, such as the office of *Pontifex Maximus*.

⁵ I.e. Julius Caesar and his ‘adoptive’ son Octavian (Augustus) (on whom see Gardner (2009a), pp. 66–9 and (2011), pp. 369–70). It is perhaps revealing of Justinian’s monarchical tendencies that the different points of origin he identifies for the Roman state effectively side-step the golden age of the Republic (although for continued Byzantine interest in the concept of the Roman Republic, see Kaldellis (2015)).

⁶ ‘Notaries public’ = *tabelliones* (Greek συμβολαιογράφοι).

⁷ In the emperor’s own constitutions, as far they survive in this collection, the dating is always included at the end.

city's year is, by all means, to be added. We are not doing away with any past practice at all; what we are doing is giving it the addition of sovereignty.

This is to start immediately from the forthcoming – under God's guidance – first indiction. They will then be putting something like: 'In the 11th year of the reign of Justinian, most divine Augustus and Emperor, the second year after the consulship of the Most Distinguished Flavius Belisarius, on the . . . day before the . . . of . . .'⁸ Thus on all documents our regnal years are to be named, for as long as God extends our reign; and then those of our successors as emperor. At present, of course, they will put 'the 11th year' of our reign; but from the first day of April, the day on which God placed us at the head of Rome's affairs, they will put 'the 12th year', and so on, for as long as God may extend our reign. This is so that there is something else of ours, in addition to the laws and their making, that will remain for ever immortal, with the mention of the reign being made together with every proceeding, every time.

2

Because those who record the date in law-courts express it in that obscure antique script, we are adding the principle that, in every court, that antique date must then also have something else appended to it: the date of the proceedings in the familiar form in common use, which is clear and can easily be read by all.⁹ This is to avoid their having to traipse round trying to find out the date, and remaining at a loss until they come across someone who really understands that script. If the remainder of the document, after that obscurely-written heading, is in the Greek language, they are to put the date under it in Greek script;¹⁰ but if the document as a whole is in Latin form, the date below it in that obscure lettering is to be written in the Roman alphabet, but in a clearer form of script, legible by anyone not entirely ignorant of the Roman alphabet.

⁸ This is the Latin form: i.e. on day *x* before the nones/kalends/ides of month *y*. In the translation of the novels, these dates in the subscription have been altered to the modern calendar.

⁹ The emperor is seeking to distinguish between a complicated form of Latin cursive known only to specialists and a simplified version which was more widely known (on which see Feissel (2008) and Mitchell (2007), pp. 175–7).

¹⁰ In this collection of novels, every single date that survives is in Latin.

Conclusion

Your excellency, in awareness of these decisions of ours, manifested by means of the present divine law, is accordingly to make them public both in this great city and in all the provinces under its authority, so that no-one dares to reckon the date, or to act, in any other way than as we have determined above.

Given August 31st in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius

537

48 | Oath taken by decedent as to value of his own property¹

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

We have always made it one aim that decedents'² directions should stand unless they conflict with a law, and be clearly in opposition to its decisions. In this connection we are aware that in the course of proceedings an issue has in fact been raised, and reported to us, over a testator who said on oath that it was his whole estate that he was bequeathing and that that was all he was leaving to his heirs, whereas some of the heirs themselves are subsequently denying that. They are wrong to do so, because while inheriting his property, and in that respect complying with his instructions, they want whatever he said under oath not to stand as valid, rather than upholding it as they should; yet our laws take the view that the heir and the one conveying the inheritance to him are, in a sense, one person.³ Thus, one would not say that this person is contradicting himself, and that he did not want what he said, and swore, was valid, to be so, but was contradicting his own statement.

1

We accordingly decree that if someone, in a declaration that he has made either in his own hand, or written by others but undersigned by himself, or

¹ In this constitution, which Justinian presents as having been provoked by litigation, the emperor decrees that if a testator has sworn that he possesses no property other than that set out in his will or detailed separately, his heirs must either accept that statement in accepting the inheritance or renounce the inheritance. They are forbidden from accepting the inheritance, but then making claims to property that they believe the testator had (probably deliberately) failed to mention or which the co-heirs had hidden. In doing so, Justinian flies in the face of much previous legislation (e.g. *Digest* 30.112(4); 35.2.15 (8) and *Codex* 3.38.10 and 5.51.1: see Van Der Wal (1998), p. 146, note 86 and Bonini (1972a)). Creditors to the testator, however, were not so bound (see *Codex* 6.30.22).

² 'Decedent' = the deceased. For Justinian's emphasis on ensuring that the intentions of the testator be fulfilled wherever possible, see also *J. Nov.* 1 and Johnston (1998), p. 253.

³ This principle is here enunciated for the first time in Roman law: see Van Der Wal (1998), p. 147, note 93.

in his will, makes the amount of his property known, perhaps in the presence of some of his heirs but the absence of others, or in the presence of them all, the heirs are not allowed to deny that statement, or to say that one of the heirs has concealed property unmentioned by the decedent. Should the decedent have taken an oath, or sworn in his will, that he has nothing else but that, the heirs, whether children or outsiders,⁴ are to acquiesce in that, and not interfere, calumniate their co-heirs, try to find slaves from the household and have them questioned under torture, or probe and interfere like that in other ways. That is nothing but sheer quarrelsomeness, because the property is taken as being only as much as the testator stated on oath, and as being all that he wished to be divided among his heirs.

1. That is what we wish to apply as regards the heirs, who are taken as being, in a sense, the same person as the decedents. It is, however, certainly not to apply as regards creditors also. That is because it is stated by our laws that no statement by a person on his own behalf, whether verbal or written, can be of any avail to him at all, or be prejudicial to the creditors: those are to have licence to investigate everything, as they wish, whereas the heirs must abide by what the testator has said. The penalty for the heirs in this situation is that one who opposes that is to be absolutely unable to enjoy what has been bequeathed to him; he is under an obligation either to comply with it all, or to reject it all; he must not choose part and contradict part. The decedent's successors must observe his intention without having the temerity to oppose it in any way.

These provisions are to apply for all time to come, and to every case not yet launched in court, nor settled by judicial verdict or amicable agreement.

Conclusion

Your excellency, in awareness of these decisions of ours, manifested by means of this divine law, is accordingly to make them public to all by means of proclamations of your own, in the usual manner.

*Given at Constantinople, August 18th, <2nd> year after consulship of the
Most Distinguished Belisarius*

537

⁴ 'Outsiders' = *extranei* (i.e. heirs appointed from outside the family).

49 | ***Rei* who proceed to appeal; autograph documents produced by defendant; oath on delay to be coupled with that on *calumnia*, so as to have oaths taken only once for whole case¹**

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

This fluctuating human life, which can never remain in the same state, coming constantly into being but never remaining, does also cause some disturbance to pieces of legislation.² The variety of supervening cases often leads to a movement in what had seemed sound, and apparently firmly secured by observance of strict principles.

We know that we had recently rectified a wickedly deceitful practice taking place over appeals. After bringing a case to court, appellants were resting content with just that; having put in an appearance, either unilaterally or at the proceedings (that makes no difference), they were abandoning the case, and there was no way at all for the existing winner to follow up his victory: he could not benefit from what had been adjudged, because of the appeal, nor have the appeal tried, because of the absence of the appellant.

1. We amended this, under our earlier legislation,³ by assigning a year for the appellant to appear, either on his own or face to face; he was not to

¹ This law is primarily concerned with expediting the workings of justice and curtailing the opportunities for litigants and appellants to draw out legal proceedings unnecessarily. It firstly legislates against appellants who attempt to overturn a case by default by initiating an appeal against a judgment but who then fail to turn up to court. In doing so, however, the law reveals interesting incidental details of the difficulties sometimes faced by litigants in reaching such proceedings. Secondly, it clarifies procedures for the examination and authentication of documents, exemplifying once more the growing emphasis on written proof in Justinianic law. Thirdly, it legislates against those who attempt to slow down legal proceedings by demanding the taking of additional oaths to verify claims or facts asserted during the course of a trial. '*Rei*' = defendants in civil trials (see Berger (1953), pp. 683–4); '*calumnia*' = legal trickery or vexatiousness (ibid, pp. 378–9).

² The concept of the mutability of the human condition (as well as the general flux of the cosmos) necessitating legislation is a recurrent rhetorical theme of Justinian's legislation (see Lanata (1984a), pp. 165–88).

³ The earlier law referred to is *Codex* 7.63 5.

leave the case unattended, but to contest it, and obtain his rights, within that time. Generously, we then added a second year as well, to allow for the possibility that the appeal process might be held up owing to the judge's fault, or for some other unavoidable cause; after that time, should they fail to complete the case, we decreed that the verdict for the winner should remain valid. That had been our decision; it has been laid down in a general law, and we wish that law to remain in force, and be observed.

2. However, we have had a number of petitions from people saying that, in their case, they had given notice to the appellants and had wanted the case tried, but found that the judges themselves refused access, on account of certain possibly unavoidable engagements. Others blamed unfavourable winds: they had not been able to make the voyage from their province because the wind kept driving them back, and they could not make the journey on foot, either because they could not afford it, or perhaps because they were islanders, and so had no way to come but by sea – that, they said, was the reason that they had not been able to contest the case to its conclusion, even by the second year. Some blamed unseasonable storms; others, intractable illnesses. We know that all these reports to us are of actual facts. We rightly found this disturbing, both because we were not prepared to overstep the law, and because we wanted to give all the help we could to those suffering injustice under some such chance circumstance. What, then, had we to do, but look to a further law offering reasonable assistance in this situation?

1

The rest of what is provided in our said law is, as we have just said, to be observed throughout; but in the event of some genuinely unavoidable occurrence, should the person contesting an appeal not persist with it, and, despite having initiated the action by the set day, not appear by the time that the two-year period is in danger of running out, the winner's verdict is then to be confirmed, as our previous law says, but with a sub-distinction that we are adding in the present one.

By restricting the unlimited time that appellants used to have if, having given notice of appeal by the set day, they did not want to take on the action any more, or abandoned it in the middle of the contestation, we have assisted the victors. For that very reason, by taking a little away from the victors we would be taking good aim at the right mark, as follows.

Should the victor in the case desire the verdict to be confirmed genuinely – not summarily or just as a matter of time, but on the truth of

the facts – we wish him to come to court even despite the appellant's absence, lodge a complaint of that very fact, and try to find the absentee. Then, either he may succeed in finding him, or the man may not come to light; in either event, the victor is to put forward his own claims of right. This, be it understood, must still be in the course of the two-year period, but towards the end of it, with perhaps a month of it left. Should he then gain approbation, the verdict is to be valid; should he lose, on the contested issues, he is to accept the verdict that proceeds from justice, even though the appellant, despite having initiated the action by coming to court by the set day, is not persisting with it.

We only add that whether the previous winner should be victorious in this case also, or, equally, whether he should lose it, either way the absentee is to pay him the cost of his court appearances since the appeal. Should he win the case, as far as costs are concerned the very fact that he has won it fairly would entitle him to be granted his costs, as well; should he lose, the other is still to pay the costs, because he was absent, in any case, and the victory came to him even despite his absence; he should thank God that he has the benefit of the verdict, and thank the present law for being so careful to ensure justice for him that it penalises him only as to the costs – in which it is not the law that has penalised him, but he has penalised himself, by not being there.

Should neither side put in an appearance, that is neither the winner nor the loser – the one who initiated the action by the set day, but then absented himself –, the verdict in the winner's favour is to remain valid. The rest of the laws that have been enacted on appeals, those on time-limits and all the others as well, are to remain in force, because it is specifically for cases of absence after an action has been initiated on the set day that we are making this law; we are neither abrogating nor changing anything in other laws on appeal, or their timing; in fact, in enacting this law, we are also validating those.

1. It is right for us to add a further provision: that, in cases where the winners have, before this, already received a verdict confirming their victories, they are to have the benefit of those, as we are not re-opening cases already concluded. If, however, they are still in suspense, with the two-year period in progress and not yet expired, and with the verdict not yet confirmed, these cases are also to receive the same enquiry; the winners, should they prove the soundness of their verdicts, are thus to have the benefit of them.

2

There is, however, another addition that we think must be made to this law. We have already laid down a law⁴ whose intention is that no comparison at law is to be made between documents written by private persons, but only between those of professionals. However, we observe that practical experience demands an appropriate amendment in the law, as we also find from the actual experience of litigants.⁵ We therefore wish to amend it, in the following way.

Frequently, someone had produced a privately written document, and was using it either as the basis for his suit, or in proof of his own rights; then the other side put in something written in the same hand, and desired legal confirmation of it to be established from the one his opponent had himself put in; and then the opponent had made use of the law that comparisons are to be made only between documents written professionally, not privately.⁶

1. We accordingly decree that in such an event, should someone wish an enquiry to be conducted by comparison with the very documents that have been produced by his adversary, that is not to be impugned as an incorrect procedure. A document on which he himself would be relying, which he has produced, and on the basis of which he is backing up his own claims, is not something he could impugn, nor prevent the comparison of documents being made with reference to it, even should it be a privately-written one. He could not be at war with himself, and impugn precisely what he is maintaining.

2. Should a papyrus be produced from the public archives, such as a receipt from the exchequer of the Most Illustrious prefects (that is something that we know has been the subject of enquiry), we make that, too, admissible for document-comparison, as being produced from a public source, with a public attestation.⁷ Our reason for having legislated that those contesting document-examinations are to do so under oath, and for

⁴ A reference to *Codex* 4.21.20.

⁵ The constitution thus provides a further example of a legal reform inspired by actual legal proceedings.

⁶ Such comparison of documents (known in late Latin as *contropatio*) was also an accepted fact of litigation in Visigothic Spain in the sixth and seventh centuries (see Everett (2013), p. 86).

⁷ In *J. Nov.* 73 Justinian would suggest that the very fact that a document was official or had been publicly archived meant that its authenticity could be assumed. An exception here appears to have been made for tax-receipts, which were a relatively simple documentary type and could thus, perhaps, be more easily forged (see Van Der Wal (1998), p. 172, note 60 and Amelotti (1990)).

introducing the principle that only professionally executed contracts are to be used for comparison, is our absolute abhorrence of the crime of forgery.⁸ Thus that law is still to be in force throughout, only with the addition to it of the present sub-distinction; but it is still, without fail, to be under oath from those making the comparison.

3

For the sake of scrupulousness on the part of litigants, we have expressed our wish that, as part of the preliminaries in the hearing, they should immediately take an oath: accusers, that the actions they are taking are not calumnious, and defendants, that their defence will have the right on its side, and is not merely for the sake of contention. That is a general law⁹ that we have laid down for everyone, allowing no concessions at all. We have, however, added that, should one party demand proofs from the other of something he has personally said or written, he is first to swear an oath that he is not doing so as a delaying tactic. Now, there are many litigants – especially in the case of women of the higher orders – who, for purely injurious motives, rush at once to resort to this oath whenever there is proof put up against them,¹⁰ either documentary or in any other category; thus oaths are being demanded repeatedly during a single case.

1. Accordingly, as a means of doing away with this injurious behaviour, and because we do not wish numerous oaths to be taken during the same case, we decree that at the taking of the oaths (the one's oath on *calumnia*,¹¹ and the other's on his belief in the justice of his case in opposition), each party is to add that in the entire case, on any occasion that he may require proofs from his adversary, he is not doing so for the purpose of procrastination, but in the belief that the proof to be given him by his adversary is genuinely necessary for him. Should he have sworn that oath, he is

⁸ Justinian thus reiterates a prominent theme of the recently promulgated *J. Novs.* 44 and 47 (see Feissel (2010), pp. 504–7). The forging of documents is also a theme in the writings of Procopius: see *Anecdota* 28.

⁹ A reference to *Codex* 2.58.2, where the emperor decreed that the oath had to be taken immediately after what was known in Latin as the *litis contestatio*: the proceedings by which, after the appointment of judges, the issues of a case were established for examination (Berger (1953), p. 566).

¹⁰ The implication here seems to be that aristocratic women felt able to counter any accusation made against them by simply declaring on oath that it was not true. The emperor thus provides an interesting example of the instinctive deference of courts to the word of well-born or titled ladies (a phenomenon not unknown even in contemporary legal proceedings).

¹¹ '*Calumnia*': see note 1 above.

absolutely never again to have the oath demanded of him by the other side, however many proofs he may require. Once such a general oath has been taken, the proofs are to be given without compulsion to take any oaths repeatedly.

Conclusion

Accordingly, your excellency is to make these decisions of ours, manifested by means of this divine law, public to all, by means of edicts despatched by you, so that all shall know of what has been legislated by us.

*Given at Constantinople, August 18th, 2nd year after consulship of the
Most Distinguished Belisarius*

537

50 | Appeals from the five provinces of Caria, Cyprus, the Cyclades islands, Moesia and Scythia; the constitution determines in whose court they must be tried¹

*The same Sovereign to Bonus, Most Illustrious quaestor Iustinianus of the exercitus*²

We know that we have recently made a divine constitution³ by which we have entrusted your distinction with the five provinces of Caria, Cyprus, the islands that lie in a ring, and also Moesia and Scythia, for them to

¹ As part of his programme of provincial reforms, Justinian had effectively carved out of the old Praetorian Prefecture of the East a new Prefecture that consisted of the militarily troubled Balkan regions of Scythia and Moesia and the wealthy island and coastal territories of Cyprus, the Cyclades and Caria, which were placed under the command of the Quaestor of the Army or Chief of Staff (*quaestor exercitus*): hence the new administrative unit was known as the *quaestura exercitus* or ‘military quaestorship’. The logic behind this reform was primarily financial, in that it sought to harness the wealth of the islands and coastal zones to subsidise and support the defence of the Lower Danube, taking advantage at the same time of their ‘strategic location at the hub of the empire’s communication network . . . and their role in the maintenance of large fleets’ (Deligiannakis (2016), pp. 88–9). However, from the perspective of provincial litigants and petitioners, given how far Cyprus, the Cyclades and Caria were from the Balkan territories where the military commander necessarily spent much of his time, the result of the measure was effectively to deny them access to an appeal court. In the present constitution, Justinian responds to the resultant complaints by decreeing that the Quaestor of the Army should only hear appeals from Scythia and Moesia. All other appeals were to be presented to a representative of his in Constantinople, who would hear them along with the Quaestor of the Palace (*quaestor sacri palatii*). The military quaestor could, however, hear such cases if he happened to be in the imperial capital (see Jones (1964), pp. 482–3). A Latin summary and description of this law appears as *J. Nov* 41. Throughout, the Greek text (as well as that of the *Authenticum*) confuses the Balkan territory of Moesia with the Anatolian territory of Mysia. For the booming economy of Cyprus, the Cyclades and Asia minor in this period, see Zavagno (2012), Abadie-Reynal (1989), Pieri (2012), Deligiannakis (2016), pp. 87–97 and Roueché (2000). For Cypriot legal administration, see Lokin (1985). For this novel in the context of the Lower Danube and its defence, see Sarantis (2016), pp. 143–9. For archaeological evidence that this reform led to the restoration of a network of ‘regular annony deliveries to the northern Balkans after a long period of disruption’, see Deligiannakis (2016), p. 89 including note 20. The creation of the *quaestura exercitus* is also described by John Lydus (*De Magistratibus* 2.29.15–18).

² Bonus: see *PLRE* IIIA, pp. 240–1 (Bonus 1). He is described by Procopius’ continuator Agathias as clever and capable in both civil and military affairs, and in 552 is reported to have accompanied the general Narses in his successful campaign to crush the final remnants of Ostrogothic resistance in Italy: see Agathias, *Histories* 1.19.1.

³ See *J. Nov.* 41.

belong under your distinction; and we added that appeal-cases arising in the said provinces were no longer to be sent up to our Most Illustrious prefects, but to your magnificence. As to this, we have been receiving numerous petitions from aggrieved inhabitants of Caria, Rhodes and Cyprus, saying that they are often compelled, even in wintertime, to go to Scythia and Moesia, where you reside, and contest their appeals – not even, perhaps, over any great amount of money – with the risks of sea-travel over long distances, and of arriving in areas troubled by barbarians. That is the reason why we have decided to enact this law, addressed to your distinction.

Its effect is that cases from Scythia and Moesia, as being in your excellency's neighbourhood, should be heard by your eminence, in person; but as for the other cases, that is those from Caria, the said islands and Cyprus, if they were originally being contested before our Most Illustrious governors, having been transferred to the provincial governor by a divine command from us, they too, should you yourself be in this sovereign city, are to be launched and tried under you, jointly with the Most Illustrious *quaestor*⁴ of our divine Palace, in the sacred courtroom,⁵ as the existing law on appeals indicates.

1. If, however, you should yourself be staying in Scythia and Moesia, appeals are to be brought before the person filling your place in this fortunate city; in any case, however, he is still to be with the Most Illustrious *quaestor* in hearing the case in the manner of such trials. People are to be judged under them, sitting together as we have stated before, instead of being subjected to the said inconveniences. This is because we have decided to frame the law in such a way that cases are contested with more strictness and greater authority.

2. Should you yourself appoint the judge in the previously mentioned provinces, the person taking on your position in the fortunate city will take the hearings, as has also been customary for the Most Illustrious prefects. However, in the event that a case has been begun under your distinction, when you are found here (as you may well be), but you have then gone abroad in the middle of the proceedings, for military expenditures, the case is to be completed, without delay, by the person taking your place, and heard in the same way as you yourself were hearing it.

⁴ On the *quaestor*, see *J. Nov.* 7, note 19.

⁵ 'The Sacred Courtroom' = the *auditorium sacrum*, i.e. the imperial high court in Constantinople (see Berger (1953), p. 370).

If, however, it was not before the Most Illustrious prefects that the appeal was originally being sent up from some provinces, but to a different court, we are making no innovation at all in the ancient procedure.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours, manifested by means of this divine law, into practical effect, and to observe them perpetually.

Given at Constantinople, September 1st, in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius, indiction 1⁶ 537

⁶ 'Indiction 1' = the first year of the new fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311.

51 | Women on stage: not to be called on for either a surety or oath of permanence¹

The same Sovereign to John, for the second time prefect of the praetoria of the East, ex-consul, patrician

Preamble

We know that we have recently made a law² forbidding anyone from having the right to demand sureties from women going on the stage, for their continued practice of their impious calling, with no opportunity for a change of heart;³ and that we also threatened extreme penalties on those who do demand such sureties, as well as releasing the guarantors from their obligation, with no compulsion being imposed on them to produce these persons in court.

As things now are, however, we have found that there is a terrible, intolerable abuse taking place against the chastity which is our aim. It is that, because we had prevented them from receiving guarantors, they have devised another method, leading to even greater impiety: they are demanding from the women themselves an oath never to give up that impious and disgraceful work.⁴ Wickedly deceived in this way, the wretched women

¹ This constitution follows an earlier law of the emperor's which made it illegal for actresses and dancers to be bound to their employment through contracts of surety (Greek ἐγγύαι). The emperor reveals that employers had attempted to circumvent that law by demanding contracts of personal attendance (Greek παραμονή) sworn under oath from such women. This practice too the emperor now outlaws. Theatrical performers were commonly regarded as akin to prostitutes in early Byzantine society (see Webb (2008) and Brubaker (2005)), and this law should thus be read alongside *J. Nov.* 14 which sought to prevent pimps from extracting similar contracts from those whom they had drawn into the flesh trade. The law chimes with Justinian's general concern to protect the rights of vulnerable women (on which see Krumpholz (1992), pp. 162–204). The Empress Theodora herself was accused by Procopius of having worked on the stage (Procopius, *Anecdota* 9.10–25). This constitution (like *J. Nov.* 14) casts light on the highly legalistic nature of Byzantine social and economic relations and the associated importance of legal contracts and oaths, which were even deployed and manipulated by employers for fundamentally illegal and immoral purposes (see Sarris (2011c)).

² A reference to *Codex* 5.4.29. For the use of the contract of surety as a form of indirect contract of employment, see Sarris (2006), pp. 60–6.

³ 'No opportunity for a change of heart': possibly indicating that 'people in the sex industry expected some sort of structured amnesty if they showed remorse through penance, but were now by law denied it' (Hillner (2015), p. 107).

⁴ I.e. they were demanding the women agree under oath to what were known as 'paramonar' contracts or contracts of personal attendance, which were deployed in a wide variety of

think they are being pious, by being impious; they are sacrificing their chastity in order to keep their oath, when they should have known that to break oaths in that way is more pleasing to God than to keep them.⁵ After all, if anyone has been administered by someone an oath to commit murder, perhaps, or adultery or some such outrage, such a shameful, outrageous oath, leading to perdition, is not one that must be kept.

Thus, even should the woman have taken such an oath, she is to be allowed to retreat from its severity and to live chastely, in safety, or rather, in the way that God loves. The penalty for breaking the oath, if there is a penalty at all, is to be deflected onto the person who demanded it.

1

We ourselves thus impose an immediate penalty of ten pounds of gold, which we demand of any person at all who has the temerity to exact such an oath; and we decree that this sum is to be paid to the unhappy woman herself, for a decent way of life in future. It is to be demanded, and to be paid to her, through the provincial government; and the governor is to be aware that should he be negligent, he will be liable to her, after leaving office, as will his heirs, his successors and his estate, for having neglected to carry out a pious action.

Should it actually be the provincial governor himself who demands the oath, he is himself to be charged the payment of the said ten pounds of gold.⁶ Should there be a military commander in that province, it is through him that it is to be paid, as stated, to the woman. If the province has no military commander, the metropolitan bishop⁷ of that province is to see to this matter, and, should he see fit, to refer it to us; also there is the higher-ranking governor of a neighbouring province. Thus, under all circumstances, the person who has done this, whether an office-holder or a private individual, is to be chastened by the stated fine; and the fine is to be given to

contexts from agricultural labour to the employment of private armed retainers (e.g. *J. Nov.* 116) and, as already seen, prostitutes (*J. Nov.* 14). For a further discussion, see Sarris (2006), pp. 166–73 and Samuel (1965).

⁵ As in *J. Nov.* 14, Justinian describes legal contractual forms including oaths being used to bind women for illicit purposes, once more reflecting the great role of both legal instrument and oath-taking in sixth-century Byzantine society.

⁶ Justinian may here simply be referring to governors presiding over or witnessing the extraction of such oaths. Alternatively, the novel would provide an interesting insight into the range of economic interests governors possibly engaged in on top of their public duties.

⁷ ‘Metropolitan bishop’ = the senior bishop in the province, appointed to its capital city or ‘metropolis’.

the woman who, as far as he was concerned, could never again be chaste, lest she prove – save the mark! – to have broken an oath.

Conclusion

Accordingly, your excellency is to make these decisions of ours, manifested by means of this divine law, public to all by means of proclamations of your own, in order that they may know of our Sovereignty's zeal for morality.

Given at Constantinople, September 1st, in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius 537

**1. No taking of person, property or money in
distrain, but fourfold repayment to be made to
person distrained against**

**2. Individual's gift made to Sovereign not to
require entry in records¹**

*The same Sovereign to John, for the second time Most Illustrious prefect of
praetoria, ex-consul, patrician*

Preamble

The mean practice of distraints,² with the detestable exactions that they involve, is detested by numerous other laws as well, and especially by those laid down by ourselves; but, we know not how, despite being penalised by so many pieces of legislation, this practice is still brazenly in use, and evincing greater strength of its own than that of the laws constraining it.

1

For this reason, we decree that absolutely no distraint whatsoever is to be valid in our realm, whether on market days (which is where we find it most brazenly practised), in the countryside, in cities or in villages, and whether on city-dwellers, villagers, agricultural workers or anyone else at all, at any time, or in any manner. One who has the temerity to make a demand for money or anything else, by way of distraint, on one person in place of another, is to repay it fourfold to the person on whom it has been enforced, and also to forfeit the case he has against the person in place of whom he

¹ This law covers two unrelated topics, and thus conveys the diverse nature of the issues covered by the bundles of imperial legislation as they were despatched from Constantinople. The first part of the law covers private distraint: the process whereby, without court approval, a person (the distrainer) sought to seize the property of another in satisfaction of a debt or claim. The law casts especially interesting light on the destabilising effect of such behaviour in rural contexts and at fairs. Through this section of the law, the emperor can be seen attempting to restore order to provincial society and strengthen the writ of the courts. In the second part of the law, the emperor declares that gifts or donations made to the imperial household need not be formally registered in the public records according to the procedure known as the *insinuatio actis* (see below).

² The emperor here refers to private distraint, on which see *Digest* 20.1. 6–9.

was making the exaction. After all, it would be unreasonable for a demand to be made from someone other than the debtor; nor is one person to be harassed on someone else's account, on the ground that that person had committed assault or serious injury, and, because of being a fellow-villager of his, be put on the rack, injured, and suffer undeservedly, or, generally, endure any abusive treatment whatever without lawful cause, as a substitute for someone else.³ The local governors are also to subject the distrainer to corporal punishments, and are to be aware that should they not do so, but if distraints should take place brazenly in the province they govern, there will be nothing capable of rescuing them from our grasp.

2

An addition that we have decided to make to this law is that, just as gifts made by the Sovereignty to others require no entry in the records, but are valid in themselves, so also the gifts to the Sovereignty that are made by individuals, whatever the sum, are not to require an entry in the records, provided only that they are genuinely made out by notaries public,⁴ in public, and carry the signatures of the donor and witnesses, with the rest of the procedure for gifts. It would be an inconsistency for the Sovereignty not to receive just the same treatment from individuals as it itself gives to them.

³ The law here appears to refer not only to distraint against those who have provided surety for the debtor or accused, but also extra-judicial action taken against his neighbours. The village community or its inhabitants possessed legal personality in late Roman and Byzantine law (referred to variously as the *κοινόν* or *ὄμας*), a fact that may have encouraged the acts of private distraint alluded to here (see Sarris (2006), pp. 37, 42, 60 and 69 and Gorecki (1986)). In particular, villagers could be held collectively responsible for taxation, the collection of which was often delegated to private individuals such as neighbouring landowners. Such arrangements were especially common in Egypt, where the documentary papyri (especially those pertaining to the village of Aphrodito) record them to have given rise to acts of private distraint and violence akin to those described in this novel (see Sarris (2006), pp. 71–80 and 96–114). For private distraint against debtors culminating in the imposition of forms of debt bondage in archaic Roman and Hellenistic law (which may have remained current in provincial practice in late antiquity), see Hillner (2015), p. 146.

⁴ 'Notaries public', i.e. *tabelliones*. The 'records' referred to were the local tax-records or registers of ownership and liability preserved in the municipal archive or *archivum publicum* – an institution which, Justinian had already admitted, was gradually fading away along with other municipal institutions (see *J. Nov.* 15 and Sarris (2013)). It was standard practice in the late Roman period for certain donations to be made in front of government officials and registered according to a procedure known as the *insinuatio actis* ('insertion in the records'). Justinian made this obligatory for all gifts over the value of 500 *solidi* but exempted certain types of gift from that regulation, such as those described here (see Berger (1953), pp. 442–3).

This inequality has arisen as a result of the new principle, introduced by the constitution of Zeno⁵ of divine destiny, that gifts from the Sovereign required no records. As that matter was not fully considered before, we are therefore bringing it to completion, in our desire to make the same apply on both sides: for individuals' gifts made to the Sovereignty, as well as for the Sovereign's to individuals. Equitable justice will thus have been applied to this matter.

Conclusion

Accordingly, your excellency is to take pains to make the provisions of this divine constitution of ours public to everyone, in the usual manner, by means of proclamations of your own.

Given August 18th in the 11th year of the reign of the Lord Justinian, pious princeps, Augustus, <2nd year> after consulship of the Most Distinguished Belisarius

537

⁵ See *Codex* 5.16.26 – a law of Justinian.

Summoner in provinces for appearance in court across border to give surety that, if not the winner in the case, he will pay the amount determined by the judge that the person falsely accused is to receive. Recipient of a writ to have 20-day time limit for consideration of whether he is prepared to go to law, or accept the judge assigned. One who fails to appear after giving a bond under oath must pay the plaintiff's whole costs, and argue case under subsequent suretyship. <Conditions under which *ex casu* appointments may*> be hypothecated. Persons married without dowry or pre-nuptial gift, if indigent, to be called to inherit a quarter of estate from well-off predeceased spouse, whether there are children or not¹

* Lacuna filled from Auth. [S/K, p. 299, line 14].

¹ Like the preceding constitution, this law covers a number of essentially unrelated issues. In the first section, the emperor attempts to protect the interests of those who find themselves summoned to legal proceedings outside of their home province. Normally, the plaintiff was expected to attend whatever court was appropriate to the defendant, but there were limited occasions (such as those pertaining to feared judicial bias) in which the emperor could be called upon to appoint a special judge (typically the praetorian prefect), in which case the trial could, in theory, be heard anywhere in the empire. The second issue concerns the mortgaging of imperial appointments. As it was common to purchase office, it would also appear to have been standard practice to borrow sums of money to purchase office using, as security, one's anticipated earnings from the office one hoped to acquire (see *Codex* 8.13.27 and Kelly (2004), pp. 161–2). The third issue dealt with is that of wives who were left widowed without any provision having been made for them and their future well-being through the establishment of a dowry or ante-nuptial gift. Justinian here allows such women to claim a quarter of their late husband's estate. The law thus conforms to Justinian's general *modus operandi* of reforming legislation in the interests of vulnerable women, even at the expense of the agnatic principle which Roman inheritance law had traditionally been determined to uphold (see Krumpholz (1992), pp. 191–201, Arjava (1996), pp. 106–7, Feenstra (1983) and *J. Nov.* 22). The emperor describes the legal reforms contained in this constitution as having been necessitated by case law and approaches that had been made to him by petitioners.

The same Sovereign to John, for the second time prefect of the praetoria of the East, ex-consul, patrician

Preamble

Many people have been petitioning us and informing our Majesty that certain persons have been taking them to court in other provinces, or even that they are being extradited there, either by divine command from us or also by the verdicts of an office-holder; and that these actions are causing them hardship, in that they are being made to go, under compulsion from the commands or verdicts, but then those who have summonsed them, and who have received surety for their defendants' appearance at the prescribed court within a stated time, have themselves been remaining in the province, leaving the person who has been taken to court, or extradited over there, to be worn down by the expenses of being abroad.

1

Being sympathetic to this situation, we accordingly decree that if any such case should arise, and the time fixed by the plaintiff himself for court appearance or accusation on surety should be up when one party is in attendance at court, while the plaintiff is absent and fails to appear within ten days from the other's arrival in the province, the defendant is to go before the judge and inform him of that fact, and be immediately released. The whole expense to which he has been put for travel and the stay abroad is to be adjudged, on his sworn statement, and the judge is then to charge it against the ineffectual plaintiff. As it is customary for arrests or summonses to take place only on provision by the plaintiff of sureties of a certain sum for their prosecution of the case and gaining the verdict, that sum is in any case to be demanded of the guarantors and paid to the person falsely and ineffectually accused; should the sworn statement have revealed a further sum due – although there is a stated amount determined by the judge for what the laws call *taxatio*² – , that too is to be demanded, in addition. This is so that they may learn not to play about with others' livelihoods, but to choose courts in their own locality in which to conduct cases against their opponents.

² '*Taxatio*' = a maximum sum set to which a defendant in a civil case could be held liable (see Berger (1953), p. 730).

2

We are aware that here, in general, sureties are given by plaintiffs for the production of persons in court; but that, when those persons are extradited to a different province, this procedure may be evaded. Accordingly, we decree that the judge here, or the Most Illustrious *quaestor* who serves on our divine letters,³ if commanded to take such action, is under no circumstances to have the defendant extradited to a province elsewhere unless the plaintiff has first produced, in the court to which he is going to take the defendant for trial, a guarantor that in case of his own failure to pursue the case, or to win it if he does pursue it, he will pay the defendant whatever sum may be fixed, in proportion to the distance between the places. All that we have determined on the subject of production in court is to be carried out over there: the sum of money fixed is to be demanded from the guarantors and given to the person extradited, and he is to provide the sworn statement, up to the *taxatio*, so that if he should swear that his expenses have been even greater, he is to receive that amount too; and thus the provisions of our legislation may be seen to have been fully carried out in all respects.

3

There is a beneficial ancient constitution that is nowadays deliberately evaded by people who use the lenience of our laws as an opportunity for an abusive practice of their own. In the past, the intention was for the recipient of a writ of accusation to have ten days for consideration, so as to go into the matter and, perhaps, acknowledge the claim and reach a settlement; after that time-limit of ten days, he was then to sign the writ that had been served and comply by giving a bond for appearance.⁴ Certain people, however, with a view to our laws that do not permit any objection against the judge, or request for another to sit with him, to be lodged after the formal joinder of issues,⁵ have been cheating (it is

³ 'The *quaestor* who serves on our divine letters': the *quaestor* of the palace was expected to sign the imperial letters of instruction that were sent out ordering a provincial trial to take place (see *J. Nov.* 114).

⁴ 'Bond for appearance' = (Latin) *cautio iudicio sisti* (see Berger (1953), p. 384). This was primarily demanded of those of lower social status: all that was expected of those who owned property or who bore the senatorial rank of *illustris* was a simple oath for appearance (see *Codex* 2.2.4 and *Institutes* 4.11.2).

⁵ 'Joinder of issues' = (Latin) *litis contestatio*, i.e. the section of the initial proceedings of a case in which the issues in dispute were formally established (see Berger (1953), p. 566). 'Court Clerks' = (Latin) *exsecutores*. Under Justinian, the office of clerk came

particularly court clerks who have been devising this fraudulent practice) by taking the man before the appointed judge willy-nilly as soon as some notice has been delivered, often without even service of a writ, and with no bond for appearance. Then, without his understanding anything at all about it, they hustle him into making a joinder of issue, so that once he is under the joinder his hands are tied: he has no licence either to refuse the judge, or at least to request another to sit with him, even when the judge is perhaps suspect. With that, they do what they have been intending: having got the man into their trap, they plunder his effects at will.

1. Accordingly, we decree that, whenever notice is delivered to anyone, there must at all events be a writ; and that the person notified should have a time-limit, not of ten days as in the past, but doubled, i.e. twenty. Thus, should he either wish to refuse the judge, or else to request an extra one, he will have licence to do so; or alternatively, perhaps, to acknowledge the debt and settle amicably with his opponent, instead of being put, summarily and abusively, under a judge who may perhaps be suspect, or perhaps unsympathetic, often also with a purpose of his own to pursue against the defendant – while the person undergoing the suit has no opportunity to find out what charges he is being summoned to face.

2. When he receives the writ, he has only to give his personal surety, provide the *sportulae*⁶ payable by our divine constitution, and sign what is called the ‘counter-writ’, which is to show also the time at which the writ is being served on him, to avoid there being any cheating on this, too. Then, when the joinder of issue is about to take place before the judge, the defendant is to be asked whether the twenty days for consideration have elapsed. He is to tell the truth, and to show it by means of the date of the writ and the signature on it; if he agrees that the total of twenty days has elapsed, the joinder of issue is then to take place. In the interim, he has licence both to refuse the judge and ask for a different one, or for him to have another to sit with him; or else to reach an amicable settlement without any extra cost in the interim, and without harassment from the court clerks. He must, though, put down the bond for appearance, as may be decided by the judges on these cases. Should these provisions not have

to be entrusted to high-ranking individuals who were granted extensive responsibilities (see Berger (1953), p. 465, *Codex* 12.60 and *J. Nov.* 96).

⁶ *Sportulae* = fees, in this instance payable to the clerks. It was common in the late Roman Empire for those seeking the services of imperial and other officials to pay such fees, partly so as to defray the transactional costs of the business concerned and furnish the officials with income (see discussion in Kelly (2004), pp. 64–8 and 175–7).

been observed, even should a joinder of issue have apparently taken place it is to be void, but there is licence for the whole procedure still to be carried out even within the allotted twenty days from such a joinder of issue, exactly as if no joinder of issue had taken place at all.

4

Should he have once refused a judge and received a different one, we do not allow him again to refuse the one he has requested; we are concerned for him, but, equally, we set our face completely against any delaying tactics against the plaintiffs at all. Should there be some who take the oath that they will attend, but then disappear from this great city before the joinder of issue takes place, there is licence for the plaintiff, even when there has been no joinder of issue, to appear before the judge and report that fact; and for the judge, if an office-holder, to order the defendant to be brought to court without fail, as being perjured and, by absconding, having virtually become his own prosecutor. Should he not be an office-holder, but assigned by someone as judge, whether perhaps by divine directive or command, or by an office-holder, he is to inform that person, so that the defendant is brought to court by that person. Thus the case will not remain completely unpursuable by the plaintiff, with the judge being unable to act at all, because no joinder of issue has taken place before him, while the other party is in contempt of the law and of his own preliminary oath, leaving the plaintiff with no legal recourse at all.

1. To avoid the affair remaining in suspense because the defendant is not found and his production in court is delayed, the judge is to make a cursory enquiry as to whereabouts the defendant is said to have gone, and to assign a specific time-limit. Should he fail to appear within that – as long as he has complete freedom to do so, and is not being deliberately constrained or prevented from coming by the prosecutor, as may happen – the judge is then to try the case one-sidedly, and to admit the plaintiff to possession of a part of the defendant's property corresponding to the amount of the proven debt. Granted possession, he is to hold the property in satisfaction of the debt. Should the defendant then put in an appearance, he must first make good all the plaintiff's costs, and can then reclaim his property, provide a guarantor and contest the action.

5

There is a further point that it would be well to determine in a general law, with reference to the problem of matters in dispute.

There have in the past been numerous disputes as to whether positions in the service were to be put under bonds of hypothecation,⁷ or free of them. This is something that has already been adjudged by law,⁸ and it has been made quite clear which positions, by virtue of being saleable, could also be hypothecated. On a broader view of the matter, we are aware that there was in ancient times no hypothecation on service positions; although there had been some dealings on such positions, they were extremely antiquated, and obsolete. However, emperors, in sympathy with petitions being made to them by lenders, gradually began to grant them that concession, despite the fact that the service as a whole is a public institution, with no income at all other than munificence from the Sovereign.

1. For that reason, then, we are decreeing that civil service positions *ex casu*,⁹ as they are called, are not to be subject to hypothecation to just anyone, indiscriminately, but only to the lender who advanced the loan for the position to be taken up. Apart from that, we do not make the concession indiscriminately to other lenders; but if the deceased had children or a wife, we give to them the privilege of petitioning us, by all means, and of obtaining this right, on a command from us. That is not as an inheritance from their father, should he be otherwise indigent, but as munificence from the Sovereign; our purpose is to give due assistance both to those with estate to bequeath and to those without. However, should the decedents have no child or wife, nor a creditor who made a loan for the actual position, we do then allow the other creditors a part in such transactions, in order to avoid appearing to act inhumanely, rather than framing the law for a pious purpose, pleasing to God.

Privileges concerning the positions of Admirable *silentiarii*,¹⁰ granted to them individually, are to remain in their own force.

⁷ 'Put under bonds of hypothecation' = mortgaged.

⁸ A reference to *Codex* 8.13.27.

⁹ 'Civil service positions *ex casu*' = positions which were non-hereditary.

¹⁰ *Silentiarii* = palace officials (limited in number to thirty) who maintained order at meetings and sessions of the imperial court (see *Codex* 12.16).

6

We observe that in the case of some men married to wives with no dowry, who then die, their children are called by the law to their father's inheritance; whereas there are wives who, even if they have been consorts in a marriage that is lawful ten thousand times over, can still have nothing, because of there having been no dowry¹¹ or pre-nuptial gift, and who are consequently living in extreme indigence. As our law is entirely directed towards munificence, we therefore decree that in the deceased's succession care must also be taken of these wives: such a wife is to be called along with her children. Just as we have a law with intention that if a husband divorces an undowried wife, she is to take a quarter share of his estate, so here too, as it is likely that there will be children whether fewer or more, the wife is to take a quarter share of the estate, whether the number of children be larger or smaller.¹² Should the husband have left her a legacy of less than her quarter share, it is to be made up to that amount. Our intention is that, just as we have assisted them if they should be wronged by their husbands' divorcing them, when they have no dowry, they shall also enjoy the same consideration should they remain permanently together. Be it understood that, in this case also, everything applies equally to husbands as to wives, on the model of the constitution of ours that reserved a quarter share for the wives. This is another law that we are laying down in common for husbands as well, just like the previous one.

1. Should the wife have property of her own in her husband's house, or stored elsewhere, she is by all means to retain, unimpaired, the right to demand it and retain it. Such property cannot be hypothecated, as to any part of it, for loans of her husband's, except insofar as she is, under this law, joint heir to her husband's rights.

2. We mean these provisions to apply if one member of a couple which has made no dowry or pre-nuptial gift, either the husband or the wife, is indigent, with the result that the deceased (he or she) is well off, while the survivor (he or she) is indigent. Otherwise, should one party perhaps have adequate resources from elsewhere, it would not be just that a wife who has brought in no dowry – or a husband who has made no gift in respect of marriage – should be an encumbrance on the children in the succession to

¹¹ The dowry (provided by the wife's family) and the pre-nuptial gift (provided by the prospective husband) were meant to provide for the wife or widow without eating into the husband's estate, which was traditionally regarded as the preserve of the husband's agnatic kin (see Johnston (1999), pp. 34–7).

¹² A reference to *J. Nov. 22, c. 18*.

the consort, because there is another law of ours that the wife who brought in no dowry cannot acquire her husband's property from the pre-nuptial gift.¹³ That is what we wish to apply here too, unless the husband should himself bequeath her a legacy, or a share of the inheritance; we have no objection at all to that, so that the provisions of our laws may be kept in all respects concordant, and that the indigence of one spouse may be remedied by the wealth of the other.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours into effective validity, and to make them public to all by means of proclamations to be made on your part, so that they live and behave in accordance with them.

Given at Constantinople, October 1st in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius 537

¹³ See *J. Nov.* 74, c. 4; *J. Nov.* 91, c. 2; *J. Nov.* 117, c. 4.

1. Registered estate workers: constitution applicable only from date of promulgation

2. Any house of worship, and other religious place, to be allowed to make exchanges of immovable possessions with similar ones, on execution of *decretum*¹

The same Sovereign to John, for the second time Most Illustrious prefect of praetoria, ex-consul, patrician

Preamble

Cases have been launched over one of our constitutions; although it contained nothing obscure, certain people have deliberately charged it with obscurity, for their own ends.²

Being lovers of freedom, we have recently laid down a law with intention that if a registered estate worker³ and a free person produced issue, it would

¹ Just as with *J. Nov. 52*, this constitution covers two unrelated issues. The first is the status of children born to mothers of free legal status but fathered by registered or tied agricultural workers (*coloni adscripticii*), whom imperial legislation treated as being in a legal position with respect to their masters akin to that between a master and slave in Roman law (see Sarris (2011b)). Imperial law had hitherto demanded that the children of *adscripticii* inherited *adscript* status, and thus could be claimed as such and employed on the estate of the *adscript* parent's employer or owner (as the law described them). Justinian had altered the legal position somewhat, declaring that the children of free mothers should inherit their mother's freedom (as was the case with respect to the offspring of a free mother and a slave father). Justinian had intended this law (*Codex 11.48.24*) to apply to children born after its date of promulgation. In this constitution, however, the emperor reveals that estate workers born to free mothers had attempted to claim their freedom by having the law applied retrospectively. Justinian makes it clear that any retrospective application of the law was illegal. As noted in the Introduction, however, the constitution nevertheless suggests a revealing degree of interest in and knowledge of imperial legislation even on the part of agricultural labourers. The second part of the constitution modifies the regulations with respect to the alienation of ecclesiastical property as set out in the recently promulgated *J. Nov. 46*. In this section of the constitution, the emperor allows religious institutions to exchange property, in certain clearly delineated circumstances, such as fiscal indebtedness.

² The law referred to is *Codex 11.48.24*.

³ 'Registered estate workers' = (Latin) *coloni adscripticii*. The principle derived from the Roman law of slavery adopted here was that the child inherited the legal status of the mother. Note that the law contrasts *adscripticii* with those who are deemed 'free', and parallels the former with slaves (see Sarris (2011b)).

not, as of old, follow the status of the registered worker in all cases, but should be taken as being the same for registered workers as for slave status: the status of the progeny was to be ruled as being as that of the womb, because our beneficent law did not wish a baby born of a free mother to be a slave. We thus said that that was how the law was to be applied for those born to any men who are, or should become, cohabiting with wives, and have children. There are, however, some who have tried to interpret the law in such a stupid, or criminal, way as to suppose that anyone born before the constitution, even if very old, is also set free, as if born just lately, rather than long in advance of the law.⁴ Yet our meaning was that the freedom granted by that law should belong to a baby born to any men who were already married, and then, after the law, had children; or who, if they were not yet married, became so subsequently.

1

For that reason, to obviate the possibility of criminal schemes using such interpretations to the detriment of the owners of estate properties, we accordingly decree that it is all those born after the date of the law, and those alone, who are to be free from the status of a registered estate worker, if born from free mothers. The past is all to have been kept under the old law.

2

We recently laid down a law⁵ remedying, as to one particular, the matter of ecclesiastical alienations: this was with the intention that, without in any way seeming to come into conflict with the previously enacted law that ruled out any alienation, churches could in fact alienate, if it were for a debt to the public treasury, though with all strictness in observation of the law; while if the debt were to an individual, they could give immovable property *pro soluto*.⁶

We are adding that <if it should seem good to holy houses to make an exchange of immovable properties with each other*> we grant

* Filling lacuna as in app. crit. [S/K, p. 307, line 15].

⁴ I.e. that those bearing 'adscript' status but born to free mothers had been trying to claim their freedom on the basis of recent imperial laws, indicating a knowledge of such legislation on their part.

⁵ The law referred to is *J. Nov.* 46.

⁶ '*Pro soluto*' = in repayment of debt (see Berger (1953), p. 753).

licence to their heads, by means of this law, to make an exchange, provided that it should be for some unavoidable reason, and to the advantage of each house of worship, both the one that gives and the one that receives. That is, church may exchange with church, alms-house with alms-house, hospice with hospice, and, in short, a holy house with any other venerable house: church with alms-house, monastery with house of worship, hospice or hospital; or those with a church, with each other or with one of those enumerated above, or with any other holy house whatsoever.⁷ Such an arrangement is to be accepted practice; it is not only the Sovereignty that is to have licence to exchange, as the previous law stated, but also holy houses, which are dedicated to God, the Sovereign of all. This is conditional, however, on execution of a *decretum*,⁸ with all strictness, and under oath; it is also to be considered before the metropolitan⁹ of the area. Should it be proved, under oath, that such a proceeding is to the advantage of both sides, it is to be transacted, accepted and valid, with no need for a special command or divine pragmatic directive.

However, if those who take this step should contravene what is right, or should there be any collusion, or any transaction not to the advantage of each side, they will have a judgment from great God. Most certainly, in that case the curses that the scriptures call down on sinners,¹⁰ the most dreadful of all, will come down upon them; and should there be any contravention of what has now been ordained, and it be subsequently proved to have been criminal, it will be rendered void.¹¹

1. We are excepting the most holy great church¹² from this law, as from the previous one; we wish it to remain under the previous ban on alienations, as that is also the view of the most holy men themselves who are its leaders.

⁷ For such charitable institutions, see Constantelos (1991), pp. 149–278.

⁸ *Decretum* = an enactment or decree.

⁹ The metropolitan bishop was the senior bishop in a province, who resided in the provincial capital.

¹⁰ E.g. Malachi 2. 2–3.

¹¹ 'Void', in Greek ἀντί μηδὲ γεγονότος 'equivalent to not even having taken place', for legal Latin *pro nihilo* (see Berger (1953), p. 652).

¹² I.e. the foundation of the Patriarchate of Constantinople.

Conclusion

Your excellency is accordingly to make public our good and holy decisions, manifested by means of this law, in all the provinces under your authority, by proclamations of your own, in the usual manner.

Given at Constantinople, September 1st in the 11th year of the reign of the Lord Justinian, 2nd year after consulship of the Most Distinguished Belisarius

537

[much fuller in Auth.]

The same Sovereign to Menas,² most holy archbishop of this fortunate city, ecumenical patriarch

Preamble

We have already enacted a law³ banning ecclesiastical alienations, but allowing the most holy churches, including the most holy great church in this fortunate city, an exchange, nothing else, when there is something that the Sovereignty wishes to receive from the holy houses. Subsequently, we laid down a further law,⁴ from which we excepted the most holy great church, permitting certain alienations, stated in that law. However, we have now become aware that certain persons had converted the head of the earlier constitution, which we enacted for the exchange with the Sovereignty of various properties belonging to the holy houses, into the device, contrary to the law, of requesting us to receive property from the most holy church, and then to give it to them. Using that as a precedent, several people have, by means of similar requests, circumvented the divine constitution.⁵

¹ The Roman and Byzantine state effectively operated as a 'clearing house' for landed property, acquiring estates and then granting them to chosen favourites (see Sarris (2012)). In *J. Nov.* 46, Justinian had permitted the acquisition of ecclesiastical property by the state in pursuance of fiscal debts. In this constitution, Justinian reveals that this recent law had opened up a legal loophole, whereby individuals had petitioned for Church property to be taken over by the state, but then be transferred to them, thereby circumventing the prohibition on the acquisition of Church property by private individuals. In a rare concession, Justinian permits such transactions to stand, but prohibits them for the future. The law thus casts interesting light on the legal creativity and opportunism of the wealthier members of Byzantine landed society (for similar legal opportunism with respect to the peasantry, see *J. Nov.* 54). The second part of the law permits religious institutions to lease land to other religious institutions on a permanent basis under what was known as emphyteutic lease (on which, see below).

² On Menas, see Price (2009) 1, pp. 162–4.

³ This appears to be a reference *J. Nov.* 54. If so, the provisions of that law have been conflated with those of *J. Nov.* 46.

⁴ *J. Nov.* 46. In fact, *J. Nov.* 46 would appear to have been issued before *J. Nov.* 54. Those responsible for composing this Preamble would thus appear to be slightly confused (although see *J. Nov.* 46, note 11).

⁵ I.e. petitioners have been successfully persuading imperial officials to take possession of Church property and then sign it over to them, in evident breach of the original intent of the imperial legislation.

We wish all our transactions up to the present date to remain in their present state; none of the transactions on these terms that have so far been concluded between us and the most holy church, or those who have received them from us, is to be overturned.⁶

1

For the future, however, we decree that no-one at all is to have any freedom to make such a transaction. The only exchanges to be valid are those with the sovereign household,⁷ made on the condition that they remain permanently with the Sovereignty, and are not transferred to a private individual, nor come under his ownership, by way of the Sovereignty as intermediary. Should any such thing happen, we give licence to the most reverend stewards to seize those properties and claw them back to the most holy church; it will then be as though no exchange had in fact been made with the Sovereignty in the first place. This arrangement is to be observed permanently, starting from the present date; although, as we have just said, all transactions made in the stated manner since the previous law are to remain firm. That is because the transactions thus made were with men who were not acting in a scheming or criminal way, but who were in fact encouraged to do so by us. Now, however, there are some who wish to use those men's example as a means of making constant nuisances of themselves to us, and defrauding the most holy great church of this fortunate city, a thing that we intend shall, for all time, never by any means take place. Should it take place, even so, in any form whatsoever, that too is to be invalid, and the most holy great church is permanently to be able to make a reclaim, against which no time limitation is to lie.⁸

2

We also decree that while all other legislation on emphyteuses, for the most holy great church and all other holy houses, is to keep its own force, there is to be licence for the most holy churches and holy houses also to make

⁶ Those who have acquired control of Church property through this ruse are thus to be allowed to keep it.

⁷ The law would suggest that ecclesiastical properties that had passed into imperial ownership had come to be assigned to the imperial household (*domus divina*), which was ultimately under the direct control of the emperor and court and which had been hived off from the resources of the *res privata* around 536 (see *J. Nov.* 30, note 36 and *J. Nov.* 117, note 35).

⁸ 'Time limitation' = Latin *praescriptio temporis* (see Berger (1953), pp. 645–6).

permanent emphyteuses⁹ with each other, it being understood that there must also be a *decretum*¹⁰ for that, as well. That is another point on which the most holy great church is to be excepted; but the emphyteusis is to be made on the condition that under absolutely no circumstances can it be extended to a private person.

Conclusion

Your beatitude is accordingly to observe our decisions, and also to make them public to the holders of metropolitan thrones¹¹ under you, so that they, too, will know our decisions, and not have the temerity to contravene any of them. Should they either themselves act in contravention of them, or allow that to be done, they will all have judgment from God, and the consequent punishment.

Given at Constantinople, October 18th in the 11th year of the reign of the Lord Justinian, pious princeps, Augustus, <2nd year> after consulship of the Most Distinguished Belisarius 537

⁹ 'Emphyteuses': the Roman institution of emphyteusis originated in the practice whereby municipal land or land belonging to the state was leased out for very long periods (or perpetually) in return for a fixed annual rent. Unlike normal leases or usufructuary rights, these grants were deemed to be both inheritable and alienable. In late antiquity, this practice was assimilated under the title of emphyteusis (which initially applied to a similar practice of Greek origin) and came to be adopted by private landowners and the Church. Perpetual emphyteusis in particular effectively granted a lessee full rights of ownership *de facto* without conveying full title *de jure*. It thereby drained the concept of 'ownership' (Latin *dominium*) of almost all its legal content. For that reason, the permanent emphyteutic leasing of ecclesiastical property (which was meant to be inalienable) had been forbidden (see Nicholas (1962), pp. 148–9, *Codex* 4.66.1 and *Institutes* 3.3.24).

¹⁰ 'Decretum' = a decree or enactment. For further related legislation, see also *J. Nov.* 46 and *J. Nov.* 54.

¹¹ 'Metropolitan thrones' = metropolitan bishops.

56 | **Clergy: what are called *emphanistica*¹ are to be paid for the Great Church, but not paid for other churches**

The same Sovereign to Menas, most holy archbishop of this fortunate city, ecumenical patriarch

Preamble

As we have been receiving petitions from a number of men, we have thought it right to address this law to your beatitude. Clergy appointed by your God-belovedness in most holy churches, with the exception of the most holy great church, are being most appallingly treated, in that they are not being accepted by the clergy there until those have been paid whatever sum of money they decide. We know this from frequent petitions that have been being made to us on this subject.

1

We accordingly decree that your beatitude must guard against this very strongly. In the most holy great church, appointees are to make any payment that it is customary for them to make, as we are making no change in payments in the most holy great church; but apart from it, no cleric in any other church is to have the right to take any payment at all for what are called *emphanisima*. Should anyone do any such thing, he is to be deprived of his priesthood, and the person appointed is to step into his place; that is the reward he is to receive for his avarice. The most God-beloved defenders of the Church of the most holy great church are also to guard against this practice, and to anticipate a penalty of ten pounds of gold

¹ This law prohibits the charging of entrance fees paid upon installation to a benefice. These fees are described in Greek as ἐμφανιστικά in the title, as ἐμφανίσμα in the main body of the text, and as *insinuativa* in the Latin of the *Authenticum*. The Greek term is otherwise unattested. The Greek word ἐμφάνισις does appear, however, as an equivalent to the Latin *insinuatio (apud acta)*, i.e. the formal certification or registration of documents. This constitution complements the regulations against the purchase of ecclesiastical office ('simony') contained in *J. Nov.* 6 and the Councils of the Church: see Chalcedon 16.37 and Canon 2. For further discussion of this law, see Bonini (1990), pp. 45–50.

if they should disregard any of these provisions.² All appointments are to proceed without charge, as we do not wish the ministries and services of the Lord God to be entered on by sale or any commercial transaction, but in purity and freedom from bribery. Only if there is no sale or commerce would they be worthy of their place.

Conclusion

Your beatitude, and your successors on the archiepiscopal throne, are accordingly to take pains to put our dispositions, manifested by means of this divine law, into practical effect.

Given at Constantinople, November 3rd in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius

537

² 'Defenders of the Church' = (Latin) *defensores* or (Greek) ἑκδικοί: these were officials appointed to police the Church and protect its legal interests: see *J. Nov.* 17, note 17.

1. Clergy leaving their churches 2. Builders of houses of worship¹

The same Sovereign to Menas, most holy archbishop of this sovereign city, ecumenical patriarch

Preamble

Often, a number of clergy serving at certain houses of worship, or perhaps previously installed there by certain persons, are being paid the customary remuneration, but then, for reasons known to themselves, absent themselves entirely from the holy sacraments, or, on whatever pretext, withdraw altogether from the most holy church in which their post is.

1

We accordingly decree that this is not to become an obstruction to the sacred ministry. We do not wish anyone to be allowed to profit (it is actually sinful for anyone to make a profit by embezzling what belongs to others, on any pretext whatsoever) from what is at the time being paid by, or through, the most God-beloved bishops under whom these churches are; they are therefore to install others, and those are to receive these payments. The original emoluments are to continue being paid throughout, and the sacred ministry is not to be disrupted. After substitutes for the previous clergy have been installed by either the patriarch or the local bishops, there is to be no licence for those who withdrew to wish to return and oust the substitutes, and for those paying such remuneration to be made to pay it twice over: to those wishing to come back again as well as to the substitutes. They are not to accept those who return; the stipends are to be paid to those installed after their predecessors' withdrawal. No profit is to accrue from this situation to those making the payment; those who do

¹ This constitution, which can be read as an appendix to *J. Nov. 6*, concerns ecclesiastical discipline. Firstly, it legislates against priests who abandon their congregations and who nevertheless continue to claim their stipends, thereby treating their ecclesiastical office as a sinecure. Secondly, it prohibits the founders of private religious institutions from appointing clergy to them without episcopal supervision and consent. A primary imperial concern with respect to this issue is likely to have been to prevent the appointment of heretics. On such foundations, see Thomas (1987), pp. 37–58.

attempt to profit in such a way will, whatever happens, be providing the stipends, and all emoluments for those installed by themselves, out of their own property, as will their heirs and successors; and they are to know that, should they embezzle again after this, a set appropriation will be abstracted from their property for our divine *privata*,² from which to pay the remuneration to those concerned.

2

For the honour and reverence due to your throne, we also direct that, should anyone who has built a church, or else who pays the stipends of those who minister in it, wish to install certain persons as clergy in it, he is to have no freedom at all to present whom he wishes to your God-belovedness for appointment, without discrimination or examination.³ Instead, they are to be examined, at their presentation, by your holiness; and those who receive the appointment, on the decision of yourself and that of the holder of the episcopal throne at the time, are to be those found by your beatitude and your successors to be suitable, and worthy of the divine ministry. Thus, as is explicitly commanded in the holy gospels,⁴ God's holy things are not to be profaned; as they are sacrosanct, inexpressible and awesome, they must be administered in a manner that is religious, dear to God and holy.

Conclusion

Accordingly, we decree that your beatitude is constantly to observe our decisions, manifested by means of this divine law, in the knowledge that what is to the advantage of the most holy churches is no less of a care to us than is our own life.

Given at Constantinople, October 18th in the 11th <year> of the reign of the Lord Justinian Augustus, 2nd year after consulship of the Most Distinguished Belisarius 537

² 'Privata' = the imperial estates of the *res privata*. Justinian thus threatens such miscreant clergy with seizure of property by the Crown. On these estates, see Lounghis (2000) and *J. Nov.* 30, note 36.

³ The law here refers to private religious foundations, on which see Thomas (1987), pp. 37–58.

⁴ A reference to Matthew 7:6.

58 | Holy sacrament not to take place in private houses¹

The same Sovereign to John, for the second time prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

It is not only in ancient laws that there is the explicit command that no-one at all is to have freedom to hold the most sacred rites at home, but that both the rite and the worship of God are to be left for celebration in public, according to the rules on this subject handed down in the priestly acts; we too are laying down this law, for the present time also, and wish it to be in fully secure validity.

We forbid all inhabitants of this great city, or rather of the whole subject territory, to have any so-called houses of worship in their own houses, and celebrate the holy sacrament in them, which results in practices foreign to catholic and apostolic tradition. If some people think that they simply must have buildings on their property as sacred, just for prayer, and for that alone, we allow them that, if nothing at all is done that constitutes any part of the holy liturgy; apart from that there is no objection if they want to have particular rooms and pray in those, as in consecrated places. They are to refrain from all else, though, except if they wish to invite certain clerics to come there. These would be, here, from the most holy <great> church and the most holy houses under it, and be assigned for this purpose by the consent, and with the approval, of the most holy archbishop; or, abroad, by consent of the most holy bishops. (The existing rights of the high office of his beatitude, the archbishop, as to appointments and administrative decisions, here or in the provinces, are not to be altered in any way whatever by the making of our present law; everything that has been put in his hands, in whatever way and at whatever time, is to be maintained, both now and for all time to come.) And we decree that your distinction is to observe these provisions, and make them public to all by means of letters of your own, so that the law is in effect throughout. We have also given this

¹ This law prohibits the creation of 'house churches'. As with the regulations concerning private religious foundations in *J. Nov. 57*, the emperor's primary concern here is likely to be the suppression of heresy, which was prone to spread through unregulated places of worship (see Thomas (1987), pp. 37–58).

command to the Most Illustrious prefect of this fortunate city, and to the most holy archbishop and ecumenical patriarch, so that it is constantly upheld by both the civil and the priestly power. House-owners themselves are also to be aware that if they fail to observe these provisions, they personally will incur punitive action from the Sovereignty, and the houses in which anything of the kind takes place will become public property, and be taken under our most sacred crown treasury. If there are some who already have anything of the kind in their own homes, they are to know that should they fail to put that right within three months from the promulgation of this law, by making it conform to the character decreed by us, they will become subject to the penalty stated. This is to be done genuinely, with definitely no chicanery; we are lovers of nothing but the truth.

We decree that your excellency is to observe these provisions, and permit no such thing to be done. Know, too, that should we find out that something of the kind has been reported to you, but you have not put a stop to it – either you personally, or your successors in office – you personally, and those who take over the office from you, will pay a fine of fifty pounds of gold; and the staff under your command will be subject to the same penalty, for having allowed itself heedlessly to overlook the breach of a rule to which we attach importance, and which is one that safeguards the unity of the most holy church, and prevents practices that are manifestly forbidden. They will also risk their whole position. This is in addition to the confiscation of the actual house in which any such thing has been going on, to come under the most sacred crown treasury.

Conclusion

We have also written to the most holy patriarch of this fortunate city, for him to see to this matter as well, because we wish these provisions to be upheld both by the priesthood and by the government, and so to remain unshaken for time to come.

Given at Constantinople, November 3rd in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, <2nd> year after consulship of the Most Distinguished Belisarius

59 | Funerals of decedents: expenses payable¹

The same Sovereign to John, for the second time prefect of the sacred Eastern praetoria, ex-consul, patrician

Preamble

Every good work must either, God willing, take its origin with us, or, should something have subsequently gone amiss with good things done by others, be rectified by us, and brought back to its original state. Thus either by doing it, or by rectifying it, we take pains always to have a share in good actions. One such malpractice has been occurring over funeral processions of decedents; we have decided to correct it, and to give people the boon of not enduring the double distress of simultaneously losing their relatives and having to suffer financial loss on their account. There was a constitution properly devised by Constantine of divine destiny, and later strengthened by Anastasius of pious destiny,² who also added a source of income; but it has been in danger of falling into desuetude, and we ourselves are intent on reviving it, imparting to it full protection and appropriate regulation, and making it last for ever.

¹ This fascinating constitution complements *J. Nov.* 43 concerning publicly funded funerals in Constantinople and the fiscal status of those properties and groups that were charged with conducting them. It provides finer detail of the fiscal arrangements than does the earlier law, and casts particular light on the role of female ascetics, many of them attached to the hospitals of the city, who acted as hired mourners. The sections of the constitution concerned with payments break into Latin, not just for monetary sums, but even for phrases such as ‘every six months.’ This might suggest that those drafting the law were making use of a now lost Latin constitution or public inscription setting out the sums payable by way of funeral costs or to support institutions charged with the performance of funerary duties. As with *J. Nov.* 43, the law is also highly significant for the history of Byzantine taxation, as it uses technical fiscal terms that are commonly supposed to have been a feature of the Middle Byzantine Empire of the 8th–11th centuries, but which are not generally associated with the earlier period. The evidence of this law would appear to indicate, therefore, that many supposedly Middle Byzantine fiscal institutions and arrangements were already fully functional under Justinian, and may have been transmitted to the Middle Byzantine period through the institutional memory and structures of the Church and charitable institutions (on which see also Sarris (2012)).

² For the laws referred to (which either no longer survive or are here described in a somewhat confused way), see the notes to *J. Nov.* 43. A law of Theodosius II on this subject (which may here be wrongly ascribed to Constantine) is preserved at *Codex* 1.2.4, whilst a general law of Anastasius is to be found at *Codex* 1.2.18. On this and related legislation concerning burials, see also Bond (2013) (who also discusses the non-Constantinopolitan evidence) and Dagron (1991).

Constantine of pious destiny gave the most holy great church nine hundred and fifty workshops of various guilds of this fortunate city, tax-free; and Anastasius of pious destiny not only increased those workshops by a further hundred and fifty, but also, in two pragmatic directives, honoured them with a specific income, on condition that the money accruing from that income should go towards the wages paid by the most god-beloved stewards to those who carry out this work.³ A large number of people have been petitioning us, from various quarters, saying that things are not proceeding like that: decedents' funerals are not being conducted free of charge, but stinging charges are being made; and there are many extraneous individuals and guilds to be found making demands on mourners, and compelling people to pay, willy-nilly, when they have nothing. We have thought it right to regard all this as deserving correction.

1

First, then, the affairs of the workshops, which have been the recipients of much malpractice and decline. We restored them to the most holy great church, by enacting a divine directive⁴ on the subject addressed to the city prefecture, in the following terms: it, together with the staff under it, were without fail to convey the eleven hundred workshops to the most God-beloved defenders⁵ and stewards of the said most holy church, eight hundred being assigned to the most reverend defenders as workshop personnel, and three hundred to the most God-beloved stewards. The most reverend stewards were to have the three hundred workshops and the income donated by Anastasius of divine destiny, and to make no further complaints of its

³ As with *J. Nov.* 43, this constitution figures terminology that will become of great significance in later Byzantine fiscal practices. One example of this is the term ἀτελής – later adverbially ἀτελῶς – (here translated as 'tax-free', on which see Bartusis (2012), esp. pp. 66–8), which was used of properties and tax-payers who were relieved of their obligations to the state and instead had those obligations transferred to a third party (such as a monastery or, here, the Great Church). Constantine's original grant of the services of a number of otherwise tax-exempt and liturgy-exempt shops and guild members to the Great Church was augmented by Anastasius, who also hypothecated to the Church the revenues of certain agricultural properties (Greek χωρία). For similar assignments of the revenues of properties to churches in the west (known as *tituli*) see Hillner (2006).

⁴ A reference to *J. Nov.* 43. The inference is that the liturgies or public duties owed by eight hundred of the workshops were assigned to the Church to provide the labour associated with undertaking, and the tax revenues of an additional three hundred workshops were assigned to the stewards (οικονόμοι) along with the revenues derived from the rural properties hypothecated by Anastasius to meet the additional expenses.

⁵ 'Defenders' = (here and throughout the law) were *defensores* appointed to police the Church and protect its legal interests: see *J. Nov.* 17, note 17.

inadequacy, as they would have the extra income from the grant of three hundred workshops, out of which to pay the monthly wages to the *decani*⁶ and the other groups; and the most God-beloved defenders were to have the eight hundred workshops, and to provide those known as *lecticarii*,⁷ and perform the rest of the service called for by the exequies of the dead. In this way the mourners were to be relieved of their costs.

2

Accordingly, the said eleven hundred workshops are to be reserved to the most God-beloved stewards and defenders, permanently tax-free and at full strength, being replenished by the Most Illustrious prefect of this fortunate city if there should be a shortfall in any way, or should there be any alteration in their condition or their trade.⁸ The most God-beloved stewards are to have the administration of the estate properties assigned for burial costs, and, tax-free, are also to have the three hundred workshops while the defenders, with the eight hundred, are to see to the conduct of exequies of the dead. The income accruing from the estate properties, with the addition of that from the three hundred extra workshops which they have also requested to receive in actual practice, is to be the endowment for burials from the most God-beloved stewards, in the manner we shall describe below.

Because very many of the eleven hundred workshops in this fortunate city had fallen away, we direct that these should now be brought back up to strength, and that the number of eleven hundred workshops should be maintained continuously at full strength and tax-free, in the manner that we have stated, for the most God-beloved stewards and the most reverend defenders. However, there are to be no fewer *decani* or grave-diggers⁹ than the eight hundred assigned to the most God-beloved defenders; and instead of the full three hundred given to the most God-beloved stewards, these most God-beloved men, if they so wish, are to have licence to take all or some of the three hundred workshops as manpower, or to receive money for all or some of the workshops on account of those called *excusati*,¹⁰ using the actual

⁶ ‘*Decani*’ were probably the heads of bands of undertakers (see *J. Nov.* 43, note 5).

⁷ ‘*Llecticarii*’ = litter carriers or, in this instance, corpse-bearers (see notes to *J. Nov.* 43, note 5).

⁸ I.e. the Urban Prefect of Constantinople was to make up any deficiency or shortfall in income.

⁹ ‘Grave-diggers’: Greek κοπιᾶται.

¹⁰ ‘*Excusati*’ or ‘ἐξκουσᾶτοι’ = the recipients of an exemption (*excusatio* or ἐξκουσεία). Like the term ἀτελῶς, this word would become an important element of the medieval Byzantine fiscal lexicon (see Bartusis (2012), pp. 66–9).

funds that they have not had hitherto (as they have themselves informed our Majesty) to defray the costs of exequies for the dead. Thus the apportionment to the *decani*, the sisters, the canonesses and the acolytes¹¹ is to come both from this money and from the revenues yielded by the estate properties, as we shall detail below.

The same most God-beloved stewards have informed us that it is impossible in future for there to be the same surplus income from the estate properties; and that is why, in fairness, we have assigned them the additional three hundred workshops for that purpose, in order to maintain unflinchingly, in time to come as well, the pay given hitherto to those who work on funeral processions: that is four hundred *solidi per mensem*, shared between *decani*, acolytes, sisters and canonesses as has been their prevailing custom hitherto, that is one hundred and eighty-two *solidi per singulum mensem* to the *decani*, ninety-one *solidi* to the sisters, ninety-one *solidi* to the acolytes, and thirty-six *solidi* to the canonesses. These are to be collected from the most God-beloved stewards, and paid to the usual recipients at six-monthly intervals.¹²

3

The share of the money that goes to the most reverend sisters must be paid by the most God-beloved stewards, within the stated time-limit, to the most God-beloved deacon Eugenius, chief hospitaller of the Hospital of

¹¹ 'The sisters, the canonesses and the acolytes': there would appear to have been a hierarchical distinction between these three groups. The 'acolytes' (meaning 'those who follow') were apparently people who were specifically hired by the institutions charged with arranging the public obsequies to act as a funeral entourage, whereas the 'sisters' (the Greek term used to describe them in the novel means 'ascetic women') and the canonesses, who chanted alongside the cortege, were seemingly lay women and girls living under religious observance in an institution akin to a late medieval western beguinage, but under male supervision (see the seventh-century *Life of Theodore of Sykeon* c. 95, which records how a mute eight-year-old 'sister' attached to the Great Church of Constantinople was brought to the holy man by her male teacher so that he could miraculously restore her speech). In the sixth century, such women and girls would not appear to have formally become either nuns or deaconesses, but nevertheless wore specific clothing and devoted themselves to a life of chastity, piety, and service. They are still recorded as attending funerals in the ninth century. See Dagron (2012), pp. 569 and 588, Magdalino (2007) section I, pp. 30 (with note 77), 42 ff., 150, and note 15 below.

¹² 'One hundred and eighty-two *solidi per singulum mensem* (= for each month)', etc.: these sums (along with the phrase 'six-monthly') are all given in Latin in the Greek text, as are most of the other sums of money elsewhere in the novel. The figures given seem too high to constitute personal stipends and were presumably paid to the institutions with whom these devout women were associated or which hired the 'acolytes'. This is strongly suggested by the following c. 3.

Sampson¹³ of pious memory, and of that founded by ourselves, and to the most God-beloved hospitallers of the said hospitals after him; this is because the sisters who serve this function belong under the hospitallers for the time being of the said hospitals. That which is due to the acolytes and the most reverend canonessees is, similarly, to be paid by the most God-beloved stewards to the men who now preside over them, and those who at the time wield authority over them. These, then, are the people through whom the distribution is to be made to the aforesaid women under them (the sisters and canonessees), and also to the acolytes. Should the most God-beloved stewards be in arrears with such payment, and should that fact become evident by the absence of any payment within the passage of six months during the next six-month period, the most God-beloved stewards of the time are then to be charged the whole of what is owed since the first six-month period, at interest of one-third¹⁴ of the customary 1 per cent for the time lapsing since the first six months. This is to be seen to by the most holy archbishop and patriarch of the most holy great church in this fortunate city.

4

Should a second year pass as well, and should the most God-beloved stewards have even then not paid the most reverend women, or the said

¹³ The Hospital of Sampson (which stood to the north of Hagia Sophia) would become one of the most important medical and monastic institutions of medieval Constantinople (see Janin (1969), pp. 561–2). According to the later hagiographic tradition, Sampson was a sixth-century doctor turned priest who died c. 530. Sampson had previously opened a free clinic for the poor in his own home, and was reported to have cured the Emperor Justinian of an illness, in return for which Justinian acceded to Sampson's request that he found a residential hospital for the poor, which the emperor named after him (for the history of this institution, see Miller (1990) and Stathakopoulos (2006)). Miller (1990) suggests that Sampson and his hospital may really have originated in the fourth century, and that Sampson's possible Arianism obliged the foundation legend to be recast. The Greek of this constitution is too opaque to help resolve the issue: it could either mean that Eugenius was in charge of two separate hospitals (one founded by Sampson and another by Justinian), or just of 'the Hospital of Sampson, of pious memory, the one founded by ourselves' (i.e. by the emperor). A solution is perhaps provided by Procopius, who records that the original foundation of Sampson, which he gives the impression to have been reasonably long-standing, was destroyed during the course of the 'Nika' riots in 532. The original foundation was then rebuilt by the emperor, 'making it a nobler building in the beauty of its structure, and much larger in the number of its rooms' (*Buildings* 1.2.13–17). Procopius goes on to relate that Justinian and Theodora also built hospitals opposite that of Sampson, in buildings (probably former palaces) known as the House of Isidorus and the House of Arcadius (*ibid.*, 1.2.17–18). It is probably these additional hospitals that are referred to here. For Byzantine hospitals in general, see Horden (2008).

¹⁴ 'One-third' is given in Latin. The rate of interest of 1 per cent referred to was 1 per cent per month or 12 per cent over a year: so the rate of interest charged was 4 per cent per annum.

decani, the most holy patriarch at the time is to have licence, not only to demand the sum owed, with the stated interest, from the most God-beloved stewards, but actually to compel them to pay the whole of what has been determined; and, should the most holy patriarch so wish, also to oust them from their responsibility for the management of the estate properties, insisting on their condition being as it is now in their hands. The most blessed archbishop and ecumenical patriarch at the time is to take responsibility for all this; the most God-beloved stewards belong under him, as well as all the clergy, and the whole establishment of the most holy church.

1. With all these provisions in place, no-one at all is to take any payment whatever for conducting the burial of a corpse, from anyone unwilling to pay. To give the whole procedure in detail, we decree that each bier provided free of charge is to be given one conventual group¹⁵ of sisters or canonesses, with no fewer than eight women at the head of the bier, chanting, and three acolytes. These will be paid absolutely nothing at all. However, should any of the deceased's kin conducting the funeral procession wish, of his own free will and under no compulsion, to include another one or two conventual groups, or even more, that is to be out of his own munificence. Nor are we leaving even that without precise regulation; we wish the number of extra sisters or canonesses, and acolytes, who are provided by munificence, also to be in the same proportion as we ruled above: that is, no fewer than eight sisters or canonesses being added from each group, and three acolytes for each group.

5

Should the funeral be within the new walls of this fortunate city, the sisters or canonesses taken on as additional to the number that serve free of charge are to be paid a full *tremissis* of a *solidus*.¹⁶ The acolytes receive nothing out of that at all; they do not share it with the most reverend sisters or

¹⁵ 'Conventual group' = Greek ἀσκητήριον, which elsewhere means a religious institution, monastery, or nunnery (see *Codex* 1.3.53.3 and 1.3.46.5). Here, however, it appears to refer to an institutionalised grouping of lay women living under religious observance (or a 'consorority') attached to a church or hospital, akin to a late medieval western beguinage (see Dagron (2012), p. 588 and Janin (1969), pp. 549–50). For an alternative translation, see Magdalino (2007) section I, p. 30.

¹⁶ A *tremissis* was a gold coin worth one-third of a *solidus* (or eight carats of gold). 'Within the new walls' probably signifies the inhabited area between the 'Theodosian Walls' built in the early fifth century and the 'Constantinian Walls' built in the fourth, which were regarded as being within the urban perimeter (see Janin (1964), pp. 263–7).

canonesses. The acolytes taken on as additional, after the three who serve free of charge, are to be satisfied with three carats, should there be three of them; with six carats, if six; and so on.¹⁷ That is the proportion in which their remuneration is to be managed. Certainly, should the distance be rather long, and there be a larger number of *decani*, as well as of conventual groups, serving the bier, a small amount will be paid them, too, in respect of the burden, just as for those on duty for the exequies, so that they also may be seen as having some remuneration for the extra amount of work. The region of Justiniana,¹⁸ or Sycae, across the water, is also to be regarded as within the new walls, as it is not far off, and reaching it takes no more time or trouble.¹⁹

Should the funeral procession take place outside the walls of this fortunate city, or in the other regions across the water apart from that mentioned, the sisters or canonesses are in that case to receive half a *solidus*. The acolytes are in no way to share any of that with them, either; acolytes are, separately, to receive four carats for each conventual group, in the stated proportion, and no more than that. The ascetic group that accompanies the bier provided free of charge with its three acolytes, comes, in any case, with an escort of three acolytes and eight sisters or canonesses as stated; these are to be paid nothing at all, nor are they to demand anything for supplying candles, or to devise any other reckoning under any other pretext.

6

These provisions of ours all refer to those who do not, as an additional act of munificence, apply for use of the two large biers stored in the holy public treasury: that is, those of Studius of glorious memory, and Stephanos of magnificent memory.²⁰ Should anyone wish to receive these, we do not include them in what we have stated earlier, because they require many men, a larger guard, and certain other trouble taken. Instead, as having

¹⁷ The gold *solidus* comprised twenty-four carats. These carats could be credited in the form of cheques (πυρράκια) or small-denomination coinage (see Sarris (2006), pp. 92–5).

¹⁸ Justinian had re-named Sycae (or Galata) after himself, a habit commented on by Procopius in *Anecdota* 11.2 (see Janin (1964), pp. 466–7).

¹⁹ A possible reference to the existence of a public ferry that ran between Galata and the main city.

²⁰ Studius was a *consul* who in 453 founded the important monastery of St John the Forerunner, to the southwest of the city between the Constantinian walls and the Theodosian walls, on the site of a suburban villa (see Janin (1969), pp. 430–40 and *PLREII*, p. 1037 (Studius 2)). The Church of St Stephen stood in the region of the Constantianae (see Janin (1969), pp. 474–6 and Magdalino (2007) section II, pp. 61–5).

adopted a munificent intention, he is to pay whatever amount he may agree with either the *decani*, or the most reverend sisters or canonesses, for their work. This, however, cannot exceed the sum of twelve *solidi* for the two biers of Studius and Stephanos; and, for the gilt one placed in the most holy great church, or a single one that may perhaps be fitted up as a substitute for it, four *solidi*. The sisters, canonesses and acolytes, are to earn double what we have determined for them earlier, it being understood that the particular group of sisters or canonesses that escorts other biers free of charge is to receive the same amount as the rest of the groups. The same principle that we have just stated is also to be observed for the acolytes, so that they too receive double the amount already constituted by us. However, when there is only one of these three biers in use for the funeral, that being the wish of the person conducting it, it is to be understood that the most God-beloved defenders²¹ have the obligation of providing the personnel of *decani* from the workshops that we have assigned to them, and also the biers; but they are not to incur any expense. It is the most God-beloved stewards who are to be obliged to meet all the said cost of the said personnel, out of both the income left them by Anastasius of divine destiny, and of the three hundred workshops that we have assigned to them, with the distribution among them all that has been laid down by us. There will thus be nothing indeterminate: those who wish burials to be carried out at more modest cost will have the benefit of this constitution, and those with a view to munificence will not be put to great expense, but will be munificent in moderation.

7

That, then, is what we have determined for the workshops, for the revenues and for funeral processions, both those conducted free of charge and those conducted with munificence. As overseers for keeping the number of workshops permanently up to strength, we are not just appointing the Most Illustrious prefect of this fortunate city and the staff under him; much more importantly, we are appointing your excellency, and those who will successively be at the head of the office of which you yourself are now the holder.²² Furthermore, we are setting a penalty of fifty pounds of gold against your staff, should they be negligent, and twice that against the successive holders of your high office; thus they will never permit the total

²¹ 'Defenders' = ecclesiastical *defensores* (see *J. Nov.* 17, note 17).

²² I.e. the Praetorian Prefect of the East.

of eleven hundred workshops, divided as we have stated, to fall short. Should you yourself, or your successors, ever be informed that it has done so, you are to pay full attention to seeing that it remains up to full strength throughout, and is not subjected to burdening or undermining, by your excellency or any other person, in such a way as to make that a cause for any payment being made for the funeral of any person, against what we have determined.²³ There is to be no discrimination between the persons of decedents as to whether they are rich or poor, except, as we have just said, if they should choose one of the three biers for which we have constituted appropriate provisions; we wish those, too, to be valid in this form, and to be unshaken throughout, and everlasting. This divine pragmatic law is to be valid throughout, as long as humankind exists; as long as the great and much-extolled name of Christians exists among mankind, and shall increase daily, through the munificence of the Lord God.

Before all others, be it understood, it is the most holy patriarch of this fortunate city who is himself to oversee this matter. By handling the matter with his priestly authority, he is to permit no contravention of the terms of this constitution of ours by any person, whether priestly, governmental, or any other. We even pass binding judgment on the Sovereignty itself, to the effect that each successive holder of the sceptre, with his regard fixed on the great God, must see vigilantly to this matter. This is not just for the sake of the decedents; it is also for the sake of the living, and above all for the salvation of those on the throne, that pious actions should under all circumstances be put into effect, and that the good work of their predecessors' labours should not be ruined by negligence on the part of successors.

Just as we have laid it down that the eleven hundred workshops are to be kept up to strength, and free of tax, so we decree that all remaining workshops are to be liable to tax. No-one at all is to have licence to exempt them from tax, whether they belong to holy houses, hostels, religious institutions, monasteries or any other body, or even to our own reigning house, or to those in office or in positions of power.²⁴ All workshops alike are to acknowledge their liability to the taxes, so that there is to be no gradual exemption²⁵ of them one by one, with the result of putting the whole

²³ In other words, no taxes or liturgies are to be demanded from the workshops at any point in the future.

²⁴ 'Those in office or in positions of power': indicating both that members of the aristocracy owned such properties in Constantinople, and (predictably) that they sought to obtain tax exemption for them.

²⁵ 'Exemption'. Here, the Greek text uses the Byzantine fiscal term *ἐξκούσεία*, for later examples and discussion of which see Bartusis (2012), pp. 66–77.

burden, by giving individual relief, onto the few that are left, thus imposing heavy extra cost on those incapable of bearing it.

Conclusion

Your excellency, those who will take up the same office after you, and the staff under you, will accordingly observe these decisions of ours in the present divine pragmatic directive, both now and for all time to come.

Given at Constantinople, November 3rd in the 11th year of the reign of Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius

537

1. The dying, or their remains, not to be mistreated by creditors

2. Assessors not to commence trials without office-holders¹

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul, patrician

Preamble

If they scrutinised the true facts, those whose goal is truth would not lightly resort to criticism. It is probable that some may complain at the large number of laws daily being promulgated by us, without reflecting that it is the call of necessity that obliges us to enact laws to suit the circumstances, when those already enacted cannot provide remedies for the succession of unexpected problems that arise.² One such has come to light recently, as follows.³

¹ This constitution again concerns two unrelated issues. Firstly, it addresses violation of the dead in the context of acts of private distraint (on which see *J. Nov.* 52). Secondly, it seeks to oblige office-holders charged with judicial responsibilities to fulfil their obligations and not simply leave them to their legal officers (Latin *assessores*). The preface, however, is of unusual interest, in so far as it records the emperor publicly responding to his critics. The novel is referred to at the end of the sixth century in the correspondence of Pope Gregory the Great (see discussion in Loschiavo (2015), p. 94).

² ‘Those whose goal is truth’: it was a trope of ancient historiography that truth (Greek ἀλήθεια) was the proper pursuit of the historian; Procopius, for example, declares at the beginning of his *History of the Wars* that ‘while cleverness is appropriate to rhetoric, and inventiveness to poetry, truth alone is appropriate to history’ (*Wars* 1.1.4–5). *Prima facie*, therefore, the preface to this law reads as if the emperor is lashing out at writers of contemporary history, critical of his programme of legal reform and his legislative output, who were accusing him of causing confusion. This, of course, is precisely what Justinian’s contemporary Procopius does: see, for example, *Anecdota* 6.21–22, and, especially, 14.1–11. As noted by Greatrex (2001), many of those who wrote contemporary history in late antiquity were lawyers by training. Procopius, for example, is described in near-contemporary sources as a *rhetor*, indicating a practising barrister or advocate (see Sarris (2007)). The relevance of Justinian’s opening salvo may thus lie in the fact that the second part of this constitution is concerned with legal officers attached to the entourages of governors and military commanders known as ‘assessors’ (Latin, *assessores*). Intriguingly, that is precisely the post that Procopius is recorded to have held under Belisarius (see discussion in Lillington-Martin (2017), pp. 158–62). It can probably be assumed, therefore, that he would have been aware of this law. Justinian justifies new legislation on the grounds that he must respond to changing circumstances. As noted in the Introduction, this was a *topos* of the novels, as discussed in Lanata (1984a), pp. 165–88.

³ The first part of the constitution thus provides a further example of legislation issued in response to actual cases.

One person claimed to be owed a debt by another. On discovering that the man was near death, he then collected up some soldiers,⁴ some slaves and as many other people as he could, and burst in on him as he lay dying. The dying man kept crying out in protest until, under the violent stress, life left him. The other then, on his own authority, began fixing seals on the property;⁵ there was no-one present in any official capacity, and no observance of civil law and order at all. Nor did he leave it at that; he also had no compunction over treating the body disrespectfully, and at first insisted that the interment should not take place. After grudgingly conceding that the corpse could be taken out of the house, he then, in public, stopped the funeral procession by seizing the bier, and saying that he would not let it go unless he recovered what he was owed. Finally he accepted surety, and only then did he allow the man, now dead, to be committed to the earth. The crime in this case has been suitably dealt with; but we consider it necessary also to amend these matters by a general law, rather than let them remain indefinitely without legislation, for the offences to occur yet again.

1

Accordingly, our decree is this: should anyone either take possession of the house of someone still alive who is believed to be in his debt, and harass the man in his lifetime, and his family (by which we mean wife, children and household in general), or, after the alleged debtor's death, dare even to affix seals on his own authority, without first obtaining a judgment and observing legal procedure, he is in all circumstances to forfeit his case, whether justified or not, and is additionally to be made to pay, to the heirs of the man whom he has treated with such utter lack of respect, as much again as he claims to be owed. He is also to be subject to a fine of one-third of his property, in accordance with what Marcus, that supreme philosopher among emperors,⁶ has laid down in his own laws;⁷ and he is to suffer public disgrace.⁸ It would be just for one who has shown no compunction for human nature to suffer loss of money, reputation and everything else.

⁴ On such private armed retinues and the illegal employment of imperial soldiers, see *J. Nov.* 116 and Sarris (2006), pp. 162–75. The behaviour described here constitutes an example of the lawlessness and violence associated with private distraint as also detailed in *J. Nov.* 52.

⁵ The fixing of such seals constituted a claim to ownership.

⁶ The Marcus referred to is the Emperor Marcus Aurelius (161–180 AD).

⁷ See *Digest* 48.7.7 and 48.7.1.

⁸ 'Public disgrace' = *infamia*: see *J. Nov.* 45, note 6.

1. If, after a death, someone should commit an offence over the burial of the deceased, by preventing the funeral procession, there is already a law⁹ actually enacted on that by our father; but from us there is also to be a heavier consequential penalty: he is to be subject to the same punishments as those to which our present law subjects those committing such an offence as we have described against those still alive. It is especially the Most Illustrious prefect of this fortunate city who is to see to this matter, as corrective measures for such things are his concern; but so, equally, are the Most Illustrious prefect of our sacred *praetoria* and our master of sacred offices, with the successive staff under them.¹⁰ Outrages against nature are of common concern, so the prohibition and punishment of them must also come from the office-holders in common.

These provisions apply not in this fortunate city alone, but in all the peoples over whom God has given us the rule from the outset, has added to us, ‘and shall still also give’, as one of those before us says;¹¹ the local office-holders, whether military or civil, are to see to this. Office-holders here, and their staff, should they be negligent over any of this, will have a fine at twenty pounds of gold imposed on them; for provincial posts, on information laid either here or in the province, it will be at five pounds, should they too fail to pursue this energetically.

2

There is another matter on which we are resolved, as being correct, and in accordance with the constitution of Zeno of pious destiny, and moreover with our own: that is, not to permit office-holders’ assessors¹² to hear, on their own, any cases launched before the office-holders, or before judges assigned by us.¹³ It would be far more satisfactory, and authoritative, for cases to be launched under the office-holders themselves, with their

⁹ The law referred to is a constitution of Justin I’s found at *Codex* 9.19.6.

¹⁰ The implementation of the law is thus referred to the Urban Prefect of Constantinople, the Praetorian Prefect and the Master of Offices (*magister officiorum*).

¹¹ A phrase taken from Homer *Il.* 1.96, where it is further troubles that are forecast, rather than triumphs. This slightly inappropriate use of a Homeric tag should alert one to the dangers of reading too much into Homeric allusions in sixth-century sources, on which see Kaldellis (2004), p. 53.

¹² As noted earlier, *assessores* were legal officers or advisers assigned to such high officials (see Jones (1964), pp. 500–3). The constitution of Zeno’s referred to is not included in the *Codex*, and the law of Justinian’s referred to may actually be one of his uncle Justin I’s (*Codex* 2.7.25).

¹³ ‘Office-holders’ or ‘those who govern’ (Greek οἱ ἀρχοντες) effectively here means governors and others charged with judicial responsibilities.

assessors present. There will then be something for the attendants, and any possible witnesses who appear, to be afraid of; and, in general, the proceedings will be properly awe-inspiring, more so than if the judges sitting on such cases were low-level judges,¹⁴ with no higher rank than assessors. However, as office-holders who are permanently here with us are kept busily occupied on affairs, and on commands from us, one must make the law conform aptly with the circumstances.

1. Accordingly, we decree that cases must without fail take place before office-holders in person, whether of higher or lower rank. In the course of the action, the case must be brought before them again, at least once, so that they understand the arguments up to that point. When the final judgment is going to be issued, assessors must on no account dare to sit without the office-holders; there must, as we have already directed, be due solemnity, with the divine scriptures on display, and the office-holders themselves must hear the whole of the issues that have been contested, uninterruptedly, and judge the cases in person. They must accept appeals without any delay, should there be an appeal where the law permits one to be made. Again, appeal judges must, without fail, hear the cases in person; no-one is to dare to do otherwise. Should any such thing occur, the office-holders themselves are to anticipate a fine at twenty pounds of gold, and the assessors who have the temerity to act thus are, if advocates,¹⁵ to be struck off the register of most learned speakers, and, if anyone other than advocates, to be deprived of any office they may hold, and chastised by a fine of ten pounds of gold. Those who have shown utter contempt for the constitution of Zeno of pious destiny, and also of both our own previous one and the present one, must not suppose that, by dissembling, they will escape the penalties laid down in it. Whenever such an offence is committed, the Most Illustrious *comes* of our divine *privata*¹⁶ at the time will

¹⁴ 'Low-level judges' (Greek χαμαιδικασταί) were similar but not identical to *iudices pedanei*: private persons appointed as judges to whom provincial governors delegated cases (see Berger (1953), p. 518, which needs to be revised in the light of Van Der Wal (1998), p. 15, note 13). They were introduced by Zeno (presumably in the law just referred to) and were the subject of an important reform of Justinian's in 539 (*J. Nov.* 82).

¹⁵ 'Advocates' or 'barristers' (Greek συνήγοροι) = Latin *advocati* (see Berger (1953), p. 352). 'The register of most learned speakers': the Greek term *rhetor* ('speaker') had by late antiquity come to mean a practising barrister or advocate, who had to be publicly licensed. The punishment described here is the equivalent to a modern English barrister being 'struck off from the Bar'. For Justinian's treatment of this profession, see Procopius, *Anecdota* 26.1–7.

¹⁶ '*Comes* of our divine *privata*' = the *comes rerum privatarum* or head of the imperial estates, to which all fines had been assigned by a law of the emperor dating from 529 (*Codex* 1.5.18.11 and *Codex* 10.30.4.16): see Delmaire (1989), p. 414 and, on Justinianic policy with respect to imperial estates in general, Lounghis (2000) and *J. Nov.* 30, note 36.

have the responsibility for attending to this matter, collecting the fines and depositing them in the crown treasury. Even he is to be aware that, should he not pay due attention to this, he will compensate the public treasury out of his own resources.

2. That is what we decree for those office-holders who are excused from hearing whole cases in person, because of their engagement in the public interest and on our instructions. However, should there be any other judges, not themselves holders of any office, but hearing cases on commands from us, either in this fortunate city or in others, who act in any such way, we shall pursue them all, and those with the post of assessor who hear cases with them, with still more severe penalties, if they do not hear the case with their own assessors throughout the whole proceedings, continuously. We threaten them with deprivation of their ranks and a fine at twenty pounds of gold, and their assessors with banishment from the actual city in which they have acted thus, and also with forfeiture of their own rights of citizenship.

Conclusion

Accordingly, your excellency is to make these decisions of ours, manifested by means of this divine law, public to all in the usual manner, using proclamations in the provinces, so that no nation is to remain unaware of what has been decreed by us. In this fortunate city, it is the Most Illustrious prefect who will promulgate these decisions.

Given at Constantinople, December 1st in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Belisarius

61 | Pre-nuptial gift: immovable property not to be hypothecated, or alienated at all, by the husband, even with the wife's consent, unless she is subsequently compensated. Same to apply for dowry¹

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul, patrician

Preamble

We have taken the appropriate means to rectify a deplorable situation that we discovered in a case launched before ourselves; but, as is our custom, we shall deal with such cases by a general law.²

1

We are making a decree for any case in which anyone has made a settlement of pre-nuptial gift (or gift in respect of marriage, as we have legislated that it must preferably be called),³ whether it was made for himself by the man in person, or contracted by another, perhaps his father or mother, relatives, or even possibly persons unrelated. Should he have taken such action, and contracted a gift in which there is any immovable property, we forbid him in future either to hypothecate the property settled as pre-nuptial gift, or to alienate it in any way. What has once been bound by the terms of the pre-nuptial gift could not properly be alienated: it would result in distress to the wife when she found, perhaps when the gain

¹ In this law, Justinian asserts that a husband may not alienate or mortgage immovable property that formed part of a pre-nuptial gift made to his wife or her dowry. Even if the wife has consented to such a transaction, it is to be void unless she re-iterates her consent after an interval of two years. Even then, however, the husband must provide her with property of equal value by way of surety, and she is granted the right to sue in pursuit of her claim (see Van Der Wal (1998), p. 79 (entry 583) and Noailles (1919)). In common with other Justinianic measures, the law thus seeks to defend the interests of married women (see Krumpolz (1992), pp. 162–204).

² Note, once more, the responsive nature of imperial legislation.

³ 'Pre-nuptial gift' = Latin *donatio ante nuptias*: a gift to the wife that was meant to help support her in widowhood but which she was obliged to leave to her children of that marriage.

which brings her in the pre-nuptial gift came due, that the property was not in her husband's estate, but had been either alienated to others or hypothecated, perhaps to powerful persons, so that it would be either difficult, or beyond her reach entirely, to re-claim it, and it would require a trial, although by this she can come to her own assistance.

1. This, then, is to be observed. One who hereafter enters into a contract, whether it be of purchase or of hypothec, must know that he will have absolutely no benefit from it: the agreement, whether written or oral, will be as if it had never been written or spoken, and the gain is to be preserved for the wife. In our opinion, some judges of ours who have awarded the action *in rem*⁴ over the pre-nuptial gift to wives, after dissolution of the marriage, have acted quite acceptably, even though that correct initiative has then been disregarded by later judges, out of surely quite excessive strictness.

Recipients of dishonestly made hypothecs are not to devise ways of causing wives to consent, and so to forfeit their rights. Written consent in such cases, either for hypothecation or for purchase, or for any other form of alienation, would be of no use at all to the recipient, if the consent-procedure took place only once; exactly as we have prescribed in cases of *intercessio*,⁵ a second agreement, confirming the consent, must also be drawn up after the passage of a two-year period. In this case also, the transaction is only then to be valid.

2. Even should the wife have given her consent, she is to suffer no loss at all, as with *intercessio*, unless she has also given a second consent, as we have just mentioned. At first hearing, many mistakes could be made on the spur of the moment: for fear of her consort, or by easily being led astray by deceptions, the wife might not pay regard to her own rights; but then, after considering the case thoroughly, with more time, she might become more assured than she was.

3. Even that concession is one that we are not making unreservedly: we are not exposing the wife to the loss consequent on her second consent unless there is other property, from which it is possible for her to receive security⁶ for the immovable property or properties

⁴ 'Action *in rem*' = an action in which the claimant asserts a right to a thing (such as ownership) possessed by the defendant (Berger (1953), p. 346).

⁵ '*Intercessio*' ('intercession') = a procedure whereby one assumed for oneself the debts or liabilities of another. Under the *Senatusconsultum Velleianum* of c. 46 AD, women were forbidden to assume liability under *intercessio*, but Justinian reformed the law such that a woman could so intercede so long as her agreement to do so was publicly witnessed and was re-stated after two years (*Digest* 16.1, *Codex* 4.29.22 and *J. Nov.* 134 c. 8). See Berger (1953), pp. 506 and 700, Buckland (1963), pp. 448–9 and Saradi (1990).

⁶ 'Security' (Greek τὸ ἰκάνον) = Latin *satisdatio* (see Berger (1953), p. 690).

included in the pre-nuptial gift that are held by another person under the terms of alienation or hypothecation. Otherwise, should there be nothing else left, we are still not permitting the wife to suffer detriment. Even should she have given her consent twice, or several times, the calculation is to be as for *intercessio*: should it prove that there is nothing left over sufficient to reach the value of the pre-nuptial gift, the gain is to be assured for her in all respects.⁷ We are saying this not merely out of consideration for wives, but also, and much more, for husbands who take this action; in many cases, virtually in most, it is for the children of them both that the asset of the pre-nuptial gift is preserved, and another effect of this ruling is that it remains with the husband's estate, and in his succession. When this is taken into account, the law is thus in the interests of the husband as well as the wife.

This is to apply, far more, to the dowry,⁸ should he have hypothecated or alienated any of it; sufficient trouble has already been taken on such matters, and enshrined in legislation.⁹

4. Nor are we acting altogether without concern for the contracting parties themselves. Given that we wish liability in these agreements, whether spoken or written, to be null as far as the wives are concerned, we nevertheless decree that the husbands themselves are to be liable for their other property, in respect of alienation or hypothecation. We are reserving to wives their right, unaltered, only to the immovable property in their pre-nuptial gift; but are reserving to the recipients the relevant right arising from the contracts, as far as the husbands' other property in it is concerned. In any case where the wife launches proceedings, all the privileges that we have already granted for the dowry are to remain in their own force; such a privilege is one that we have not originally granted to anyone at all other than the wife, nor are we granting it now.

Accordingly, your excellency is to make these decisions of ours, manifested by means of this divine law, public to all in the customary manner, using proclamations in the provinces, so that no nation is to

⁷ Van Der Wal notes, however, that this is not, strictly speaking, an example of *intercessio* (see Van Der Wal (1998), p. 79, note 55).

⁸ The dowry was a gift to the wife from her own family which was meant to support her (Berger (1953), p. 444).

⁹ Justinian had recently reformed the law on dowries in favour of the wife in *Digest* 23.3; 23.4; 23.5; 24.3; and 25.1; *Codex* 5.12; 13; 14; 18; 19; 20; 22; 23; and *Codex* 7.74. Hitherto, husbands had been allowed to keep some parts of the dowry, but Justinian limited the extent of any possible claim of the husband to one of use (*usufruct*).

remain unaware of what has been decreed by us. In this fortunate city, it is the Most Illustrious prefect who will promulgate these decisions.

Given at Constantinople, December 1st in the 11th year of the Lord Justinian, pius princeps, Augustus, <2nd> year after consulship of the Most Distinguished Belisarius

537

PROOF

The same Augustus to John, praetorian prefect

Preamble

In the most ancient times, the authority of the Roman Senate shone out in such powerful vigour that under its control, exercised both at home and abroad, the whole world was subjected to the Roman yoke; the sway of Rome spread not just eastward and westward, but also laterally, to both bounds of the earth's circle, and everything was run by the Senate's collective decision-making.

1. Later, when, to the realm's good fortune, the prerogative of the Roman people and Senate was transferred to their majesties the emperors, it came about that it was they themselves who made the choice of whom to put at the head of affairs. These were to carry out all that the imperial voice commanded them: military matters were to be under them, and everything else, too, was to be in obedience to their behests, while the remaining senators led lives of inactivity.² After office-holders laid down the duties that had been entrusted to them, it remained at the emperor's discretion whether he wished to return them to the Senate's freedom from responsibility, now that they were liberated from the exertions of their office, or to mark them out for other tasks.

¹ This constitution effected a major change in the nature of the Senate of Constantinople, by charging senators with enhanced judicial responsibilities. The second half of the law clarifies the order of precedence within the Senate itself. It is significant that the law was only issued in Latin which, as the historical language of state, was deemed most appropriate to the antiquity and dignity of the senatorial order. *Prima facie*, this piece of legislation would appear to contradict Procopius' claim that Justinian sidelined the Senate, and left its members 'sitting as if in a picture' (*Anecdota* 14.8). However, in fact, through this law Justinian was seeking to exercise much tighter control over the Senate and its members by incorporating them into the workings of the court (thereby making them more like functionaries: see Haldon (2005), pp. 39–40). The novel thus arguably heralds a shift towards a more 'palatine' aristocracy such as would characterise the Middle Byzantine Empire. For discussion of a papyrological fragment of this law, see Corcoran (2008).

² The constitution here provides an interesting insight into how officially promulgated imperial history viewed the transition from the Republican to the imperial system associated with the figure of Octavian (Augustus), who secured sole mastery of the Roman world in 31 BC. For further discussion of this topic, see Kaldellis (2015).

1

At the present time, under the pressure of the numerous tasks of all kinds, for the untiring conduct of which, in war and in peace, our Majesty is known, the portion of the Senate not otherwise employed has shrunk to an excessively low level, and they have come to regard this as the height of injustice, not as an escape from a life of care.

1. For that reason, we have seen fit, on our own initiative, to take appropriate steps for its enlargement, and to allocate to it men outstanding for their noble birth and very high repute, in order that one part of our Senate may manifest its ability in administrative posts, while the other, not so engaged, may be able to display its talent to the state in another way.³

2. Great advantage comes to our state from the incorruptibility of the judicial process. As there are some cases that are brought, on appeal from judges, to our Divinity's Sacred Consistory,⁴ and are tried by our highest dignitaries,⁵ we have accordingly decided that it should not only be our judges who weigh up the facts of cases at law, but there should also be senators convening to hear trials, in referred submissions,⁶ together with our other Most Illustrious dignitaries. On any occasion when a session of the Consistory is called for other purposes jointly with a session of the Senate, both dignitaries and senators all assemble together; in just the same way, whenever a session of the Consistory⁷ is called, on its own, for the trial of a case, the senators are now also to convene, even if the phrase 'a session of the Senate'⁸ is not added. In joint session, all are to decide as they see fit, in the presence of the holy gospels; they are to bring the decision to our knowledge, and to await our august Majesty's ruling. Such trials are to be taken, not* by senators alone, but by both orders, because the purity of law

* To make sense of this sentence, *non* needs to be restored before *a solis senatoribus* [S/K, p. 333, line 7], with Osenbrüggen and Zachariae.

³ The Senate of Constantinople had been founded by Constantius II (337–361) and had gradually expanded ever since, drawing in the higher-ranking members of the empire's burgeoning aristocracy of service (see Heather (1994) and Skinner (2008)).

⁴ The 'Sacred Consistory' (*sacrum consistorium*) was effectively an imperial cabinet which advised the emperor and which comprised the highest-ranking state and palatine officials such as the Praetorian Prefect, Quaestor, and Count of the Sacred Largesses (see Jones (1964), pp. 333–40).

⁵ 'Highest dignitaries' = Latin *proceres* – a reference to the most exalted of the aforementioned state officials.

⁶ 'Referred submissions' = upwardly referred cases and appeals known in Latin as *consultationes*: see *J. Nov.* 28, note 19 and Kaser (1980), p. 433.

⁷ 'A session of the Consistory' = Latin *silentium* (see Jones (1964), pp. 333 and 338).

⁸ 'A session of the Senate' = Latin *conventus* (see Jones (1964), pp. 338 and 506–7).

and the light of justice are discovered in a better, more considered, manner by a larger number than a smaller.

3. Be it most definitely laid down that it is both at the circus games and when a session of the Senate is announced, that senators have to assemble in the normal way, and discharge their proper duty.⁹

That is how we determine this article of the present law; and by this constitution we bind it to be valid for ever.

2

There is, however, another head that we have decided must be put separately in the present law, for the honour associated with the highest administrative offices.¹⁰

Intermediately, as it were, between the Most Illustrious highest dignitaries of our Palace and the Most Illustrious senators, there is the office of the exalted prefecture.¹¹ We therefore decree that, in accordance with what tradition reaching right back to the furthest antiquity claims for itself, it is the city prefecture that is to hold the presidency of the Senate, and to have primacy of place dedicated to it. Next to be counted are all the most eminent patrician senators; be it noted that any of those who are also distinguished with consular insignia should have precedence, with their relative precedence deriving from the order of their consulship.¹² Those who have actually held substantive consulships¹³ are, of course, to precede all other consulars, in their own order.

⁹ On state occasions, senators of the highest rank (*illustres*) were expected to attend the games in the Hippodrome of Constantinople (on which see discussion in Cameron (1976), esp. pp. 230–70).

¹⁰ ‘The highest administrative offices’ = Latin *dignitates*.

¹¹ I.e. the Praetorian Prefects and also the Urban Prefect of Constantinople. The latter oversaw the policing and administration of the city and acted in a judicial capacity (see Jones (1964), pp. 375, 509, 692 and 698).

¹² Those senators accorded with the honorary title of ‘patrician’ (*patricius*) were to take precedence over others. Within that group, consuls and ex-consuls were to take precedence over other senators. A consul was nominated from each of the senates of Rome and Constantinople on an annual basis, although Justinian was progressively engaged in ‘moth-balling’ the institution (see *J. Nov.* 105, note 1). On patricians, see Jones (1964), pp. 106, 254 and 528; on the consulship, see Jones (1964), pp. 532–9 and Cameron and Schauer (1982).

¹³ ‘Substantive consulships’ are here contrasted with honorary consulships, on which see Jones (1964), p. 533.

1. Just as it is customary for the patriciate's bands of rank to have precedence among our dignitaries above the high rank of consular, that same principle is to be observed in the most honourable Senate.

2. After the patricians, the whole assemblage of both consulars and those of prefectorial rank, together with which we also count *magistri militum* and the Magnificent *illustres*,¹⁴ are to have licence to convene in the high council with each in order of the date of his elevation to his rank, to take their seats, and to give their opinion.

3. In the event that any office-holder comes to lay down his office on a command from us, we decree that he is not to lose status for that reason, or be demoted to a lower rank. In the most honourable Senate, as well, he is to retain his precedence, which he was recognised as having enjoyed previously, when in office. Indeed, should we wish to present him with a higher position, he is to retain possession of this award also in the highest council. We are not allowing any of those whom we call 'honourable'¹⁵ to suffer any injustice, so that the special reward of retirement that we are granting them, in recognition of their hard work, shall not detract from their honour, and diminish it.

4. Thus one and all are to enjoy the mark of our favour entirely unmarred, whether it is conferred for action or for respite. People do not appear to like either permanent employment or permanent freedom from it; what gives human minds pleasure is change, variety, and experience of something unusual.

5. Any who have been distinguished with *illustris*¹⁶ status are to be allowed to receive codicils of the patriciate, even if they are not consular or prefectorial; that requirement, in the constitution of Zeno¹⁷ of divine memory, was unwarranted. All someone needs for receiving the honour of the patriciate is that he should have been distinguished with Illustrious status; even if that has been overlooked in some cases, that is not to engender prejudice against those who have received promotion.

¹⁴ I.e. the most distinguished class of senators, after the consuls and patricians, comprised praetorian and urban prefects and former *magistri militum* (the highest-ranking generals), who were all granted the high senatorial rank of *illustris* (see Jones (1964), p. 528 and Lee (2005), p. 117). The sons of senators could only inherit the lowest senatorial grade of *clarissimus*, although the emperor could be petitioned to award one of the higher grades (see Haldon (2005), p. 40 and Jones (1964), pp. 529–30).

¹⁵ 'Those whom we call "honourable"' = Latin *honorati*: those distinguished by office who kept their rank even in retirement (Berger (1953), p. 488).

¹⁶ '*Illustris* status' = granted the highest senatorial status.

¹⁷ 'The constitution of Zeno' = *Codex* 12.3.3.

6. Should we wish to confer a high imperial office¹⁸ on certain people, we decree that, as long as it is with the intention of elevating them at once to the Senate, they are only to pay one-third of the *sportulae*,¹⁹ this is to enable them to enjoy their high imperial office without suffering serious loss. All others, at their promotion, are to pay the customary dues in full.

Conclusion

Your excellency, your successors in office, and your staff, are accordingly to be for ever active in observance of what our Eternity has decreed by this divine law. A penalty of fifty pounds of gold threatens those who attempt to violate it, or who allow it to be violated by anyone.

Given at Constantinople, . . .th December in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, <2nd year> after consulship of the Most Distinguished Belisarius 537

¹⁸ 'High imperial office' = Latin *dignitas*.

¹⁹ '*Sportulae*' = 'fees', on which see Kelly (2004), pp. 64–8.

*The same Sovereign to Longinus, prefect of this fortunate city*²

Preamble

We have thought it right to restrain and correct a deceitful practice occurring in this fortunate city, in connection with house-building.

The constitution of Zeno³ of pious destiny states that houses are to stand at certain distances apart; we too have legislated along these lines, and the principle has been introduced that in this fortunate city no-one is to be able to block the view of the sea, a very great amenity, from within one hundred feet. Perhaps people's views should have been left open, and not blocked, from a still greater distance; but a new and unexpected evasion has been devised, namely that some people have left the hundred-foot distance, or have even added a bit more to that, and then, being unable⁴ to build anything else on that site, have put up a kind of partition across. When they have thus cut off the view of the sea with full authority to do so, as at the distance of a hundred feet they are not in conflict with the law, they start building on the inland side, with nothing to stop them; and, their aim once attained, they knock down the structure they had devised for the purpose. By this cunning scheme they render other people's houses devoid of all pleasure for the owners. That is something that we intend should by no means occur in future.

¹ This constitution was promulgated in response to a ruse which had been contrived to evade the existing imperial prohibition on blocking the sea views of other houses in Constantinople. Such views were evidently highly prized. The law had hitherto prohibited the construction of new buildings within one hundred feet of such properties, blocking the sea views of others. Unscrupulous developers had responded to this, however, by erecting temporary screens at or beyond the hundred foot limit, which served to block (and thus remove) the view, behind which they had built permanent structures and then demolished their screens to enhance the value of their building by its own enjoyment of the view (see also *J. Nov.* 165, and, for further discussion, Saliou (1994), pp. 244–6 and Rodríguez López (2012), pp. 63–6). For a similar ruse in English Common Law, see *Fidler v. Reigate and Banstead Borough Council* (22 June 2013).

² Described as a 'large and vigorous man' (Procopius, *Anecdota* 28.10), Longinus is reported to have been a widely travelled and loyal servant of the emperor, who acquired considerable experience as a diplomat prior to his appointment to the urban prefecture (see *PLREIIIB*, pp. 795–6 (Longinus 2)).

³ The legislation referred to is to be found at *Codex* 8.10.12 and 8.10.13.

⁴ 'Unable': presumably because such sites were too close to the sea to leave enough room.

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Should anyone wish to devise a scheme for a structure of that kind, with malicious intent, he is not to play that kind of trick. Should he have a genuine need of it, he is to build a whole house, even back to the whole distance of a hundred feet, and to design his building works to meet requirements indispensable for him. He is most definitely not to put up temporary walling as a ruse against his neighbour, in order to steal a way of depriving him of his view by putting a piece of trickery like that across it, as if by way of some kind of sketch. Just as we rightly set our face against those who steal anything else, and regard them as deserving punishment, so we also regard those who cheat in this way as malefactors, to no less a degree than those who steal other property. The *vi bonorum raptorum*⁵ does well to inflict a penalty of quadruple the value on anyone daring to take even a small object, by way of theft; so how can it not be necessary also to chastise one who cheats in this sort of way, both by compelling him to demolish what he has built, and by a heavier penalty? – namely a fine of ten pounds of gold, payable to your excellency's *theatralis fund*⁶. This is so that, after making himself a 'bad neighbour', as the saying is, he shall not get away with laughing at the law for being incapable of subjecting him to its own decrees.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours, manifested by means of this divine law, into practical effect in this fortunate city, and to observe it in perpetuity, together with the staff under you. The said fine of ten pounds of gold is to be imposed on those who contravene these provisions, or who permit them to be contravened.

*Given at Constantinople, March 9th in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished John*⁷ 538

⁵ '*vi bonorum raptorum*' = (more properly) the *vi bona rapta* = goods (movables) robbed by force. The Latin phrase is evidently being used as shorthand for the penal action *actio vi bonorum raptorum* ('action against forcible seizure of goods') (see Berger (1953), p. 667).

⁶ The '*theatralis fund*' was presumably a fund maintained by the Urban Prefect of Constantinople to help finance public spectacles (see Van Der Wal (1998), p. 92 (entry 649)). 'Bad neighbour': Hesiod *Works and Days* 346.

⁷ John = John the Cappadocian: see *PLREIII*, pp. 627–35 (Fl. Ioannes 11).

The same Sovereign to Longinus, Most Illustrious prefect of this fortunate sovereign city

Preamble

Numerous complaints have for a long time been being brought before us, from every side, against the market gardeners in this fortunate city and its environs; everyone is aggrieved at their malpractice.² The nature of these denunciations is much as follows.

¹ This constitution casts interesting light on the arrangements by which market gardens in the vicinity of Constantinople were managed and exploited. The law suggests that it was common practice for plots of land in the vicinity of Constantinople to be put out to lease (Greek μίσθωσις) to commercial gardeners. Upon the agreement of a lease, the holding would be professionally assessed with a view to working out the value of its crops or plantings *in situ*. It is implied in the law that the new tenant was then obliged to pay the landowner a sum equivalent to that value. Upon the termination of the tenancy, the crops and any trees, etc. planted on the holding would again be valued, and this time the landowner was obliged to pay that sum to the demitting tenant. The obvious economic logic to such a system was that it provided the tenant with an incentive to look after and improve the holding entrusted to him. Justinian complains in this law, however, that those responsible for the valuations were conspiring with the gardeners to under-value the holdings and their crops at the initiation of a new tenancy and to inflate the value at the end of the tenancy, thereby defrauding the landlord. In what would have been an economically regressive measure, Justinian therefore herewith abolishes the established practice save for where a landlord chose to rent out hitherto uncultivated land which the tenant was bringing under new cultivation. Otherwise, the tenant was obliged to return the land in the same condition in which he found it, and thus was only liable to receive from the landowner the same order of monetary sum as he had initially paid out (effectively by way of deposit) for the lease. Tenants were thus still presented with a monetary incentive to maintain a holding, but not to improve it. It might be argued, therefore, that Justinian deployed a legislative hammer to crack the proverbial walnut. This novel would suggest that the turnover of such leases was relatively frequent, thereby indicating that they are unlikely to have been emphyteutic in nature, as emphyteutic leases tended to be long-term or perpetual (see Berger (1953), p. 452).

² ‘Market gardeners’ = (Greek) κηπουργοί. The areas between the Constantinian and Theodosian Walls, and beyond the Theodosian Walls themselves, were home to stretches of prime agricultural land and wealthy suburban villas (the cultivable zone within the former has been estimated at some 2–3 square kilometres, whilst within the latter it has been reckoned at some 10–12 square kilometres). Further highly cultivable land within easy striking distance of Constantinople was also to be found on the other side of the Bosphorus. It is presumably landholdings in these three areas that are being referred to here, and it is likely that their cultivation played an important role in helping to feed the city, and in particular to provide it with fresh vegetables. Many of the landowners concerned are likely to have been the aristocratic owners of neighbouring villas (for further

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Valuers,³ they say, are for the most part from the same guild as market gardeners, and their shocking practice is that when the owner⁴ of the market garden hands it over to the market gardener who is taking on the tenancy, all they include in the valuation is the crop that has been planted on it, and that is the valuation they assign for the cultivator, or tenant, who is taking it on; but at the time when the person who has rented it is about to hand it back, on the expiry of his term, the valuers begin by making a precise valuation of the produce, and then multiply it by six, or more: if it has produce on it worth fifty gold pieces,⁵ they put it at no less than three hundred, and sometimes at an even higher valuation. And that is not the limit of their greed over this: they make it very much worse by claiming that they have put manure on the land and made some supposed improvements, as a result of which they raise the value to whatever amount they wish; and they make further increases for the valuation of trees that have perhaps been planted, even though no such value is taken into account at the time when they are taking it over from the owners – and despite the fact, what is more, that cultivators generally consent, in their agreements, both to keep trees that have been planted, and to plant others.⁶ As the valuer expects to be in the same position himself before long, it is naturally on his own behalf, as well, that he is employing such rapacity.⁷ Should the unfortunate owner, from inexperience, put up with paying such an excessive charge for his own property, and then convey it to someone else and have the same treatment again in his case, and then perhaps endure similar robbery for a third or fourth time, he will be in danger of forfeiting the possession of his market garden altogether, and being put out of his own property.

discussion of the Constantinopolitan food supply, see Durliat (1995) and, especially relevant to this novel, Koder (1993), summarised in English in Koder (1995).

³ 'Valuers' = Greek διατηρηταί, Latin *aestimatores*. For imperially sanctioned guilds, see *Digest* 3.4.1–2 and Dagron (2012), pp. 580–1.

⁴ 'Owner' = Greek δεσπότης ('master'). The term used for crop (Greek λάχανον) would suggest vegetables or greens of some sort (see Bagnall (1993), pp. 23 and 30).

⁵ 'Fifty gold pieces' = fifty *solidi*: the large monetary sums mentioned would suggest that the contracting parties were probably landowners and market gardening contractors engaged in commercial horticulture to feed the population of Constantinople.

⁶ For a contract expecting the contracting party (in this instance, an overseer) to plant and maintain the property, see *P.Oxy* XIX 2239.

⁷ The implication is that those employed to calculate valuations were themselves also mostly market gardeners, as stated at the beginning of the chapter.

It is reported that there is, in addition, an even more unacceptable practice of theirs: it is that, if the next person who undertakes the cultivation makes something more than the previous income, he too, on giving up this tenancy, demands a valuation on the basis of improvements said to have been made by him, even though the increase has not been due to his own good work at all, but perhaps either to negligence, or to collusion, on the part of the original conveyancers, resulting in the conveyance being executed on lower terms than it should have been. All this appears to us as being clearly brazen wickedness beyond all measure, and we wish it to be restrained by your excellency, with attention to this divine pragmatic law of ours.

In whatever condition the market gardener has taken over the market garden from the landlord, that is the condition in which he is to return it. Any crop it contains when the market gardener takes it over is to be valued; and equally, at the hand-over, he is to receive the exact value of the crop, and nothing else. Should it contain no crop, and it be fallow land that he took over, whether manured or not, that is how he is to hand it back. In a word, the condition of the property under the market gardener who is handing it over is to be the same as it had been when he received it, with nothing extra put in, to the disadvantage of the owner. Further, the valuation of the crop is not to be solely in the hands of market gardeners, but also of those known as *summarii*,⁸ who are also to be experts in such matters; and, be it understood, the holy scriptures are to be displayed.

It is our will that landowners should not have their possessions made valueless by the criminal rapacity of those to whom they are conveyed. To that end, you will summon these people together, and restrain them: you will permit no conduct injurious to landowners, but will preserve them from harm and over-charging in all respects. It is also our wish that transfers from owners to market gardeners are to be on as fair a basis as those from market gardeners to owners: our concern is for fairness all round, with no injustice to either side.

2

Should anyone have conveyed uncultivated land, the other party, should he have brought it under cultivation, is to be paid for the cultivation, and for the value of the crop on it; and he is to give it up without causing trouble,

⁸ *Summarii* = clearly the compilers of summaries or abstracts (Latin *summaria*), hence a type of reckoner or accountant.

and with no rapacity or fraudulent malpractice in this case, either. Our purpose is that by means of this divine pragmatic law of ours, and of the direction that will take place on it by your excellency, we should in future remain free from vexation on such matters, and that concerns like this should not make their way into all our other cares on the realm's behalf, as well. There is no aspect of our realm, great or small, that is outside our concern; we traverse everything in our mind's eye, and we wish nothing to remain disordered, undisciplined or controverted.⁹

You will also threaten those who do anything of the kind in future, or who allow it to be done, with a fine of five pounds of gold.

Given at Constantinople, 19th January in the 11th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John

538

⁹ Note the motif of the 'all-seeing emperor'.

65 | Alienation of property bequeathed to the church in Moesia for ransoming prisoners and feeding the poor¹

[Latin only]

The same Augustus to Justinian, Most Distinguished governor of Moesia²

Preamble

We are aware of having previously promulgated a law whereby we prohibited all ecclesiastical alienations; but later, we decided, by another law,³ that it should be lawful to use ecclesiastical property, or other property that had been assigned to religious houses, as payment *pro soluto*.⁴

1. There also comes to our mind the fact that, even before our law, we granted the most holy Martinus, bishop of the city of Odessus, an injunction prohibiting him from selling ecclesiastical property; this was to prevent any powerful person from putting compulsion on him, for a purpose of his own, to alienate ecclesiastical property.⁵

2. There also comes to our mind something else that we did, about divine vessels:⁶ for all of them, we withheld permission for anyone to have licence either to sell or to pawn sacred vessels, except solely for the purpose of ransoming prisoners, because the ransoming of a life is of more value than everything else.

¹ In this constitution, Justinian permits the Church in the Balkan ecclesiastical diocese of Moesia, on the Lower Danube, to alienate properties of marginal economic value for the charitable purpose of ransoming prisoners. The diocese of Moesia was highly vulnerable to barbarian attack, and the late 530s was a period of sustained military activity along Byzantium's Balkan frontier, as the imperial authorities attempted to re-establish direct control over the military highway that ran from Constantinople, via Thessalonica, to northern Italy (see Sarris (2011a), pp. 168–77). For further discussion, see Sarantis (2016), who discusses this novel at p. 201.

² See *PLREIII*A, p. 743 (Iustinianus 2).

³ A reference to *J. Nov. 7* and *J. Nov. 46*.

⁴ '*Pro soluto*' = in repayment of a debt (Berger (1953), p. 753).

⁵ A reference to a now lost rescript responding to aristocratic pressure in the region of the economically vibrant city Odessus in Lower Moesia (see Sarantis (2016), pp. 216–17).

⁶ See *J. Nov. 7 c. 8*.

1

Although that series of events is all in the past, it was necessary for us to relate it, to provide the background for the present special law.

At the present time, the said most holy man has come to this most sacred city, and has informed us that many people bequeath lands, or small houses⁷ or vineyards, for the purpose of ransoming prisoners or feeding the poor, but with no assured income; and as alienation is prohibited, the said actions, most pious though they are, can nevertheless not be carried out. He has now petitioned us for permission to do so, by means of a special law.

1. We accordingly decree that should anyone have bequeathed immovable property for the ransoming of prisoners or the support of the poor, if, on the one hand, there is an assured income to be collected from the bequeathed property, the legacy, inheritance or gift is to remain uninjured by any alienation, since the rescuing or support can be done out of the income.

2. If, on the other hand, there is either no assured income, or the property is a building near collapse, and at a distance from the church, or consists of vineyards with harvested yields that are not always consistent, but variable, and possibly exposed to barbarian attacks, we do, by this special law, even permit their sale in the said province, in such cases alone. However, should the house be within the precincts of the church, or the vineyards be situated at a very short distance off, close to the city walls, it is then permitted only on condition that the testator's actual words, in which he gave consent for a sale, with the ransoming of prisoners or feeding of the poor to be effected from the proceeds, must be set down in the deed of sale.

3. Should this condition have been followed, the sale is to have validity, and both the ecclesiastical stewards and the most holy bishop are to have licence to sell the said property, and the purchasers to possess it with valid title, with no fear of the other law.

4. However, the ecclesiastical stewards will be answerable to almighty God if they spend the moneys they have received for any other purpose, most pious though it may be, instead of only for the two purposes aforesaid, on the model of the law that was laid down on alienation of sacred vessels.

5. Thus, a necessary sale is to proceed, most pious actions are not be frustrated, and people's lives are not to be lost. Possession of lands and

⁷ 'Small houses' (Latin *domuncula*) might mean small households or estates.

movable property has less weight, and those things are less necessary, than the ransoming of prisoners and the livelihood of the needy: those are pleasing to almighty God, as well as life-saving.

Conclusion

Your worship is accordingly to see that what our Eternity has decreed, by means of this special law, is both put into effect, and observed.

Given at Constantinople, March 23rd in the 11th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished John

538

66 | Constitutions newly made to be in force after two further months from notification¹

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

Issues in cases launched are constantly giving us grounds for laws.² One such is that we have been having numerous petitions made to us about the constitutions of ours that we have enacted on successions,³ such as that on the necessity for the testator to write the heir's name in his own hand, or, again, on how many *unciae*⁴ the Falcidian share which parents bequeath to their children has to be reckoned at: whether at three, four or more. A number of wills have been in danger of failing to have their provisions implemented, for the reason that, even though the laws have been made, they have nevertheless not become known, either in the provinces or even here, because they may not yet have been promulgated and become public.

¹ This constitution seeks to address confusion caused by the piecemeal circulation or understanding of recent imperial legislation on wills and the 'legitimate portion' to be left to heirs on intestacy (on which see Berger (1953), p. 618). In response, the emperor declares that laws on inheritance were to take immediate effect upon promulgation in Constantinople, but were to take effect in the provinces two months thereafter. The law thus casts interesting light on the mechanisms whereby knowledge of imperial legislation was disseminated, and the speed of communication within the empire (on which see Kaiser (2010)). It also reveals that although Latin was still regarded as the primary or most prestigious language of the state, it was apparently common for the Greek version of laws to be drafted first. For the relationship between the Greek and Latin versions of Justinian's novels, see Kaiser and Stylianos (2012). For provincial knowledge of inheritance law as revealed by the papyrological sources, see Urbanik (2008). The emperor's admission that the velocity and frequency of legislation was a cause of complaint is revealing in light of the criticism of the emperor's legal activities implied by the recently issued *J. Nov.* 60 pr.

The preface to the novel links together the related but distinct legal institutions of the *portio* (or *pars legitima*) and the 'Falcidian share' (on which see Berger (1953), p. 552 and *J. Nov.* 1). This linkage was a common stylistic feature of the imperial Chancery, although Justinian was careful to maintain a distinction between the institutions which would fade away in post-Justinianic jurisprudence (for which, once more, see Urbanik (2008)).

² Note how Justinian presents imperial legislation as legally reactive (or responsive).

³ The laws referred to are to be found at *Codex* 6.23.29 and the recently promulgated *J. Nov.* 18 c. 1 (on the *legitima portio*). The former would later be repealed by *J. Nov.* 119 c. 9.

⁴ '*Unciae*' = twelfths.

We have therefore thought it necessary to make a ruling on such matters, in a brief law.

1

We accordingly decree that our constitutions on wills are only to be in force from the time by which they have become common knowledge; here, that is to say, the date is to be reckoned from when they are, or have become, published to all; and, in the provinces, it is to be from when they have been despatched, and became, or have subsequently become, known in the metropolitan cities.⁵ This is so that people shall not appear to be in contravention of the law by making wills in accordance with what had previously been in force, and putting them into effect, because of their being unaware of the laws. To make the matter clearer still, we decree that should a law of this nature be enacted, it will be in force, and current, after two months from its date of notification, whether in this fortunate city or in the provinces; that is a long enough time after its notification to publish it to everyone, both for the notaries public⁶ to learn of its effect and for our subjects to come to know about it, and to observe the law. Thus no-one at all will have any excuse for failing to keep our law. We do not want testators' intentions to be overturned, but, on the contrary, we take pains to establish their validity in every way; after all, why should we, actually, find fault with those who have been ignorant of the laying down of our constitutions? Even should wills come into being shortly after the law has been enacted, it may be still unknown, and that is why the heirs' names have not been written in the testator's own hand, or only a three-*unciae* share has been left to a child, instead of four *unciae*. Ignorance of it during the period when it has either not, in the event, been laid down, or has been laid down but not yet promulgated, is justifiable.

1. Those are the reasons why even now, despite the fact that the law decreeing that an heir's name should be written in the testator's own hand is by now a long-standing one, and is on the statute-book named after us, there are still many people who, out of ignorance of its enactment, drew up wills in contravention of its terms. Such oversights are still being reported to our Majesty; as it has turned out that the constitutions had not yet been made public, we have always pardoned all those who have presented such petitions, and we have made divine directives on these granting them the pardon they deserve.

⁵ 'Metropolitan cities' = the seat of the provincial governor.

⁶ 'Notaries public' = (Greek) συμβολαιογράφοι; (Latin) *tabelliones*.

Accordingly, so as not to be troubled daily by requests to lay down directives on these, we are, as stated, decreeing that the earlier constitution, included in the Justinianic Code, is to be in force, here, from the time it was published, and in the provinces, from when it was despatched to the metropolitan or other cities, and has become public. As a long time has elapsed since then, and our Code has been despatched everywhere, there is no good reason for it not to be known.

2. However, the latest one, defining the bequest to children, included among the constitutions since the Code, is to be in force, both in this fortunate city and in the provinces, after two months from its notification, as we have just stated. Parallel versions were made of our constitution on children's proportionate share of institution as heirs: one was written in Greek, as being appropriate for the majority, and another in Latin, which by the constitution of our realm is the definitive one. The former has the date March 1st; it was written then, but not put into immediate notification at the time. The Latin-language version, addressed to Solomon,⁷ Most Illustrious prefect of the sacred *praetoria* in Africa, has the date April 1st appended.

3. The Greek version did not become public at once, either, until the one composed in Latin had also been made and despatched.⁸ In fact, the version addressed to our Most Illustrious prefects of our sacred *praetoria* here (that is the Greek one) was actually notified to their court, and despatched, in the month of May. Accordingly, we decree that its legal provisions, describing the children's proportionate share of institution, must be in force here from May 1st of that year, so that we may keep to the two-month period; and that the two-month period from notification should also be observed after its publication in the provinces. Should it, even now, have not yet been despatched to all the provinces, it and any others that may perhaps not have been despatched, or that may subsequently be laid down by us under God's guidance, are now to be despatched as quickly as possible, and are to continue to be so despatched, for our constitutions to become public, and continue to become public, in the metropolitan cities of the provinces. Provincial governors are themselves

⁷ On Solomon, see *PLREIIIB*, pp. 1167–77 (Solomon 1). A native of the empire's eastern frontier with Persia, he fought under Belisarius against the Persians and accompanied him to Africa, where he twice served as Praetorian Prefect (hence his receipt of the present law). He died in battle against the Moors in 544 (see Procopius, *Anecdota* 5.29).

⁸ It is revealing that although the Latin version is effectively presented as the more prestigious, the Greek text was drafted first.

to send them, and continue to send them, to all the cities under them in each province, so that in future no-one pleads any ignorance as an excuse.

4. Thus the past all has a justifiable pardon; directions of the deceased are to be valid as the testators have made them even if of recent provenance, and even if they did not, in accordance with the legislation in force earlier, write the heirs' names in their own hand, or had failed to reveal them to the witnesses, or have left no more than three *unciae* to the children. As we have just stated, we do not want testators' directions to be overturned; we declare these wills entirely valid. Thus, even should wills have been written closely after the laying down of the law, and not have been altered when the testators perhaps lived on, the institutions originally made in accordance with the laws publicly known at the time are even so to retain their validity, without being impugned for the testators' failure to alter them later in their lifetime. Not everything is in our power, and some people do not have time for a will: death often comes on people suddenly, depriving them of the power to make one. Thus a disposition that was originally correct should not, in our opinion, suffer afterwards in any way, or be overturned, by reason of not having been altered; it should remain intact, and the intention in the testator's mind at the time should remain valid. It would be an unacceptable thing for what was done correctly to be overturned as a result of something not having been done later on.

5. Accordingly, to sum up, children are to receive three *unciae*, should that be what has in fact been left to them by their father, under wills so made either before the enactment of the law, or after it had been enacted, but before it was published to office-holders. If, however, the wills should include a stipulation that a shortfall must be made up for the children to what was due to them, under the laws as they then were, they are to receive it as under the old laws: thus, if the bequest falls short of the three *unciae*, that is what it is to be made up to, not to the four *unciae*, as was enacted later, but not was yet known at the time.

Accordingly, your excellency is to make public to all, both in this great city and outside it, the decisions of ours manifested by means of this divine law, through proclamations of your own, so that the terms of our legislation may be clear to everyone, for the protection of them all.

Given at Constantinople, May 1st in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John

67 | Houses of worship not to be founded by anyone without bishop's consent; prior provision to be made for upkeep and establishment of house of worship being founded; bishops not to leave their churches; alienation of ecclesiastical immovable property¹

The same Sovereign to Menas, most holy and most blessed ecumenical archbishop and patriarch

Preamble

Although we have included provisions on the most holy churches in numerous laws, we still need yet another, catering for cases that have cropped up, and are still occurring.

Many people, for fame's sake, embark on the construction of most holy churches, but after having built them do not go on and see to setting aside funds sufficient for lighting them, for the support of those serving there, and for the sacred ministry; they leave them as just bare buildings, and either decaying, or deprived of all sacred ministry.

1

What we accordingly decree, first of all, is that no-one is to have freedom to start building a monastery, church, or house of worship, until the most God-beloved bishop of the city has been there, held prayer at the site, fixed

¹ This constitution addresses four issues relevant to Church discipline. First, it reiterates that private religious foundations should only be established with episcopal consent and under episcopal supervision, so as to prevent the secret establishment of heretical places of worship. Second, it seeks to prevent private donors from founding religious establishments but then leaving them insufficiently endowed. Instead, would-be donors of more limited means are encouraged to give to existing religious institutions (including those in the capital) that found themselves under-endowed. The emperor here hints at a superfluity of such foundations in Constantinople. Third, Justinian seeks to prevent bishops from spending too much time in the imperial capital (drawn thither, presumably, with a view to attending the patriarchal and imperial court). Lastly, the constitution further fine-tunes the emperor's recent legislation on the alienation of ecclesiastical property. On private religious foundations, see esp. Thomas (1987), pp. 37–58.

a public cross there, led a procession and made the enterprise known to everyone. This is because a number of people, under cover of founding so-called houses of worship, have actually been ministering to maladies of their own, by becoming the founders, not of orthodox churches, but of unacceptable conventicles.²

2

Secondly, he is not to build a new church without having discussed it with the most God-beloved bishop, and specified the amount that he is setting aside for lighting, for the sacred ministry, for sound maintenance of the fabric and for the support of those serving there. Should that be regarded as sufficient, he is to begin by making a gift of the funds that are going to be set aside; only then is he to construct the building. It may be that someone is not well enough off for that, but wishes to do something of the kind because he is perhaps desirous of the fame of being known, like others, as the founder of a church; if so, there are in fact plenty of churches, both in this sovereign city and in the provinces, that have a proper ministry, but are in danger of collapse through age, or else are small, and in poorer decorative condition than those in charge of them would wish: he will be able to take on one such church, and to carry out the building work on it – though that, too, is to be with the consent of the God-beloved bishop of the orthodox. In this way, he will be able to be known as the founder of a sacred house without having to meet any additional expenditure out of his own resources, because the usual expenditures already endowed for this purpose will be met by those who have been providing them before.³

3

There is another point: we are decreeing that, as in the law already issued by us,⁴ the most God-beloved bishops are to stay permanently in their own churches, not to leave them and spend a long time here, thus obliging the stewards over there to remit their expenses to them from their most holy church; they are not prepared to stay there, but they spend its money. Accordingly, we decree that the law already laid down by us is to remain in

² I.e. heretics have been attempting to establish private places of worship free from episcopal supervision, as anticipated by *J. Nov.* 57.

³ Note the implication here that lay foundations of religious institutions in Constantinople had already exceeded levels of economic sustainability.

⁴ A reference to *J. Nov.* 6 c. 2–3 and *J. Nov.* 57 c. 1.

its own force: should the most God-beloved bishop absent himself from his church for too long, no remittance is to be sent to him from the province. The money is to be spent on pious activities and on the most holy church, and he is not to burden his most holy church with expenses while he roams about over here. It is to be understood that if the period of his absence is a long one, our previous legislation on this subject will apply.

4

We have, in fact, already legislated that if ever there is going to be any alienation of ecclesiastical immovable property in the provinces, it is to proceed by *decretum*:⁵ as stated in our previously issued constitution, the *decretum* is to be executed in the presence not only of the God-beloved bishop of the city, and his clergy, but also that of the most God-beloved metropolitan bishop. However, there has been no addition made to that legislation covering what is to be done if it should be the metropolitan bishop who intends to sell, or the most reverend stewards of his most holy church; we are therefore adding that any two God-beloved bishops whom he may choose, from the synod under him, are to be present. All the rest of the procedure already legislated by us is to be observed, with the addition of the two God-beloved bishops. This is so that he may be seen as performing the action on his own authority, but with his synod; just as he is making the action trustworthy and effectual by being in the presence of his subordinates, so too the presence of the synod under him, represented by the two God-beloved bishops, is to be seen as making the action safe, by also receiving the attestation of this sacred synod.

Conclusion

This law of ours is being distributed both to your beatitude's see and to the other most holy patriarchs; you yourself will make it known to the metropolitans under you, by letters of your own, and they will make it clear to the bishops under them. Thus nothing of what we have decreed will escape cognisance.

Given at Constantinople, May 1st in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John

538

⁵ For the public production of such *decreta* (= enactments) before the senior (or 'metropolitan') bishop of the province, see *J. Nov.* 40 c.1.

The most pious Sovereign's constitution concerning bringing successions to gains in childlessness into successions to gains in marriage to be in force for *facta* executed after the constitution; Leo's constitution to be in force for those earlier than that¹

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul, patrician

Preamble

We are aware of the constitution of Leo² of pious memory that was enacted for those (whether husbands or wives) who enter on second marriages; it religiously reserved the gain on marriage for the children of that marriage, by making the original beneficiary secure possessor of the use alone, while keeping full ownership for the children. Its intention was that in the event of the decease of both children and grandchildren, there being no-one left on whose account the person remarrying has been deprived of ownership, the benefit of full ownership should also remain, indefeasibly and entirely, with the original beneficiary.

¹ This law clarifies a procedural issue that had arisen concerning Justinian's earlier reforms on accruals or gains through marriage (i.e. by way of dowry or ante-nuptial gift) and how they were to be handled in the context of inheritance (see *J. Nov.* 2 c. 2, *J. Nov.* 22 c. 47, Van Der Wal (1998), p. 89, note 103 and Arjava (1996), pp. 106–7). Justinian had allowed a widowed spouse whose children from the original marriage were dead to alienate or mortgage such accruals and, in the event of re-marriage, to keep the portion thereof envisaged in the original marriage contract in the event of childlessness. In this constitution, Justinian decrees that the reformed law could only be applied if the last child of the first marriage had died after the emperor had promulgated the reform, otherwise the unreformed regulations were to apply (see Van Der Wal (1998), p. 89 (entry 635)). As with *J. Nov.* 57, the law reveals a tendency on the part of Byzantine plaintiffs to seek to have legislation applied retrospectively when it was to their advantage. '*Facta*' = legal deeds.

² This law is no longer extant as it was not included in the *Codex*. The emperor referred to is most likely to be Leo I (457–474), rather than his immediate successor Leo II, who reigned for less than one year.

1

We recently amended this,³ issuing different directions, with the intention that the heirs of the deceased children or grandchildren (whether those should be the parents, or others) should have some benefit from this source: the original beneficiary was to retain full ownership only of what was in the agreement for a death in case of childlessness, with the rest going to the heirs of the deceased children or grandchildren; no innovation was made by us on the subject of the use.

1. Accordingly, we wish that that should still be in force, both now and for all time; but not if the children had in fact died before the enactment of our constitution. As the entire gain had already accrued to the person contracting a second marriage, because of the children's having died before the law, our law would not interfere with what the previous law, that of Leo of pious destiny, had effected under its own authority. Thus they will not only remain with secure authority over what they gained in the absence of children or grandchildren, but will now have a claim, by right of ownership, on any part of it that is held by others.

2. By embracing these points in a brief law, we are obviating the possibility of such controversies, so as to avoid being constantly troubled by people with requests, and to get rid of such annoyances by enshrining these provisions in a general law. For a person who had previously benefited from the legislation that was in place before our law, we wish the terms of that legislation to be observed.

Conclusion

Accordingly, your excellency is to publish our decisions, thus made, to all, by means of proclamations and ordinances of your own.

Given at Constantinople, May 25th in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John

538

³ A reference to *J. Nov.* 2 c. 2, reiterated by *J. Nov.* 22 c. 47.

69 | Governors of provinces to be obeyed by all, in both criminal and financial cases; cases to be tried there, without exception for any privilege other than divine pragmatic directive¹

Emperor Justinian Augustus to the Constantinopolitans

Preamble

Of all human virtues, there is one that must be held the most perfect, because it awards to all their just deserts; we mean justice, named from that fact: unaccompanied by its benefits, none of the other virtues would have its proper character.² For that reason, even courage, if not associated with justice, is not something that we shall praise, despite the fact that the ancestral language uses ‘virtue’, on its own, to mean prowess in arms;³ should one remove the element of justice from that, it would become merely a means for crime, not for anything better. As we observe that justice has been disregarded in our provinces, we have thought it necessary to reinforce it by means of a law in the service of God, and to bring it up to its proper strength.

As it is, there are many who have devised means for themselves – such as divine rescripts, privileges, pragmatic directives, official ordinances, or one pretext after another – for committing offences in provinces, and then claiming to have them tried elsewhere. But if someone has suffered, in one place, a misfortune such as loss of belongings, or involvement in litigation over land-boundaries, ownership, possession, a hypothec or anything else,

¹ This constitution essentially forms a pair with the recently promulgated *J. Nov.* 53. It upheld the principle that court cases should be heard in the province in which the plaintiff resided and repealed exemptions to that rule that had been granted to favoured individuals, religious institutions and the administrators of imperial estates. By limiting disputes caused by this issue, the emperor again here attempts to curtail the flow of appeals to Constantinople (a persistent aim of his legislation).

² ‘Named from that fact’ = a play upon the relationship between the word for a right or just desert (Greek δίκαιον, Latin *ius*) and the word for justice (Greek δικαιοσύνη, Latin *iustitia*). The preface here echoes *Institutes* 1.1 (‘Justice (*iustitia*) is an unswerving and perpetual determination to acknowledge each man’s right (*ius suum*)’).

³ ‘Virtue’ (Greek ἀρετή) referring to the Latin *virtus*, in a military context ‘courage’. Note the description of Latin as the ‘ancestral tongue’ (it is also likely to have been the emperor’s native language: see Honoré (1975)).

how could he, in a different place, be able to produce proof of what has happened to him? By acting in this way, what those who contrive such situations are doing is merely showing off their power, and a strength that does not rely on justice. In doing so, people are relying on holding their power perpetually; they have no regard for the uncountably many examples there are of the fact that only after looking long and hard, and only in very few cases, do we see that powerful men have powerful descendants, and rich ones rich descendants. Generally, the descendants of the powerful tend to be weak, and those of the rich to be poor; what does descend to the children is their fathers' wickedness.⁴ These people do not consider; they do not calculate that their schemes for using their positions of power, supposedly to their own advantage, may be acting against the interests of their descendants, to whom that same power does not descend.

1

It is with these considerations in mind that we have thought it necessary to lay down the present law.

We proclaim to all the inhabitants of the provinces, all those obedient to our sceptre in our whole subject realm, facing both the rising and the setting sun and to either side, that everyone is to undergo trial in the province in which he commits an offence, or in which he becomes liable to proceedings, financial or criminal, whether over land-boundaries, ownership, possession, hypothec or any other issue whatsoever: there is to be no attempt to gain unfair advantage outside their borders. That is something that has been stated in various ways in legislation by our predecessors, even though not completely, or in the manner that we have determined.

1. Because of the availability of proofs, any required prosecution, writ – if required – and trial must under all circumstances take place locally, whether it be on large-scale crimes or transactions, or, equally, on a minor offence. Owing to his opponent's strength, or his own weakness, a litigant might be unable to prosecute him properly, even there, in the locality; it would be far more seriously wrong if he were unable to gain his rights, even in minor matters, without going to court over them only after waiting, travelling abroad and having his opponent taken there.

What could be more scandalous than for someone who has been wronged by, perhaps, the theft of an ox, a horse or one of his pack-animals or

⁴ Justinian here suggests a relatively high degree of downward social mobility within the late Roman world (on social mobility in general, see Hopkins (1961)).

herd-animals, or (to take the most insignificant example) a domestic fowl, to be obliged not to take the matter to court where the theft has been committed, but to hurry off elsewhere and face a demand, over there, for proofs of what has happened to him, so that he either has to meet costs far greater than the value of the case, or to groan over his lack of means, and endure it?

This is the cause of there being a great number of people petitioning us every day, causing us trouble in such cases over what are, in the main, minor matters. It is also very troubling for us, personally, to see a great many men, and a great many women, leaving their own regions and travelling to this fortunate city, most of whom have had to beg and borrow for the means to do so; sometimes they even die here.

2

Should both plaintiff and defendant be resident locally, the case is certainly not to be haled off to another province, nor to this fortunate city, either on the basis of any privilege or by command; it is to be concluded on the spot. If one party is there and the other not, and the party present is being wronged by a member of the other's household, it is the actual person who has perpetrated the wrong who is, in any case, to be sued, be he a manager, a tenant or anyone else of his; but he is to be able to receive a time-limit proportionate to the distance from the province, in accordance with the general law laid down in the past,⁵ for making a report on the case to the person on whom the responsibility for it devolves.

1. Should the province in which the case is being conducted be not far off, with only one or two provinces in between, the time-limit given him is to be of four months; should the distance be greater than that, of six; and if, perhaps, from Palestine, Egypt or one of the further provinces, eight months will suffice for it. However, if it is from one of the western or northern provinces, or from those in Libya, then the period to be fixed is that which was also regarded as sufficient by our predecessors as legislators, namely that of nine months. Thus, if the principal has confidence in the actual person who has sent him the information, he is to entrust the case to him; if he is not so minded about him, he is instead, without fail, at least to despatch someone else to take over the action altogether, and to implement the verdicts, whatever they may be, unless there should be an appeal, whether on a major or a minor issue. Should the informant not have

⁵ A reference to *Codex* 3.11.1. A principal could be held responsible for the actions of his agents, especially if they were slaves or sons under paternal power (see Nicholas (1962), p. 201).

been entrusted with the case, and the allotted period have elapsed, the person hearing the case is to cause the accused, even against his will, to appear in his court, and to conduct the action as principal on behalf of the person absent. After trying the case in the presence of the person defending the suit, should the latter prove liable, he is to give judgment both against him, should he prove to be in any way guilty, and also against the party who did not choose to despatch someone to the province after receiving such information. Should he be well off, he is himself to pay the amount awarded; should he not be well enough off to pay the full award, the consequent shortfall to the winner's costs is to be made up out of the absent person's holdings.

3

If the party who has been ordered to produce in court either the principal in the case, or someone acting legally on his behalf, should not himself actually put in an appearance, he is then to be summonsed, in the name of the law.⁶ If he does not respond, he is to be condemned even in his absence, by the procedure known as 'undefended action',⁷ because no less serious a view would be taken of a contumacious absentee than of one who presents himself. However, should he, perhaps, have presented himself or sent someone, while the accuser himself has failed to appear, the judge is then to acquit the accused, and to compel the calumnious accuser to make good his costs. Thus everyone will behave fairly, thus they will cease offending, and thus they will not suppose that wealth can overcome justice.

1. It has not escaped us that even this may not suffice to remedy the problem completely, if judges favour the more powerful, rather than those who are in their province, and whose desires are more for justice. Nevertheless, we know that we have remedied most wrongdoings by this legislation; or rather, the whole will have been remedied, as far as was in our power. Given that we do not confer positions of authority unless the recipients first take an oath to administer justice to all, and to keep their hands clean, I do not think that after the present law we shall need to add anything further, as long as they conduct trials justly, with regard both to the law and to their oath.⁸

⁶ See *Codex* 9.40.

⁷ 'Undefended action' (Greek ἐρημοδικιον: see *LSJ*, p. 687). The Latin of the *Authenticum* uses the Greek word but glosses it 'id est desertae causae' ('that is of an abandoned case').

⁸ For the oath (including the verbatim promise on the part of governors to keep their hands clean) see *J. Nov.* 8.

4

No-one at all shall snatch the guilty out of the provincial authorities' reach by means of any privilege, power or directive; unless, that is, a divine pragmatic directive of ours, issued for a reason of state, should order that someone is to be here for trial, or unless the law should do so, as in appeals. Even that, though, is something that we have in large part remedied, by making many of the higher provincial governors into judges of appeal,⁹ so that, whenever the matter in question is not something of the highest importance, the appeal proceedings are to be carried out before them, rather than in this fortunate city.

1. We have dedicated this law to justice; and we shall increase its justice still further if we permit no-one to have any privilege against it. No privilege whatever is to be excepted from this law, even if it is one that has been granted to one of the most holy churches, one of the holy hospices or any most venerable house at all, to any even of the Sovereignty's households¹⁰ themselves, the divine *patrimonium* or the divine *privata*¹¹ – which are deservedly ranked second in honour only to that which proceeds from above –, to any office-holder or person in power, or in general to any of those under us at all. All are to be obedient to the law, and in deference to the rule of justice they are to respect it and to keep it strong throughout, having regard not only to themselves but also to their eventual successors. They are to be aware that virtually nothing on earth remains in the same state, but nature is constantly flowing in numerous irresistible twists and turns that cannot easily be either foreseen or foretold;¹² only God, and, under God's guidance, the Sovereign, can control them fairly and equitably.

⁹ See *J. Novs.* 23, 24, 25, 26, 27, 28, 29, 30, 31 and 50.

¹⁰ 'Sovereignty's households' (Greek *oikoi*) = estates of the imperial household or *domus divina* (see *J. Nov.* 30, note 36). For papyrological evidence for such estates in Egypt, see Azzarello (2012). Delmaire (1989), p. 231 suggests that this novel provides the first clear evidence that Justinian had separated off the resources of the *domus divina* from the broader body of imperial estates under the control of the *res privata* (see *J. Nov.* 30, note 36), and dates the probable date of this reform to around 536 (*ibid.*, p. 232).

¹¹ The (*sanctum*) *patrimonium* and (*res*) *privata* were two different types of imperial estate, the administrative and structural differences between which do not appear to have been extensive (see Bury (1911), pp. 78–80). The former comprised estates belonging to the emperor the revenues from which the Emperor Anastasius had hypothecated to the fiscal department of the *sacrae largitiones* ('imperial largesses'), probably so as to make up for a diminution in tax revenues caused by his decision in 498 to abolish the tax on mercantile profits (*collatio lustralis*): see Delmaire (1989), pp. 694–5. For the estates of the *res privata* see *J. Nov.* 30, note 36.

¹² The obligation incumbent upon the emperor to respond legislatively to universal flux is another common trope of the novels (see Lanata (1984a), pp.165–88).

2. Should anyone make use of any divine directives, pragmatic or other, that have been issued to him on any such matter, they will be absolutely invalid, and governors will pay a heavy penalty, should they give them any acceptance. Our remedy applies not only to the past, but also to the future: if anything of the kind should hereafter be issued to any of our subjects, or else to any of the institutions stated above as being prohibited – we include among these, as stated, churches, holy monasteries, our divine households, the divine *privata*, and the divine *patrimonium* – these, too, shall have absolutely no validity. Justly, this law will extend its force in every direction, simultaneously securing the future and remedying the past.

3. You subjects, accordingly, all of you whom God has granted to our ancestors and to us, are to know that in giving you this law we are granting you security: you will not be travelling long distances, nor be wailing against the great, nor will you blame us for failing to provide a remedy for this. Each of you will see, at close quarters, the punishment for any loss or injury that he may have suffered; and seeing it remedied, he will sing the praises of the great, good God who has rightly and justly given us the illumination for the enactment of this law.

Office-holders who break this law, or allow it to be broken, are to be penalised by forfeiting their position, and by a fine of ten pounds of gold.

Conclusion

Accordingly, the Most Illustrious prefects of our sacred *praetoria* throughout our subject territory, in knowledge of this law, will advertise it in the dioceses under them: in all Italy, in Libya, in the Islands, in the East and all over Illyria. Everyone shall know how we care for them in offering to God, who has provided us with so much, the law that will give us a strong point in our own defence, by reason of having legislated thus for our subjects' well-being.

[In Latin] To be published in Constantinople

<Given at Constantinople, June 1st> in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John [Supplement as in Auth.]

70 | City councillors to be released from the council on achievement of the honour of the *praefectura* only if they have received the actual office¹

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

Numerous parts of previous legislation, having fallen into neglect and been hardly used, have come to be regarded as not having been legislated at all. We know, for instance, that there was an ancient form of prefecture described as *honoraria*,² and that *codicilli*³ for it were issued by the Sovereignty. It was given that name on the ground that all it conferred on those found to deserve it was just the honour; it did not release city councillors from their curial status, unless one had held the office in actual practice. In the case of the Most Illustrious military commander – a post that our laws declare to be *praefectoria* although all that the *codicilli* for it confer, on their own, is merely esteem, without freedom from status –, we observe that none of them were released from such status, even in virtue of the rank of general,⁴ without having held the position in practice; and it is just the same in the case of the prefecture itself: should someone be going to be free of such status, it is necessary for him to have taken up the office itself before he can be released by it from the bonds of the city council.

¹ The East Roman Empire in the sixth century still relied for much of its local administration on the delegation of responsibilities to provincial landowners who were enrolled on the council of their local city (Latin *curia*). Elevation to senatorial status, such as resulted through advancement in the imperial government, however, freed men of such ‘curial’ status. In this law, Justinian seeks to bolster the provincial city councils by re-iterating a regulation that had seemingly falling into abeyance, namely that only those who actually held high-ranking posts (such as that of *magister militum* or praetorian prefect) were excused curial obligations. Those who were granted such ranks in a purely honorary capacity, by contrast, remained bound to their native *curia* (for full discussion of the general issue, see Laniado (2002)). ‘*Praefectura*’ = ‘prefecture’.

² ‘*Honoraria*’ = honorary.

³ *Codicilli* = letters of appointment, warrants.

⁴ ‘General’ (Greek στρατηλάτης) = (Latin) *magister militum* or supreme regional military commander (see Durliat (1979) and Lee (2005), p. 117).

1

Accordingly, we are reviving such a law. We decree that, should the Sovereignty ever decide to honour a city councillor, and to do so in a way that releases him from his status, it is to award him the insignia of the office, and install him as holder of such high offices as those of urban prefect in the elder Rome and in this, our new one, or of the praetorian seats of the East, the West, Libya and also Illyria, all of which God has made subject to us. They will enjoy their freedom only when they have been found worthy of such high honours as to be carried in a curule chair,⁵ with the heralds' cries in their ears, and also to ascend judicial thrones; that is how will they be free of such status.

However, should it be the will of the Sovereignty to confer on him only the honour, it will make out codicils and bestow those on him. The extent of this grant from the Sovereign will be that he is seen as having been honoured, and is a member of the great council,⁶ but not that he is released from his local council or its membership list. He will remain in his original status, having gained only the honour; and he will be grateful for that to God and to the Sovereignty, as having raised him clear of his previous low level, up to something finer.

This is to be an additional distinction from the Sovereign; it is one that does not reduce the tax-revenue, nor release the city councillor from his status or from his customary obligations.⁷ It enhances the respect that the person found worthy of this honour had possessed at the time, rendering him more distinguished, and pre-eminent above the other city councillors by the honour alone.

Conclusion

Your excellency is accordingly to take pains to observe our decisions, in the knowledge that we have not reduced the number of city councillors but have also rendered them altogether more distinguished. Thus the cities will know of these decisions by means of your proclamations, so that the city

⁵ The 'curule chair' was the ceremonial chair upon which Roman magistrates were entitled to sit. The constitution here suggests that the traditional Roman procedures for appointment were still followed in sixth-century Constantinople. On the curule chair and its post-Roman history, see Schäffer (1989).

⁶ 'Great council' = the senate of Constantinople (on which see Skinner (2008)).

⁷ 'Obligations' = (Latin) *munera*.

councillors in them, becoming aware of this, will have good cause to applaud our rule.

Given at Constantinople, June 1st in the 12th year of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished John 538

71 | ***Illustres* in financial cases to plead through representatives in all circumstances; also cases on *iniuriae* under the criminal procedure, by the privilege granted them. Those of Most Distinguished status to be allowed to plead financial cases both in person and through representatives¹**

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul, consul ordinarius, patrician

Preamble

We think it good to provide an amelioration, in a brief law, for measures that are supposed to lead to honour and higher status, but whose effect may actually be to bring, not honour, but some financial loss.

It has been stated in some constitutions that nobody of Most Distinguished status² may contend an action in person, but they must in all cases do so through representatives. This was laid down by antiquity for the honour of high ranks; but we observe that there are a number of those who have attained high rank, and are inscribed as the holders of Most Distinguished status, such as *comites*, *tribuni*³ or any other such dignitaries, but who own only moderate fortunes, and are thus quite unable to appoint a representative and meet the consequent cost.

¹ Roman law had hitherto obliged those of senatorial status to act through legal representatives (Latin *procuratores*) in certain types of legal proceeding. This was partly to protect their dignity, and partly to prevent their potentially over-bearing presence from influencing judgment. In this law, Justinian limits the application of that law to the highest rank of senators (i.e. *illustres*). Those senators of lower standing, the emperor relates, were sometimes of more modest economic means and thus found the cost of appointing a legal representative prohibitive. ‘Those of Most Distinguished status’ = (Greek) λαμπρότατοι, i.e. members of the third senatorial grade (Latin *clarissimi*) who came after those styled *spectabiles* as well as the *illustres*. By the time of Justinian, only *illustres* actually sat in the Constantinopolitan senate (see Guiland (1967), Haldon (2005), pp. 39–41 and Jones (1964), pp. 529–30).

² ‘Nobody of Most Distinguished status’ = no *clarissimus*.

³ *Comites* (‘counts’), *tribuni* (‘tribunes’) = those who have acquired senatorial rank through military careers. The former were more senior than the latter (see Southern and Dixon (1996), pp. 60–1).

1

Accordingly, we decree that at the level of the Most Magnificent men of the *illustres*, this is to apply; they must under all circumstances contend financial suits through a representative, and must also launch ones of *iniuria*⁴ through a representative, by the criminal procedure, under the privilege granted to them for that. This is so that they are not obliged either to sit with the office-holders while they take the case, or else to be brought before them as litigants; that has dangers on both sides, either of being injurious to high rank, or of improper proceeding on the part of the judiciary.

Otherwise, all below the level of the Most Magnificent *illustres* are to have licence both to have representatives to represent them, and to contend in person, as they wish, without thereby being subject to any bar, loss or penalty.

Conclusion

Accordingly, your excellency is to publish our decisions, manifested by means of this divine law, to all, by carrying out the actions customary for these purposes.

Given at Constantinople, June 1st in the 12th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished John

538

⁴ *'Iniuria'* = a wrongful act which injured a person either physically or reputationally (see *Institutes* 4.4 and Berger (1953), p. 502). The Greek text uses the Latin term, despite the fact that the Greek ὑβρις ('hubris') provided a perfectly adequate translation, thereby once more indicating the extent to which Latin terminology was sometimes deployed in the Greek text simply so as to imbue it with an antiquarian and Roman aura.

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul, consul ordinarius, patrician

Preamble

It is a major concern for the lawgiver that all the realm's affairs should be in the best possible condition, and free of crime; but a matter on which particular pains are taken by those who have received from God the authority to legislate, namely the reigning Sovereign, is that of the contractual arrangements of wards, and their guardianship.

We have heard many cases in which, shockingly, the guardians obtain cessions² against their wards (whether children, or ephebes³ now in the second phase of life), and at once become secure possessors of their estate. This may be either by taking on fictitious debts, or by obtaining, at a low price, the cession of debts that are completely hollow, or even by concealing the existence of receipts for debt-payments that are among the wards' effects; and on thus receiving cessions by these means, and many others – once a person has turned to dishonesty, what might he not devise? – they appropriate the wards' property.

1

We mean to legislate to rectify all that, as well as another matter: namely, that should someone have a minor or his property under an obligation to

¹ Roman law allowed the transfer (Latin *cessio*) of one person's rights (such as a claim to sue) to another (see Berger (1953), p. 387). In this constitution, Justinian attempted to prohibit guardians (Latin *curatores* and *tutores*) from acquiring legal claims to the property of their wards through *cessio*, or acting as guardians to those whose estates had a claim against them. The chief concern was clearly that guardians should not abuse their position to acquire their ward's property by acquiring the right to sue the ward's estate for an unpaid debt, or to escape a debt owed to the ward's estate. Justinian also attempted to prevent guardians from escaping the obligations of guardianship by acquiring or fabricating such claims. On the institution of guardianship, and its importance to Roman society, see Saller (1994), pp. 181–203.

² 'Cession' (Greek ἐκχώρησις) = Latin *cessio*: the transfer of a creditor's rights to a third party (see Berger (1953), p. 387).

³ 'Ephebes': those who had attained puberty but were under the age of twenty-five, and who could thus be assigned a guardian (*curator minoris*) if they were deemed to need special protection. See Buckland (1963), pp. 169–72.

him,⁴ he is not even to undertake his guardianship at all, even if called on by law to do so. After all, if he were secure possessor of the ward's property as well as of that of an opponent of his, what could he not do in his own interest? For that reason, a further point we are legislating is that, should a person entering on the role of guardian prove to be manifestly under an obligation to a claim with respect to the rights of the minor, that person, also, will not become his guardian; this is to prevent him from stealing a document, or abstracting other pieces of evidence that are in the ward's possession, with the result that his guardianship would prove ruinous to the ward's affairs. A securely binding legal principle is to be that no-one asserting a claim against the deceased's property, against the minor himself or against the minor's property, or else being himself manifestly under an obligation to a claim, is to undertake his guardianship, or to have freedom to do any such thing.

2

Another general rule is that, should anyone already in position as guardian acquire a claim against his ward, perhaps by an inheritance coming down to him from someone who had a claim against the ward, or for some other such reason, he is no longer to be trustworthy as sole guardian of the young persons, or minors; a second is to be paired with him as supervisor⁵ (as we frequently find in legal provisions)⁶ to keep watch on him, so that there is no malpractice against the minor, or his estate, on the part of the guardian who has meanwhile acquired the claim against him.⁷ But that is the very behaviour which he is to avoid, having taken the oath on appointment to observe that, in addition to fear of punishment for betrayal of trust in relation to his fellow guardian.

3

In order not to concede refusal of tutorship⁸ or supervisorship to everybody who may assert a claim against the minors' property under them, or

⁴ 'Under an obligation' (Greek ὑπεύθυνος). What is really meant here, however, is indebted.

⁵ 'Supervisor' = Greek κηδεμών, often used as 'guardian' in general, but here = Latin *curator*, a guardian or 'supervisor' with a special responsibility, e.g. for those from puberty to twenty-five who need particular care. See *Institutes* 1.23. For the translation between Latin and Greek terms for guardianship in legal texts, see Van Der Wal (1999a), pp. 128–30.

⁶ See, for example, *Institutes* 1.23.

⁷ See *Institutes* 1. 26.

⁸ Greek ἐπιτροπή, used for the Latin *tutela*, meaning here an ordinary guardianship for children up to puberty. See *Institutes* 1.17–22 and Van Der Wal (1999a), pp. 128–30.

to be manifestly under an obligation to a claim from them, we decree that should anyone say that he has a claim against the minor or his property, or against the minor's parents, he is then, within the time allowed for refusal, to give proof of that to the judge making the appointment of guardian, and thus be released; or else, should it be unproven, he is to take an oath on the holy scriptures that his claim for refusal is due to his being sure that he genuinely has a claim against the minor. Should that be the case, he is to have nothing to do with either tutorship or supervisorship, but is to be kept as far away from them as possible, to avoid our giving the minor an enemy in this way, instead of a guardian; . . .

4

. . . should he, however, say nothing about it at first, and become guardian, he is to know that, for having deliberately dissembled in face of the law, he will forfeit any action against the ward, even if it would have been justifiable. Also, should someone manifestly under an obligation to a claim say nothing about it, he too is to know that he will undergo the penalty of being unable to extricate himself by means of any payments, or other settlements of the debt, that he may have feigned to make during the time of his guardianship.

5

Should someone become a guardian, as stated, but then interfere with his ward's property by executing cessions⁹ in his own favour, by gift, by sale or by any other means whatsoever, he is to know that his action will be entirely invalid. Neither in his own person, nor by the agency of an intermediary party, is there to be any such transaction; and any such that does take place is to be completely unsafe and void. Let it be clearly understood that should he sink into such an attitude, all that his efforts will be achieving is, for one thing, the perdition of his own soul, and for another, the profit of the property that is only apparently his.

1. It is not only during his guardianship that we are disbaring him from such a cession, but also after it. This is so that he cannot manage it with that idea in mind, and set it up in advance; and then perhaps, on ceasing to be guardian, when his maladministration has gone unnoticed, take on the cession now that he is no longer guardian, and use it fraudulently. In that

⁹ 'Cessions' = Latin '*cessionēs*': see c. 2, note 2.

case, too, we intend the whole proceeding to be invalid; no ceded action is to be able to succeed against the person previously in his guardianship, but is to be void.¹⁰ Even if the cession should have been on true grounds, the profit therefrom is to belong to the ward, and not to revert to the person who executed them, as if nothing illegal had apparently taken place in the interim; instead, the outcome is to be that he forfeits what he has gained by breaking our law, and that that gain goes to the ward. Should we not impose this penalty, crime will be easy to commit: he will get the person who made the cession to renew the action, and will take the profit from the cession via the intermediary, having criminally evaded the law.

We mean this to apply to every guardian in all situations where the laws provide for a guardianship of anyone, whether for the profligate, the insane, the demented or any other case, either one that the law has already covered, or any unexpected one that nature may devise.

6

We observe that any guardians who are God-fearing embark on guardianships only reluctantly (though for the large number whose aim is the impious malversation of their wards' property to their own advantage, they are something desirable, and readily acceptable); and we also observe that what makes the task of guardian particularly disagreeable is the obligation to make investments. Hence, we decree that there is no obligation on guardians to invest their wards' money, but only to deposit it safely, and keep it for them; lasting safety for the capital itself is preferable to losing that, too, in a quest for interest, and also to the guardian's being at risk should he fail to invest it, but again, should he invest it, being at risk in the event of the investment's proving a failure. Should he, of his own accord, decide to invest, perhaps on receipt of securities or other forms of surety that he regards as being unquestionable, he is then to have the two months' grace each year that the laws call a *laxamentum*;¹¹ but he is to be aware that the risk of the investment will in all circumstances rest with himself.

7

Should the ward have sufficient means, the outgoings are to be at his expense; if they are more than sufficient, the surplus is to be deposited.

¹⁰ See *J. Nov.* 54, note 11.

¹¹ The word *laxamentum* is also attested in this sense at *Digest* 26.7.7. (11). Otherwise, it is used to indicate the lucid intervals of a madman (see Van Der Wal (1998), p. 67, note 64).

If, as may be, the ward's property is movable, the guardian is then to be obliged to invest only what suffices for the administration of the ward's affairs, while the excess is to be safely deposited; but the guardian will also be allowed to take steps, with all scrupulousness, to see if he can find, as he well may, a safe source of income to invest in for his ward out of the excess funds: it should not be liable to heavy public taxes, its seller should be financially sound, and the income should be ample. That is an additional action that we give the guardian freedom to take; but he must understand that, should he be in any way remiss over any of these points, the risk of this purchase will pertain to him.

8

However, the ward's fortune may be only barely enough for the income to support him and his household, and to provide for the rest of the business of living. If so, this is then what necessity demands of us: guardians must look to God, and make such arrangements as they would for their own affairs.

When a court order is made handing over a guardianship to the person undertaking it, we wish him also to swear an oath, with his hands on the divine scriptures, that he will go down every avenue to do what is in the ward's interest. That will not dispense him from keeping accounts, or from the dictates of the law; but the recollection of his oath will make him more reliable in his management of affairs, and more consistently careful over them.

This law is to be enacted for the protection of those in need of guardianship; we shall not hesitate to add to it anything else that we may devise, in order to act, throughout, as fathers to those who cannot come to their own assistance.

Conclusion

Accordingly, your excellency is to publish our decisions to all by means of proclamations in the provinces under your command, so that no-one may be unaware of the pious provisions of our legislation for the care of our subjects.

Given at Constantinople, June 1st in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John

73 | Deeds exhibited before judges: how they are to be certified as genuine¹

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

We are aware of our laws that intend comparison of handwriting to be one way of attesting the authenticity of deeds; and we also know that, once the criminal action of tampering with deeds had become widespread, some emperors used not to allow such comparisons, because they were convinced that forgers made it their one aim to become as practised as possible at imitating handwriting – forgery being nothing but imitation of the genuine.²

Nowadays, we have been finding innumerable instances of forgery, in many of the cases that we have heard; and a strange case has come up before us, from Armenia.³ A deed of exchange was exhibited, in which the script was judged not to match; but subsequently, when the witnesses whose signatures were on the deed were found, they acknowledged them, and the deed was accepted as genuine. The strange thing about it was that the writing was seen as untrustworthy, despite having been scrutinised, whereas the witnesses' statements coincided with the truth, even though the credibility of witnesses is regarded as somewhat unreliable. We observe, however, that this matter, by its nature, often requires

¹ As noted in the Introduction, a feature of Justinianic law was a growing reliance on written instruments in legal proceedings. In this law, Justinian addresses the problems posed by authenticating documents by handwriting, and advises that documents be witnessed by no fewer than three witnesses if a litigant wished the evidence of such documents to stand up in court. The law also casts light on the difficulties posed by the growing reliance on written contract in a society in which there were significant levels of illiteracy, or in which the services of public notaries were not uniformly available, on the implications of which see Sarris (2013). It is revealing, for example, that the emperor states that the full requirements of this law were only to be demanded in cities, and not in the countryside.

² The issue of forged legal documentation and the need to authenticate handwriting had recently arisen in *J. Novs.* 44, 47 and 49 c. 2 (see Feissel (2010), pp. 504–7). It was also a major concern of the historian Procopius (*Anecdota* 28). For this issue in near-contemporary Visigothic legislation, see Everett (2013), p. 86.

³ The constitution thus provides evidence for the effective legal integration of the recently assimilated Armenian territories, as demanded by *J. Nov.* 21 just two years earlier.

examination: dissimilarity of script may often be due to the passage of time (a person's handwriting would not turn out to be the same in his youth as in his full vigour, and as in his old age, when it is perhaps shaky, as well); or it may often be due to illness – and why talk of that, where it is a change of pen, and of ink, that has precluded perfect consistency of matching? It would be beyond us to recount all the novel problems that the fertility of nature's invention poses us, as lawgivers.⁴

1. However, God's purpose in sending sovereignty down from heaven was so that it could bestow its benefits on difficulties, and adapt laws to the diversity of nature. We have accordingly thought it necessary to make this further law, and to present it as common property to all our subjects, both those whom God has entrusted to us previously, and those whom he is always gradually adding.

As we have also found some controversy and dispute arising over handwriting in the matter of deposits, that is another thing which requires our full attention. We must therefore begin, at once, with deposits.

1

Accordingly, anyone who wishes to deposit money securely is not to rely solely on the recipient's signature. (That is what was in question in our case: the person said to have signed did not agree that the handwriting was his, and this produced serious confusion. He was made to do some other writing, which appeared similar, but not entirely matching; and as far as the handwriting went, the case remained undecided.) Instead, on making the deposit he is to call in no fewer than three witnesses as well, of the highest possible character and trustworthiness, so that we are not dependent on handwriting alone, with comparative examination of that, but that the judges may also have the assistance of witnesses.⁵ A form of evidence that we certainly do accept is the attendance of witnesses who say that the contracting party signed the deed in their presence, and that they are sure of it. Should we find that there are no fewer than three such trustworthy witnesses, such a confirmation is one that we do not disallow; after all, our purpose in laying down the law is not to restrict the means of proof, but to make sure that they do exist, and are reliable.

⁴ For this trope in Justinian's legislation, see Lanata (1984a), pp. 165–88.

⁵ In legal proceedings it was obligatory to produce the original of any document used in pursuit of a claim. The requirement (or preference) for documents to be witnessed by three witnesses repeats the provisions of *Codex* 4.21.20 and 8.17.11.

2

Also, anyone making a contract for a loan, or anything else, who does not wish to have it drawn up in public (which is an additional requirement that we do make in the case of a deposit), is not to suppose that a signature on the loan deed is enough attestation on its own; it is only so if it has the presence of no fewer than the three trustworthy witnesses, so that, whether they should appear in person and testify to their own handwriting, or others should appear and testify that the deed was drawn up in their presence, it may be doubly authenticated. Not that scrutiny of handwriting, as well, is to be discarded altogether; but it is insufficient on its own, and is to be confirmed by addition of the witnesses.

3

However, in the event of a case similar to what happened in Armenia, in which comparison of the handwriting tells one story while the witnesses' evidence tells another, in our own opinion what is spoken by a living voice, under oath, is then actually more trustworthy than handwriting on its own; rather than such means, it is to rest with the shrewdness and religious devotion of the judge to rely on true facts.

That is the way in which we think deeds must be proved reliable, . . .

4

. . . but should anyone making a deposit or a loan, or any other contract, be content with just the signature of the other party to the contract, it will be his responsibility to realise that he has made himself entirely dependent on the other's good faith. By our law, the reliability of the deed would not be adequately established on the basis of handwriting alone; but should that be supported by the presence of the witnesses before whom the transaction has taken place, or possibly by the last refuge in the matter, namely an oath, we do not invalidate it. It is because we are wary of forgeries and imitations, and do not trust them on their own, that we are adding such extra rigour to the process. Our purpose is not to deprive trusting people of their confidence in their own friends, but to do what is possible to detect unscrupulous denials, in more ways than one.

5

Deeds drawn up in public, even if finished off by notaries public, are also, as preliminary to execution, to have the presence of the witnesses attested by them in writing, as stated.

6

However, judges must also enquire into any additional markings they may find inscribed on the papyri,⁶ and try to look for them, and identify them; we know that much may become clear from those, as well. For the reasons that we have stated above, they must not precipitately accept authentication of handwriting by comparison with others.

7

It may be that all the witnesses are dead, or perhaps absent, or that there are other reasons making it difficult to attach credence on the basis of the witnesses who were signatories. It may also be that the notary public⁷ who executed it (should it be one that was done publicly) does not survive, either, to testify to his own work; or that he is away. If so, it is unavoidably necessary to take into account a side-by-side scrutiny of the handwriting in which the deed was completed, or that of the signatories, and it is then appropriate to resort to comparisons; we are not forbidding them entirely, but the proceeding must be with full rigour, particularly should the judge believe that he has to rely on them. He is also to require the party exhibiting it to swear that he knows of nothing dishonest in what he is exhibiting and that he has not caused there to be any deception over the comparison, so that he is making use of it without having had anything at all removed from it, and that total reliability attaches to the proceedings.

1. In the case of deeds drawn up publicly, should the notary public appear and give evidence on oath, if he did not write the deed personally, but through one of his underlings, that person is also to appear – that is, if he is alive and it is at all possible for him to come, there being no reason preventing his presence such as a serious illness, perhaps, or any of the other circumstances that people encounter. Should there also be a cashier

⁶ Papyrus sheets (produced in Egypt) were the main medium for both public and private documents.

⁷ On notaries public (Latin *tabelliones*) and the organisation and regulation of their business, see *J. Nov.* 44 and *Codex* 4.21.17.

on the deed, he too is to appear, so that there can be three witnesses, not just one. Even if no cashier was employed, there is still no place for comparison, so deeds are to be accredited even without it, as long as the notary public has written and made out the whole deed in person, or else the person who wrote it out is away or is for any other reason unable to be present, but the notary public testifies on oath to his having made it out himself. Evidence both in the voice of the person who made it out, and with the additional backing of an oath, would constitute a decisive factor.

2. If the notary public has died, should there be evidence for his having made out the deed by means of comparison with another one, and should its draughtsman and the cashier nevertheless be still alive, they are to appear, if available; the document is then to have authentication both from a comparison of the ways in which they were made out and from the witnesses. Should neither of them be there, there is then to be comparison of the executions, but those are not to suffice for the purpose on their own; the writing of the other signatories, or perhaps of the parties to the contract, is also to be scrutinised. Thus a single composite authentication may be achieved as a result of the combination of all these several comparisons: of the execution, of the signatories and of the contracting parties.

3. Should no means be found other than comparison of the deeds, the procedure hitherto in force is to be followed: the party exhibiting the deed for collation is to take the customary oath. But in order to give the procedure at least something more towards fuller authentication, the party demanding it is also to take an oath that the reason for his resorting to side-by-side appraisal of the deeds is that he has no other means of authentication at his disposal; and, furthermore, that he has not done, or contrived, anything that could perhaps conceal the truth.

The parties to the contract can dispense with this procedure if both should be willing, by mutual consent, to register the contracts and deposit them with an entry in the records, so as to obviate any malpractice, tampering, forgeries and all the other evils that we are rectifying by laying down the present law.⁸

For documents written in the parties' own hand, our existing legislation on comparisons of handwriting is to remain in force separately; and the existing provisions applicable in the courts for illiterates are, of course, also to remain in their own force. Such matters have already received due process, by means of judicial directives.

⁸ Justinian here suggests that the very fact that a document was publicly archived meant that its authenticity could be assumed (unless it was a document of an especially easy type to forge): see Van Der Wal (1998), p. 172, note 60 and Amelotti (1990).

8

In places where there are notaries public, two* of them must in all circumstances be employed when illiterates are involved, in addition to witnesses; and the witnesses must preferably not be unknown to the parties. This is so that the notaries public may do the writing on the illiterate's, or near-illiterate's, behalf, and that the witnesses may give evidence both that the proceedings were conducted in their presence, and that they know him. That is how such deeds are to receive their authentication. It is to be clear that in such circumstances, so that there shall be no falling short of the highest level of rigour, no fewer than five witnesses shall be brought in; these will include the draughtsman who is writing it for the contracting party, either all of it, or what comes after the few letters that have been put in by the party.

* Contested by S/K: see p. 368 app. crit. on line 31.

1. So much for written contracts. Obviously, should anyone decide to execute any kind of transaction whatsoever in unwritten form, it will receive its authentication either by means of witnesses, or by means of an oath. To ensure that nothing is left unregulated in these cases, either, the plaintiff will call witnesses, and the defendant will take an oath, or will bring in counter-evidence, depending on how the judge administers the case.

2. It is good also to add to the law that should the transaction be up to one pound of gold, such a procedure is in that case not to be observed; instead, the practice in use hitherto is to be followed, so that people do not undergo major ordeals over minor matters.

9

We wish all the above to apply in cities; otherwise, on estate properties, where things are much simpler and there are not many people available for writing or witnessing, what has hitherto been in force there is still to be firm. That is as we have already legislated⁹ for wills, the very things over which we take the greatest pains.

The law is to apply for all contracts and agreements made henceforth; why should anyone legislate for the past?¹⁰

⁹ A reference to *Codex* 6.23.31.

¹⁰ An oblique criticism of the tendency of Byzantine litigants to attempt to have laws which they regarded as favourable to them applied retrospectively: see *J. Novs.* 54 and 68.

Conclusion

What has brought this law into being is the large number of controversies that have occurred in lawsuits, and been brought before us. Our purpose is to put a stop to people's daily controversies with each other, by using the precision of our legislation to forestall their quarrels. It is thus for your excellency, on being informed of this, to make it public to our subjects both here and among the nations. We shall be writing to the other Most Illustrious prefects in the West, in Libya and in the North (that is, in Illyria), so that our whole state may become fully supplied with the law that remedies our subjects' difficulties.

Given at Constantinople, June 4th in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John

538

74 | How children are to be regarded as legitimate or illegitimate; undowried marriages¹

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

It has been correctly said by our predecessors, and above all by the most judicious Julian,² that no law or decision³ laid down for the Roman state was regarded as enacted from the outset to be entirely adequate for any further situation; a great deal of amendment was required to cope with nature's complexity, and with her challenges.

The transition from illegitimacy to legitimacy is a topic on which we have laid down many laws,⁴ of various kinds; but as a result of the daily problems contrived by nature, we have found some deficiency in our previous legislation, which we are now amending. It has been legislated⁵ that should anyone who has acknowledged a woman as his wife solely on

¹ In this constitution, Justinian addresses various issues relating to marriage and children. Firstly, he facilitates the legitimisation of children born out of wedlock to a concubine and protects their interests in matters of inheritance. Secondly, despite the Roman tradition that marriage did not require a written contract, the emperor obliges those of senatorial status who intend to marry to enter into such contracts, and requires other members of respectable society (above the level of the peasantry and military rank-and-file) to have their marriages witnessed and registered at Church. Although this latter requirement would be abolished in *J. Nov.* 117, the constitution thus nevertheless casts further light on the growing institutionalisation of the imperial Church and the growing reliance of early Byzantine law and society on a written instrument. Under this law, only peasants and the military rank-and-file were still to be permitted to marry without documentary proof. Lastly, the law protects the interests of women who had been duped into sexual relations with men who only pretended to marry them, and enshrines the right to inherit of any offspring of such a union. The constitution thus conforms to the general tendency of Justinian's legislation to protect the interests of vulnerable women and children, on which see Krumpholz (1992), pp. 117–204 and Evans Grubbs (2014), pp. 44–9 (who discusses this law in note 103).

² A reference to the second-century jurist Julian (see *Digest* 1.3.10–12). It is interesting that the emperor speaks in this preface as if he were himself a jurist. For the trope of legislation being necessitated by the changing nature of the world, see Lanata (1984a), pp. 165–88.

³ 'Decision' (Greek δόγμα) = (Latin) *senatus consultum*: a decision or decree of the senate issued in response to legal queries from high-ranking magistrates. In the imperial period, these had come to be superseded by imperial enactments (see Berger (1953), p. 696).

⁴ A reference to *Codex* 5.27.10–11, *J. Nov.* 12 c. 4, and *J. Nov.* 19.

⁵ *Codex* 5.27.10.

the basis of an intention towards her,⁶ then has children, and subsequently makes a marital contract with her as well and has legitimate children by her, the children born earlier do not remain illegitimate, in contrast to them; instead, because they in fact constitute the reason for the others' birth, they are reckoned as jointly legitimate with them. That law has itself received amendment:⁷ when the second set of children, born after the settlement, died, some took the view that the first set should no longer derive any benefit from the second ones, as they were no longer in existence; but we amended that by allowing the first set to have rights of legitimacy even so, their younger siblings' death notwithstanding. We also added (as this was also controverted) that even should no children have been born after the settlement, the earlier ones should be registered as legitimate despite having been born before it, as that had been their father's whole object.

1. Something else occurred, as follows. A man had children from a partnership of that kind, and was intending to legitimise them by making a marital contract, in the way devised by us; but the woman's death while their father was making this plan left him without the recourse of our constitution. As he had no wife with whom to draw up the requisite marital contract, his children accordingly remain illegitimate, against their father's will.

A second such case then arose, involving men with whom we are not unacquainted. A man had children illegitimately, of whom he was extremely fond. He wished them to be made legitimate, under the law; but the woman's behaviour was not, in his view, altogether faultless, and he did not think she deserved any title of legality – suffice it to say no more than that she had dishonoured herself. This was thus a second situation that was unfair to the children: in the first case it was because of their mother's death, and in the second because of her misbehaviour.

2. We also know of a third case that has been launched. In this, the father was intending to legitimise his children, in view of our legislation on marriage-settlements; but the children realised that, and when their mother (though not a lawfully wedded wife) came into unexpected wealth from a relative, they kept her hidden away. This was a criminal and

⁶ 'Solely on the basis of an intention towards her' = takes her as a concubine. This is an innovation: marriage 'by intention', without contracts either before or after, is explicitly accepted as marriage, rather than concubinage, in *J. Nov.* 18 c. 4.1 of 536, retracted crossly, in c. 4 and c. 5 below, for all but lower classes; and partly restored in *J. Nov.* 117 c. 2 of 542 (thus perhaps supporting Procopius' criticism that Justinian's frequent legislation resulted in uncertainty as to what the law on a given issue actually was: see *Anecdota* 6.21 and 14.1–11). On concubinage, see *Codex* 5.27.10.

⁷ A reference to *Codex* 5.27.11.

treacherous subterfuge, designed to make it impossible for their father to legitimise them, and so to enjoy the use of their mother's property, in the event of her death – that being what the law, properly, allows to fathers.⁸

To counter such schemes, therefore, is a matter for a strict law; and that is what we are now enacting.

1

We are therefore, by means of a novel method, only now devised by ourselves, giving freedom to anyone with no legitimate children, but only illegitimate ones whom he wishes to legitimise, to turn his illegitimate children into legitimate ones, even should he have no wife at all, or have one who is not blameless, or who cannot be found, or has some legal obstacle to marriage – there being, of course, no legitimate ones in such cases.

The procedure that we have in mind resembles one devised by our predecessors for making freedmen⁹ free-born: that begins with one process, by which they are cleared and given the right to the gold ring,¹⁰ and subsequently returns them to the condition of nature, which originally made no distinction between slavery and freedom, but made man's offspring free. Similarly, a father in the situations we have mentioned above, or in any other such situation that occurs (as we have just said, nature produces many novelties), should he have no legitimate issue, is to be allowed to give his children instatement into the condition of honourable birth from the outset, as we were saying, provided that they were born to him of a free-born mother; he is from then on to have them as his legitimate children, under his authority.¹¹ After all, before written laws came into use, there was originally, when it was nature that used to provide mankind with laws by herself, no distinction between legitimate and illegitimate: the earliest children of the earliest parents were legitimate as soon as they came into the world. Just as with freedom, where nature has created everyone free, but wars invented slavery, so with this: nature produced legitimate offspring, but deviance into lust besmirched them

⁸ See *Codex* 6.60 and 6.61.

⁹ 'Freedmen' (Latin *liberti*) were freed slaves who were nevertheless bound by certain obligations towards their former owner (see Berger (1953), p. 564).

¹⁰ 'The right to the gold ring' (Latin *ius annuli aurei*) was a procedure whereby the emperor granted a freedman (i.e. a former slave) free-birth status and the ability to stand for public office (see *J. Nov.* 78). For the procedures referred to by Justinian, see *Codex* 6.8.1–2, *Digest* 40.10 and 40.11.2 and *J. Nov.* 78.

¹¹ 'Under his authority' = *in potestate*.

with illegitimacy. As the two disorders are similar, the remedies devised for them, by our predecessors and ourselves, must also correspond.

2

Accordingly, if the mother has been genuinely found to have committed an offence against the marriage-bed – only in such a case do we permit this to be done –, the father is to have licence to leave her in her original status; and also if the circumstances should be such that she is either not alive, or not to be found, or something else should have happened, to do with her, which prevents him from going down the route that leads to a marriage-settlement, he may provide for his children nevertheless. He must submit a petition to the Sovereignty stating specifically that he wishes his children to be restored to the natural condition, and to free birth and legitimacy from the outset, so as to be subject to authority under him, and to differ in no way from legitimate children. That done, the children are thenceforth to enjoy such benefit; and they are not to be able to defraud their father, and ward off their legitimation, by hiding their mother away. By this single method, we are remedying for those without legitimate children all such evasions by nature, using so economical a supporting action to rectify so strong an assault on nature.

1. However, should a father of none but natural children not have taken this step, owing to some fortuitous circumstances, and should he die in one of the above-mentioned situations, after laying down in a will that he wishes his children and successors to be legitimate, we grant him freedom for that, even so. Here too a petition will be required: his children, after their father's death, must both explain the situation, and exhibit his testamentary dispositions. They are then to inherit all that their father may have appointed for them, receiving it from the Sovereignty, so that it may come as much by the Sovereign's gift as by their father's; or, in other words, as much by the law's as by nature's.

In saying this we are not abolishing any of the previous legal methods,¹² but are making this into an additional one, for circumstances in which those are not available; because in general, when there are legitimate children, but also illegitimate ones born either after or before, the latter could not be endowed with legitimacy except, in any case, through our constitutions introducing the method of making marriage-contracts.

¹² See *Codex* 5.27.10 and *J. Nov.* 12 c. 4.

3

We are not unaware that adoption was also regarded in the past, by some of our predecessors as emperors, as a not unacceptable method for illegitimate children to become legitimate. However, our father, of pious destiny, and the constitution laid down by him,¹³ condemned such proceedings; and we wish that, too, to remain in its own terms, because its aim has been that of strict morality, and it is inappropriate to put back into currency what has properly been rejected.

4

There is another matter that we think it good to regulate appropriately. This has come to us from much practical experience: it is a long series of suits brought before our Majesty that has led us to the necessity of the present law.

It was expressly stated in ancient laws, and the same provisions are in a constitution of our own,¹⁴ as well, that marriages are soundly valid on the basis of intention alone, even without marital contracts. The result of this has been that our citizen body has become full of spurious transactions: witnesses are coming forward and lying with impunity that, for instance, the husband used to address the woman with whom he was living as ‘mistress’, and she used the corresponding word to him. They thus have a fictitious marriage, with no real substance; and that is something we have thought it necessary to regulate, in accordance with natural laws. Though we are lovers of morality, and legislate accordingly for our subjects, we know, nevertheless, that nothing is stronger than sexual passion, which it takes the admonitions of strict philosophy to restrain, by checking the restless throbbing of lust. When men are in its power, what word would they refrain from using, as [*] a flattering form of address, to the women they are in love with?

* The translation requires deletion of οὐ (‘not’) here [S/K, p. 374, line 30], on the supposition that the copyist thought this to be a second rhetorical question. For an example of a certainly mistaken intrusion of ‘not’, cf. *J. Nov.* 62 c. 1.2. S/K’s use of ὅτερ [line 31] as interrogative makes sense (‘What would they not apply to them, as a flattering form of address?’), but ὅτερ is unexampled in this sense.

¹³ A reference to *Codex* 5.27.7 (a law of Justin I).

¹⁴ Referring to *J. Nov.* 18 c. 4.1, of only two years earlier; see comment at note 6, above. See also *J. Nov.* 89 c. 1.1.

So well did our predecessors as legislators, also, understand such psychological conditions that they actually ban the making of presents during marriage, in order to prevent husbands overwhelmed by desire from gradually denuding themselves of their property, without realising it. We have therefore thought it good to set this into legislative order, by means of a law conducive to morality.

1. In the case of men of Illustrious rank, at the level of our senators and Most Magnificent *illustres*, we do not tolerate the forming of such relationships at all; in any case, there are to be a dowry, pre-nuptial gifts and everything else that befits those with grander titles.¹⁵ As far as those in the upper service appointments are concerned, or in business, and in the more reputable professions generally, should one of them wish to enter into legal marriage without making marriage contracts, he is still not to do so in a haphazard, incautious, uncontrolled and unevidenced way. Instead, he is to present himself at a house of worship and inform the defender of that most holy church.¹⁶ He, in turn, is to assemble three or four of the church's most reverend clergy, and make out a certificate to the effect that on this date in this month of this indiction, in such a regnal year and such a consulship, in his presence in this house of worship, the man N. and the woman N. were joined together in matrimony. If either or both of the couple wish to take the said certificate away with them, they are to do that as well, and the defender of the most holy church, and the other three – or however many he may have decided, but no fewer than three – are to sign it, to that effect.

2. Should they not in fact do so, the defender of that most venerable church is then to deposit such papyrus, carrying the said signed statements, among the archives of the same most holy church – in its holy treasury, that is.¹⁷ The people are thus to have it on deposit as a safeguard, and unless such action has been taken, and the fact has been fully attested in writing, they are not to be regarded as having come together by marital intention; but when that has been so done, both the marriage and its issue are to be regarded as legitimate. We mean this for a situation where no contract of dowry or pre-nuptial gift is made. We have arrived at the

¹⁵ 'Men of Illustrious rank' = *illustres* or senators of the highest grade. Such men, Justinian decrees, are obliged to provide marriage contracts.

¹⁶ 'Defender' = the ecclesiastical *defensor* who policed and protected the legal rights of the Church (see *J. Nov.* 17, note 17). This appears to be the first mention anywhere of marriage being formalised by clergy, something that did not occur in the West till very much later (see Brundage (1987) *passim*).

¹⁷ Note the reference here to ecclesiastical archives (on which see Sarris (2013)).

present decree because we are suspicious of attestation solely from witnesses; . . .¹⁸

3. . . . but as for the least-regarded station in life, owning little property and down at the lowest level of society, it can have that, and is to have licence on that basis. Nor are we concerning ourselves with agricultural workers, or with soldiers under arms, whom the law calls *caligati*¹⁹ – that is to say, with the obscure lower class; in their case, their ignorance of civic affairs, and their desire for nothing but tilling the land, or warfare, is something highly desirable, and praiseworthy. Thus in the cases of lower-class persons, of undistinguished soldiers under arms and of agricultural workers, they are to have licence to unite without written documentation, and live together; and their children are to be legitimate, thanks to their fathers' humble position, or to their full-time soldiering or agricultural work, and to their ignorance.²⁰

5

More frequent than any of the other petitions constantly being made to us are those of women tearfully denouncing men who have been overcome by passionate attachment to them, and who take them into their home and swear on the holy scriptures, or in houses of worship, that they will assuredly take them as their lawful wives. They treat them as their own for a long time, maybe having children by them; but then, when they have sated their desire for them, they throw them out of their house, with or without their children.²¹ We have judged that to be something else that we must remedy.

Should the woman succeed in proving, in legal terms, that the man took her into his home on the basis that he was to have her as his lawful wife and the mother of legitimate children, he is then to have absolutely no licence to push her out of the house otherwise than as the law ordains: he is to keep her as his lawful wife, and his children are to be legitimate. Should she have no dowry, she is to enjoy the benefits of our constitution, and receive a quarter of her husband's estate, either if she should have been pushed out,

¹⁸ The constitution is here indicative of the growing reliance on documentary proof and written instrument in Justinianic law. The requirements with respect to the sub-senatorial 'middling sort' would be repealed, however, by *J. Nov.* 117 c. 4.

¹⁹ '*Caligati*' = private soldiers (so named after their boots).

²⁰ The law here provides an interesting insight into Roman social attitudes. Note also the less strident application of the law with respect to rural society in *J. Nov.* 73.

²¹ For discussion of this section of the law and Justinian's attitudes to seduction, see Vigneron (1995).

or if she should have lost her husband first.²² We take no notice of whether he may have dismissed her by means of divorce procedure, or without that; he is hardly likely to have served *repudium*²³ on her, given that he is denying the very existence of the marriage. Only, should he have thrown her out of the house without cause, that in itself is to put the husband in the wrong; if that happens, the wife is to serve him with *repudium* and demand her quarter, should she have been shown to have been his wife despite having come to him without a dowry, in reliance on his oath. After all, what else could a woman unable to afford a dowry do but offer herself, in place of any dowry?

1. The wife is to be lawful as well the children, even against the father's wishes. A man who married, and has had children, on the basis that his wife was to become the mother of legitimate children, could not become able to cast children born of such a marriage back into illegitimacy; nor, in the possible event that he contracts a second marriage after his wife's death, or after the *repudium*, could he desire only the children of that marriage to be legitimate, but not the earlier ones as well. The first marriage would be linked to the second one; he will be the father of all the children on equal terms, with God as his witness to the first marriage, and the law to the second.

This law of ours is to be enacted for the protection of those contracting marriages. The children will be legitimate, and will enjoy the benefits of the laws laid down for legitimate children, provided that their parents were as described: . . .

6

. . . however, should their parentage have been otherwise, they will be illegitimate, and will then obtain what we have prescribed for illegitimate children, whether by will or in intestacy – provided that they are not the offspring of a form of cohabitation that has been proscribed; because the issue of unions that are totally abhorrent to us, and therefore forbidden, must not even be called illegitimate, and must not receive any share in any munificence. A further punishment for those fathers is to be the knowledge that the children of their sinful lust will receive nothing whatever.

²² See *Codex* 5.17.11, *J. Nov.* 22 c. 18 and *J. Nov.* 53 c. 6.

²³ '*Repudium*' = unilateral dissolution of the marriage. The Greek text uses the Latin word in a Hellenised form (ῥεπούδιον).

Conclusion

Your excellency is accordingly to publish to everyone, by posting up proclamations, our decisions laid down by this law for the well-being of mankind and the making good of nature's deficiencies. Through them, the law will be clear to all, and they will know how they are to behave in such matters; and will bear in mind our concern, and the fact that we put our assistance to them before all other business.

Given at Constantinople, June <5th> in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished John, indiction 1 of the year 849²⁴ 538

²⁴ I.e. year 849 of the Seleucid Syriac era, which began in 312/311 BC (see Burgess and Witakowski (1999), p. 193).

[Latin only; except for the title, identical with Novel 104]

The same Augustus to Tribonian, quaestor of the sacred Palace

Preamble

Your excellency, as having been put at the head of the work of the quaestorship, and made a member of our council, is aware that, in conformity with the ancient model, we have put a praetor over the province of Sicily, for all private affairs to be under his administration, and for military supply to be provided; because the contributions of that province to the public treasury were, by ancient custom, entrusted to the most excellent Count of the Sacred Patrimonium² in Italy, for both the collection and delivery to be conducted under his authority.

1. But, because there are certain to be lawsuits launched in a province of that size, it is our will that any appeals there may be from the praetor, a *dux*³ or any judge in the said island should all be brought before your eminence and your court, for you to examine their merits in person, according to the procedure for upward referral,⁴ and to bring them to our knowledge. This

¹ Sicily had been reconquered by Justinian's General Belisarius in late 535. In this constitution, Justinian incorporates the island into the empire judicially and economically. In a judicial context, he directs appeals from the territory to his chief legal officer in Constantinople, the Quaestor Tribonian (on whom see Honoré (1978)). In an economic sense, he asserts that the island constitutes a 'personal fund' or 'personal asset' (*peculium*) of the emperor and, it is inferred, subsumes a large part of its agricultural resources to the *sacrum patrimonium* or Imperial Patrimony which, in Italy, directed resources to the imperial household (*domus divina*). Here, as in Africa, Justinian can thus be seen to take advantage of the campaigns of reconquest in the West to bolster what might be termed the 'imperial demesne' and strengthen his financial and economic position (see Sarris (2006), p. 215, *J. Nov.* 30, note 36, and *J. Nov.* 69, notes 10 and 11). For the imperial confiscation of estates in Africa, see Procopius, *Wars* 4.14.9–11. For archaeological evidence for the prosperity of late antique Sicily, see Vaccaro (2014). For further discussion of this law, see Cracco Ruggini (1985), pp. 190–6.

² 'Count of the Sacred Patrimonium' = *comes sacri patrimonii per Italiam*, charged with the administration of imperial estates and the collection of taxes: see Delmaire (1989), pp. 693–4. As Delmaire notes, unlike the eastern *sacrum patrimonium*, which consisted of estates belonging to the emperor which, in the late fifth century, had been placed at the disposal of the state, the western *patrimonium* supported the palace and court: see Delmaire (1989), pp. 697–8 and *J. Nov.* 69, note 11.

³ '*Dux*' = the commander of a military district (see Southern and Dixon (1996), pp. 59–60).

⁴ 'According to the procedure for upward referral' = according to the procedure for appeals '*more consultationis*': see *J. Nov.* 28, note 19, Berger (1953), p. 412 and Van Der Wal (1998), p. 184, note 112.

is so that the case may be settled by our authority on the basis of your decision, once that is known to us; it is not to go to the earlier Rome,⁵ nor to any other judge in this sovereign city, but you yourself are to hear the case, as the emperor's representative, and settle it.

2. Nor is that all that we wish to be within the purview of your jurisdiction. Any other civil ordinance requiring confirmation, that is one decreed for the defenders⁶ or the city fathers, is also to be referred to your court, for corroboration by means of your judgment and our authority. This is because Sicily has always accrued to the emperors as a form of personal asset, and any civil matters on which any doubt has arisen ought to be settled by the judgment of our quaestor. This is a claim that we make on your excellency, whom we have promoted, whom we have put in charge of work on the law, and by whose industrious agency all ambiguity in the laws, and all their bulk, have arrived at their present consistency and elegant concision.⁷

3. Your excellency, in the knowledge of what our Eternity has decreed by means of this divine law, is accordingly to give notice of it to the Sicilian judges, by means of orders of your own, in order that they may know to whom to refer cases pending appeals; and so that we may be kept fully informed by means of reports from you and your successors, and may appear as dealing with the said cases in our own person. We have thought it not unworthy for our quaestor, as a partner in our deliberations, to take Sicily under his jurisdiction, it being constituted as, in a way, a personal asset of our own.⁸

<Given at Constantinople, in December of the 11th year of the reign of the Lord Justinian, 2nd year after consulship of Belisarius> 537

[Date missing; this supplied from Athanasius]

⁵ 'The earlier Rome'. By directing appeals to Constantinople, Justinian is already making it clear that the re-conquered territories of Italy are to be treated as provinces of the empire ruled from Constantinople, and that he has no intention of restoring a separate western empire.

⁶ 'Defenders' = the civic officials known as *defensores civitatum*: see *J. Nov.* 15 and Jones (1964), pp. 144-5.

⁷ A reference to Tribonian's role in the production of the *Digest* and *Codex* (on which see Honoré (1978)).

⁸ 'Personal asset' = *peculium*.

76 | **Entrants to monasteries consecrating their property: constitution interpreting the previous constitution, as to date from which it must apply¹**

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

A case has come to us of a kind which we think must have the benefit from us of appropriate interpretation and assistance, simultaneously.

It came to our knowledge that a woman who had a son born to her by a lawful marriage decided to detach herself from this ordinary life, and live in a monastic institution for women, after having conferred a great many benefactions on the most reverend women in the community there.²

Now, our Piety's law³ intends those consecrating themselves in a monastic institution, whether men or women, to make dispositions of what they own, as they wish, before their entry to the monastery; but to be unable to take any action on it any more after entering the institution, on the grounds that they in fact no longer have secure possession of the property. This is because we have legislated that, by the very act of entering the monastery, such men and women are consecrating themselves, body and soul, and their estates; and <should they leave it, their estate remains*> in the monastery, because they no longer have secure possession of it.

- Accepting supplement from app. crit. [S/K, p. 379, line 29].

<We found that she*> was consequently apprehensive that one day certain persons would deprive her of the power to provide for her own son, even though our constitution came long after her entry to the said holy house. In consequence of the said apprehension, <we have decided*> that the constitution requires interpretation and clarification in a law of ours, to

¹ This law addresses the issue of the status of property owned by those who enter monasteries after they have adopted the monastic life. It clarifies that the regulations on this matter contained in *J. Nov. 5 c. 5* were not to be applied retrospectively.

² On female asceticism in this period, see Clark (1993), pp. 94–118.

³ See *J. Nov. 5 c. 5*.

the effect that neither she nor her son is injuriously affected at all over her succession as a result of the said constitution.

, Either more has dropped out than S/K has marked, or the draughtsman has lost his syntax, leaving no subject for either δεδίεναι [p. 379, line 31] or χρῆναι [p. 379, line 34]. < . . . > mark a conjectural supply of these requisites.

1

For this reason, we decree that there is no compulsion on any man or woman who was resident in a monastery before the said constitution of ours, or is actually still resident there, to bring their estate into the monastery now, especially if they have children. They may transmit to their child, or children, either the whole or part of their estate, or also dispose of what they own, as they wish, as we are interpreting that previous law by means of this other constitution of ours. Once they had taken up residence in the monastery, that law, laid down later on, would cause them no vexation, nor deprive them of anything for which they had previously been given licence. Nor is it even within the bounds of possibility for our previous law to constitute any obstacle to them at all; for that, the constitution would have to have been made first, and the entry to the monastery to have taken place only then. Given that no such law had been laid down at the time she entered her monastery, how could it become possible to reverse the law's chronological position, and demand that earlier entrants to the monastery should take action they had previously known nothing about, as it was an innovation made by our divine constitution only later on? No; it is appropriate for each occurrence to receive its own dating. What is to be sought is that what comes after the law shall take place in accordance with the law's intention; any effect of a cause prior to the law is to be left in its previous state, without being upset, or even inquired into.⁴

1. Accordingly, this law is to be laid down as a valuable interpretation of that previous constitution of ours, which is to be applicable after itself, in times subsequent to its making, for men and women making their renunciation after it, and is to maintain its own authority over them, without interfering with anything before it. Men and women who took up residence

⁴ This insistence on the part of the emperor that, unless otherwise stated, laws did not take effect retrospectively is also found in *J. Nov.* 54 and *J. Nov.* 68.

in monasteries beforehand, or are still resident there, are to have licence to dispose of their property as they wish, especially if they have children.

Conclusion

Accordingly, your excellency is to take pains to make these decisions of ours, manifested by means of this divine law, public to all in the usual way, by means of proclamations of your own.

Given October 15th in the 12th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished John, indiction 2⁵

538

⁵ 'Indiction 2' = the second year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311.

77 | Swearing by God, and blasphemy: constitution on its punishment¹

[Heading missing: Auth. has *The same Augustus to the Constantinopolitans*]

Preamble

We suppose it quite obvious to all right-thinking people that our whole object and prayer is for all those entrusted to us by the Lord God to live rightly, and find his favour. God's love of mankind desires not their perdition, but their conversion and salvation;² God receives those who have gone wrong and been set right. Hence, we urge you all to take the fear of God to heart, and invoke his favour; and we know that all who love God, and await his mercy, do so.

1

There are, however, some who are in the grip of the working of the devil, and have plunged into acts of very grave licentiousness, and behaviour contrary to nature itself.³ We exhort these, too, to take to heart the fear of God and the coming judgment, and to abstain from such acts of diabolical, unacceptable licentiousness, in order that their cities as well, along with their inhabitants, may not be found being destroyed under God's righteous anger, by reason of such impious doings; we are taught through the holy scriptures that as a result of

¹ This undated law addressed to an unnamed Urban Prefect of Constantinople enjoins the punishment of those guilty of homosexual acts and blasphemy, whose actions, the emperor warns (citing scriptural authority), invite divine chastisement in the form of earthquakes and plague. It thus casts light on the highly Christian and scriptural nature of imperial pronouncements in this period. The 530s witnessed a number of natural disasters (including earthquakes), whilst in 541–542 the empire was struck for the first time by bubonic plague (see Sarris (2002) and Meier (2003) and (2016)). Given the position of this constitution within the collection of the novels, it is unlikely that it post-dated the advent of the plague, although a post-plague dating cannot be ruled out; see note 5 below. On homosexuality in late antiquity, see Boswell (1980), pp. 119–69.

² A reference to Ezekiel 33:11.

³ A reference to homosexual acts. For Justinian's measures against homosexuality, see Procopius, *Anecdota* 11.34–36, Malalas 18.18, Sarris (2006), pp. 217–18 and Boswell (1980), pp. 172–3.

such impious practices, cities and their inhabitants have actually been destroyed together.⁴

1. In addition to the above, there are some who arouse God's anger by swearing in blasphemous language, and oaths using God's name. We exhort these, likewise, to desist from such blasphemous language, and from swearing by his hair, his head and suchlike expressions; given that slanderous imprecations against human beings are not left without retribution, far more does the blasphemer against the Divinity itself deserve to undergo punishments. Hence, we urge all such people to desist from the said offences, take to heart the fear of God, and follow those who live rightly. It is because of offences such as these that famines, earthquakes and plagues⁵ occur, and that is why we admonish such people to desist from the said evildoings, lest they lose their own lives. If, even after this admonition from us, anyone is found to be persisting in the same offences, they are, firstly, rendering themselves unworthy of God's love for mankind, and secondly, they will be subject to punishment under the laws; . . .

2. . . . because we have instructed the Most Illustrious prefect of the sovereign city⁶ to arrest those who persist in the said unacceptable and impious practices even after this admonition of ours, and to inflict on them the most extreme punishments, so that both our city and our realm may not be found to suffer for such impious practices, as a result of overlooking such sins.⁷ If, even after this exhortation, anyone finds such people but conspires to conceal them, they will be punished, all the same, by the Lord God. Even the Most Illustrious prefect himself, if he finds anyone offending in any such way and fails to inflict retribution on them in accordance with our laws, will, firstly, be liable to God's judgment, and secondly, will incur our displeasure.

[Date missing]⁸

⁴ A reference to Sodom and Gomorrah: Genesis 19:12. The 530s witnessed a number of destructive earthquakes which may partly have provoked this legislation (see Meier (2003), pp. 656–70).

⁵ The mention of plague might suggest that this undated law was issued after the arrival of the bubonic plague in 541–542 (see Sarris (2002)). A date of 538, however, is suggested by Lounghis, Blysidu and Lampakes (2005), p. 288 (under entry 1158).

⁶ I.e. the Urban Prefect of Constantinople.

⁷ The castration of homosexuals on the streets of Constantinople (perhaps in response to this law) is described by Procopius (*Anecdota* 11.34–6). The only individuals known by name to have been punished, however, were bishops. For the possible political motivations behind such persecution, see Sarris (2006), pp. 217–18. For the castration of sexual deviants in later Byzantine law, see Tougher (2008), p. 28.

⁸ See note 5.

Freedmen not in future to need the right to gold rings and restitution of free-birth status; making of matrimonial settlements for freedwomen automatically to make the marriage lawful, and the children legitimate. On the making of a dowry, even a slave-woman also to be free, her marriage lawful and her offspring legitimate¹

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

¹ Freedmen (freed slaves) traditionally played an important part in Roman society (see Crook (1967) and Gardner (1993)). In classical Roman law, a slave who was freed by his master and became a freedman (*libertus*) still carried with him the stain of his servile origin or past, and thus his status entailed certain legal penalties (such as rendering him ineligible for public office). He also remained legally obligated to his former owner, whom the law continued to recognise as his patron under the right of patronage (*ius patronatus*): see *Digest* 37.14–15 and *Codex* 6.4. The freedman (*libertus*), for example, was obliged to treat his master respectfully (i.e. to demonstrate *obsequium*: see Berger (1953), p. 605). It was, however, possible for the *manumitter* (i.e. the master who was releasing him) to petition the emperor that he be given full freedom and rights of citizenship, wiping away any legal trace of his former servile condition, by restoring to him free-birth status (*restitutio natalium*): see *Digest* 40.11, *Codex* 6.8 and Berger (1953), p. 591. Such a change of status also had the effect of freeing the freedman from any future obligations to his former master. Alternatively, the emperor could restore a freedman to free-born status through the procedure known as the *ius annuli aurei* ('grant of a gold ring'), which conferred the full rights of a free-born citizen whilst maintaining the freedman's obligations to his former master intact. In this law, Justinian declares that henceforth all freed slaves were automatically to be accorded free-birth status. So as not to undermine the ties of patronage that were deemed to be central to the workings of Roman society, however, the emperor confirms that all freedmen so elevated would remain subject to the traditional bonds of obligation to their former owner, who remained their legally recognised patron, as under the *ius annuli aurei*. In a supplementary measure, the emperor also confirms the free-birth status of the children of freedwomen (see c. 3). This constitution thus both tidies up the law and reforms it in a philanthropic direction, on which see Krumpolz (1992) *passim* and Luchetti (2004), pp. 276–81. In c. 4, the emperor declares his contemporary western campaigns to be motivated by a determination to defend orthodoxy and extend liberty which he claims also to be reflected in his legislation.

Preamble

As all the great God's good gifts have been granted to us in complete form, we have decided, in our turn, that we must render the freedom of slaves purely, untaintedly complete in all ways, once they have been liberated by their owners from their former status. It was for also that reason that we got rid of the derogatory status of *dediticii*² from manumissions, jettisoned grants of *Latinitas* as being imperfect, rendered *iterationes*³ redundant, and abominated the Junian law and the Largian doctrine as having been futile even on their first introduction, and correctly jettisoned later. The sole kind of free status that we have wished to be applicable in manumissions is Roman citizenship, and in that we make no distinction of place, age or anything else. However, as we are constantly planning some improvement for our subjects, we have thought it necessary to enhance even what has already been given a more perfect state, by means of additional improvements.

1

For this reason, we decree that should anyone, by emancipating a slave, male or female, have made them Roman citizens – nothing else is allowed –, he is to know, from this law, that the recipient of freedom will also have the right to gold rings and restitution of free-birth status, as an immediate concomitant.⁴ He will no longer be obliged to request the Sovereignty for this, and will need no tiresome formality at all; on the strength of his

² The *Lex Aelia Sentia* (4 AD) and the *Lex Junia Norbana* (19 AD) between them had created three different categories of 'freedom' for manumitted slaves. First were the *dediticii* (literally meaning 'the capitulated'), which included ex-slaves with criminal records or of 'degraded character' (Borkowski (2015), pp. 92–3 and 101) whom it was decided could never become Roman citizens and who were banned from the vicinity of Rome (see Gaius, *Institutes* 1.12–15). Second were the 'Junian Latins'. These were slaves who, by virtue of the defective or informal nature of their manumission (on which see Borkowski (2015), p. 110), were allowed to live as free men, whilst 'dying as slaves' in that their property reverted to their owners under the *Senatusconsultum Largianum* (42 AD) referred to in the novel (see Gaius, *Institutes* 1.16–19). Such Junian Latins could become citizens by fulfilling certain conditions (on which see Gaius, *Institutes* 1.28–30 and Borkowski (2015), pp. 110–11). Third were those slaves formally manumitted before a magistrate who received full citizenship. Justinian, however, had overhauled and rationalised this system in 530–531, doing away with the categories of both *dediticii* and Junian Latins (see *Codex* 7.5.1, *Codex* 7.6.1, *Institutes* 3.7.4, Buckland (1963), pp. 378–80 and Gardner and Wiedemann (1991), pp. 158–65 and Corcoran (2011)).

³ '*Iterationes*' = repetitions, i.e. (in this instance) a second manumission to remedy a defective earlier one, whereby a Junian Latin was able to acquire citizenship (see Borkowski (2015), p. 110).

⁴ On manumission, see Borkowski (2015), pp. 98–102.

freedom, that will all come, together with it. This legislation of ours starts from today.⁵

We are not going into anything that has taken place previously; rather than that, we are confirming everything done in the past, for it to hold good in its original forms. That is what we decree on that; . . .

2

. . . but an additional instruction we are making is that, even after this law of ours, there is to be no injury to the rights of patrons over all those persons in relation to whom we have safeguarded them, unless the granter of the manumission should also have dispensed the freedman from those rights, either by bequest by *fideicommissum*,⁶ or by adding that dispensation at the actual time of the manumission. Should he have made that additional gift, the person receiving manumission is to be absolutely released from the right of patronage as well, by his manumitter's command.⁷ Those deemed to deserve freedom are therefore to have all that; but, even after this divine constitution of ours, they are still to observe, towards those who have raised them to this honour, the respect, what is called the *obsequium*, and the *reverentia* rightly imposed on them by the laws.⁸ They are to refrain from physical violence, disloyalty or any of the other such actions as a result of which freedmen are subject to re-enslavement, under the laws laid down on these matters, and returned to their original status. Under laws already laid down by ourselves, and by our everyday commands, we have permitted no-one at all, even one of the noblest class, to be ungrateful towards a benefactor; in fact, we have actually declared those benefactions invalid. The act of manumission puts the one who has conferred it into the position of a father in relation to his freedman; that being so, how could we tolerate any ill-treatment of him on the part of the freedman, such as grave and inadmissible insults, assault, or the suffering of intolerably heavy financial loss? Should the donor of his freedom, or the donor's children, establish by proofs at law that he has been treated in any such way, we shall, after the

⁵ I.e. is not to be applied retrospectively (thereby limiting any socially disruptive consequences).

⁶ '*Fideicommissum*' = trust (see Johnson (1988)).

⁷ I.e. the *restitutio natalium* freed the freedman of his obligations to his master under the *ius patronatus*: see Borkowski (2015), pp. 105–7.

⁸ '*Obsequium*' and '*reverentia*' (= 'respect' and 'reverence') were the obligations of a freedman towards his patron and former owner to which they were traditionally bound under the *ius patronatus* unless granted *restitutio natalium* (see Borkowski (2015), pp. 105–7).

said legal proofs, return the freedman to his previous status. We shall relieve all parties of any need to go into his accounts, or any loss arising out of them; but, as befits a lawgiver and is pleasing to God, we shall have maintained equal justice at all points towards both the freedman and his former master.

1. Thus they are to be free-born, as well as freed, whether they had been manumitted previously – provided that that had been specifically bestowed on them – or whether it is after this law of ours that they arrive at their free status. Their station in life is then to be that of free birth; but they are to render due respect to their manumitters, so that they do not forfeit both their freedom and their free birth for having been proved contrary and ungrateful, and condemned as such by the law. They will thus be free and free-born permanently, provided that they have preserved, unsullied and untrammelled, their respect, *reverentia* and deference towards the manumitters and their children. As long as those are maintained, they will assuredly never relapse into their previous status.

3

Should anyone, of whatever rank, decide to marry a freedwoman and make her his lawful wife, he is to draw up a matrimonial settlement; that is the only procedure we demand after the manumission. Both previous children and those born after the settlement are to be free-born as well as free, and, what is more, they are to be legitimate successors to their father; they have been released from requesting gold rings and the right of restoration of free birth status, and will have absolutely nothing to distinguish them from other marriages between the free-born. It is their mother's freedom, and also the matrimonial settlement, that will entitle the offspring to freedom, free birth and succession to their father.⁹

4

So wholly and genuinely are we intent on this matter that, should anyone have had children even while his wife was still a slave, and subsequently decide to manumit her and draw up marriage contracts, he will, simultaneously with the executing of the settlement, be combining with it the children's right to both freedom and legitimacy, together. We are making no separate manumission-requirement for the children, either by having

⁹ See *Codex* 5.4.7 and 5.4.28.

them manumitted simultaneously with their mother, or after her, or even possibly before her; instead, we are also granting them their immediate freedom, simultaneously with the execution of the matrimonial settlement. After all, what greater indication could the father have evinced of his manumission of the children, than by rendering his wife both free and lawful, by the execution of the matrimonial settlement? A soldier, by leaving a legacy to one of his own slaves, is regarded as also giving him freedom by means of the gift of the legacy, in itself;¹⁰ if that is so, how could it not be all the more so that any father who executes a matrimonial settlement will have children who, in mere virtue of that sole act, are free, and his legitimate successors? No-one would suppose him to have wished his children's mother to be lawfully married, and to have given her something of such importance merely as a by-product of pleasure, while still leaving in slavery his own children, born of his own seed.

1. We have made this legislation just as much on the manumitters' behalf as on that of those manumitted. That is because, if we do not maintain the aforesaid safeguards for manumitters, we shall perhaps render people more hesitant over the grant of freedom; whereas our whole aim is that freedoms shall be strongly prevalent, and shall flourish and increase in our realm. It is in that desire that we have undertaken such major wars, both in Libya and in the West, for the freedom of our subjects, as well as for the orthodox faith in God.¹¹

5

What we are doing is nothing novel: we are following the best of the emperors before us. Antoninus, called *Pius*,¹² from whom the use of that title has descended to us, has granted Roman citizenship – which previously each individual had to request, and which even then only led to the condition of free-born Roman by way of the status known as *peregrinus*¹³ – to all our subjects in common; and after Constantine the Great, the founder of this sacred city, it was the younger Theodosius¹⁴ who has given the right

¹⁰ On military wills, see *Digest* 49.17, *Codex* 12.30 and *Codex* 12.36.

¹¹ An interesting aside revealing the tone of the propaganda in circulation to justify Justinian's contemporary military forays in the West.

¹² Justinian here confuses the Emperor Antoninus Pius with Antoninus Caracalla, who had extended Roman citizenship to all free subjects of the empire in the year 212.

¹³ '*Peregrini*' were non-Romans resident in the empire (see Berger (1953), p. 626).

¹⁴ The allusion to Theodosius II refers to *Codex* 8.58.1 (of 410 AD), which granted the *ius liberorum* ('right of children') to all. This right granted certain privileges to those with several offspring (see Berger (1953), p. 530).

of children to our subjects in common. In just the same way, we are giving all subjects alike, automatically, the right to restitution of free-birth status and gold rings, at present given individually to those who request it, which gives rise to expense and trouble, and requires the authorisation of the manumitter. For the future, it is not just individuals deserving free birth to whom we are granting restoration of free-birth status, but each and every one of them, on their being deemed by their owners to deserve manumission. Our purpose is to bestow this on our subjects as another important general boon.

Conclusion

Accordingly, on learning of all that our Majesty has decided in this further law, out of generosity to our subjects, your excellency is to make it known to our subjects by means of proclamations of your own, both here and in the provinces, so that they may learn of our daily concern for our subjects in legislating to their advantage. The law will be valid in all ensuing cases, and those that arise after it; we are not concerning ourselves with the past.

Given at Constantinople, January 18th in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Apion¹⁵

539

¹⁵ A member of the distinguished and wealthy Apion family from Middle Egypt, on whose estates see Sarris (2006), pp. 29–80.

The same Sovereign to Menas, most holy archbishop and ecumenical patriarch

Preamble

On learning of a wrong practice that is taking place in this sovereign city, we have decided to remedy it by means of a universal law, beginning with this fortunate city and extending it to the whole subject territory.

Whenever certain people, whose intention it is to destroy the dignity of the orthodox faith, allegedly have a suit against either monks or nuns, they are going before the civil authorities; these then send out agents,² who claim to gain access inside the holy places, drag out monks, and harass nuns, or female ascetics, including perhaps even those who are not supposed to be seen. This results in no small affront and disturbance to the venerable places.

1

For this reason, then, we decree that anyone who may have a suit of whatever kind against any most reverend male ascetics, or any of the consecrated virgins or women in monasteries at all, he is to take his case before the most God-beloved bishop of each city, who is to send and make arrangements, with all dignity and decorum, for the appearance of the persons concerned, whether this may have to be done through the hegumens,³ the *apocrisarii*,⁴ or others. He is to conduct the trial in person,

¹ This constitution asserts and entrenches the right of bishops to hear legal cases (*episcopalis audientia*), by declaring that cases against monks, nuns and other female ascetics could only be heard by a bishop and not a secular judge. In doing so, the law casts incidental light on the administrative re-organisation of the re-conquered imperial territories in Italy, and may provide our earliest example of monastic or ecclesiastical imprisonment as a punishment for both clergy and laity. On *episcopalis audientia* and the relationship between the Church, courts of law, and lawyers, see Lamoreaux (1995) and Humfress (2007), pp. 135–268. On monastic imprisonment, see Hillner (2015), pp. 314–41.

² ‘Agents’ (Greek *πρακτῶρες* = Latin *executores*) were officials employed by the praetorian prefect, typically for tax-collection. This law thus reveals an additional legal side to their responsibilities: see John Lydus, *De Magistratibus* 3.56, Liebeschuetz (2001), pp. 185–6 and *J. Nov.* 168.

³ ‘Hegumens’ = heads of monasteries.

⁴ ‘*Apocrisarii*’ = (in a Church context) deputies or representatives who also served as ambassadors and envoys for their ecclesiastical home institutions.

and give judgment, with priestly solemnity. They are not to have any civil judges at all, involving their dignity in disrepute; because the most God-beloved bishops of each city are competent to make the orders for the trial and for the soundness of the proceedings, and to judge them in accordance with our laws and the divine canons, in a priestly and dignified manner. In this way, those who think they have a case will receive their rights, and the dignity of holy persons will be preserved intact and unimpaired, as well.

2

The law is to be a general one, with observance by the Most Illustrious prefects in all dioceses (that is to say, those of Illyria, Libya, Italy and the whole West⁵), by the Most Illustrious prefects of each Rome, by the Most Magnificent *praetor* of the people, and by the governors of provinces and their staff. There is thus to be no weakening of it at all: it is to be upheld unimpaired, for the honour of the most reverend monks.

On learning of this, your beatitude, too, is personally to observe it in this fortunate city and its environs, and is to make use of letters to the God-beloved city metropolitans for whose appointment you have taken on the responsibility, prefixing your own letters with this divine law of ours.⁶ They will inform the bishops under them; and so, just as a result of this small letter, the law will be promulgated in unified continuity throughout the subject territory. We decree, further, that suits brought against monks are to be accelerated, so that their minds are not preoccupied with worries about their cases, but they can rapidly be rid of them, and concentrate on their divine duties instead.

3

Accordingly, the contravener of this in any way is to know that, should it be an office-holder who has the temerity to pass judgment in such a case, he will be ejected from his position, for having committed a grave affront to the Divinity, and, jointly with his staff, will be penalised with a fine of ten pounds of gold, to be paid to our most sacred crown treasury. The agents who have dared to bring any summons before them are to be restrained by

⁵ Note the implication that with the Italian campaign largely progressing satisfactorily (Rome was now in imperial hands), a new Praetorian Prefect for 'Italy and the whole West' has been created (see Sarris (2011a), p. 117). For the recently created post of the *praetor* of the people (= *praetor plebis*), see *J. Nov.* 13.

⁶ I.e. the Patriarch was to write to the chief bishop in each province.

the most God-beloved bishops, and to be confined in what are called *decanica*⁷ so as to undergo suitable punishments, and never again to be allowed to execute any legal action against anyone.

Conclusion

This law is to apply whenever anyone has<a suit*> against any of the most reverend monks, or consecrated virgins or women at all, who are resident in holy monasteries. On clergy, and on the procedure for taking them to court, we have already laid down laws which we wish to be in force and authoritative in every way.

* This missing word, or something corresponding to it, must be restored to the text somewhere in this sentence [S/K, p. 390, lines 1–4].

Given at Constantinople, March 10th in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Apion 539

⁷ These ‘δεκανικά’ would appear on the basis of cognate words to mean guardrooms or military punishment blocks. Incarceration was not traditionally used as a punishment in Roman law, but here we may see the beginnings of an innovation. It is possible that the cells were located in the monasteries themselves. Certainly, monastic imprisonment is a feature of later legislation: see Hillner (2015), pp. 314–41. As Hillner notes with reference to *Secret History* 17.5.6, ‘according to Procopius, Justinian, despite his legislation against private prisons, re-introduced them through the back door with monastic confinement’ (Hillner (2015), p. 341).

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

With God's help, we are constantly taking every care to preserve from harm the subject population that has, by his bounty, been entrusted to us. To this end, we enact laws, in which we see to there being full justice; we take pains to recover what has gradually been slipping away; and we also devise positions of authority which chastise disorder and reduce crime. An example of that is the office of *praetor* of the people² that we have created in this great city; from actual experience that has been proved in practice most beneficial to the inhabitants of this sovereign city of ours.

As a result of this experience, we have thought it right to work innovatively, by means of a law and a position of authority, at something else that requires remedying. This is that we have found the provinces gradually being denuded of their population, while this great city of ours is becoming

¹ In this constitution, the emperor establishes the office of *quaesitor*, the holder of which was given the task of supervising and policing the population of the city of Constantinople along with the *praetor plebis* established in *J. Nov.* 13. As with that reform, this law reveals that major problems were being caused by migration into the imperial capital. Many of those arriving were litigants and petitioners whose cases the *quaesitor* was to expedite. Others were economic migrants whom he was to return to their native provinces. The *quaesitor* was also charged with the policing of vagrancy and mendicancy. Justinian decrees that beggars from outside the city were to be expelled, but those who were native to Constantinople were to be forced to work. At the same time, the constitution casts interesting light on other aspects of sixth-century society. The handicapped, for example, were to be saved from begging through the intervention of charitable institutions. Perhaps most revealingly, the emperor declares that one of the factors that drew petitioners to the city was a desire on the part of agricultural and estate workers to petition and even sue their employers and landowners, who were presumably resident members of the Constantinopolitan aristocracy. The highly litigious nature of early Byzantine society is thus once again cast into sharp relief (on which see Sarris (2011c)). Justinian's creation of the office of *quaesitor* is described by Procopius, who claims that the official was also charged with the punishment of heresy, adultery and pederasty (*Anecdota* 20.9–11). This reform is also referred to in John Lydus, *De Magistratibus* 3.70 and Malalas 18.85. For further discussion of this law, see especially Laniado (2015), pp. 190–254.

² 'Praetor of the people' = *praetor plebis*. See *J. Nov.* 13.

troublesomely full of all sorts of people, and especially of agricultural workers, who are abandoning their cities and their work on the land.³

1

That is what has caused us to look to the present law, and to the office now being practically re-made by us. We have no hesitation in granting it a stipend, a substantial one, from the public treasury, and in establishing an administrative staff for it as well; also in putting him at risk of a penalty for negligence. We are attaching to the office and its holder the title of *quaesitor*, ‘investigator’, as that was the word originally used by those who devised the post itself – in the most distant past, that is – for those who came to hold this rank.⁴

1. We wish the holder of this office, with his regard on God and on fear of us and the law, to find out about the people coming into this great city, as to what country they come from, whether they are men or women, clerics, monks or nuns, advocates from cities abroad, or whatever else their status and rank is, going into the question of who they are, where they come from, and with what motive. If they are agricultural workers, he is to consider which of our office-holders their cases concern, and put pressure on those to get rid, in short order, of the difficulties that have brought them here; and, after they have received what they should, to deport them as quickly as possible to where they have come from.⁵

2

However, should any of the agricultural workers be under overlordship, and have come to this sovereign city with a petition to their masters, he is to cause the masters to come to a quick decision on the issue for which the agricultural workers have come, and to deport them as soon as they have received their rights.⁶ But it may well be that they came here as opponents

³ The problems caused by migration to Constantinople are a major theme of *J. Nov.* 13. For epigraphic evidence for such migration, see Feissel (1995).

⁴ The use of a Latin title is consistent with the general rhetorical antiquarianism of the emperor’s reforms (on which see Pazdernik (2005)).

⁵ The inference is that many are coming to the city to petition imperial officials and litigate.

⁶ ‘Under overlordship’ (Greek ὑπὸ δεσποτείας) = (Latin) *in domini potestate*: i.e. they are *coloni adscripticii*. This law also, however, concerned *coloni liberi* (see Van Der Wal (1998), p. 160, note 2). The latter were agricultural workers who, after thirty years’ continuous service as *adscripticii* were allowed to pay taxes independently of their landowning employer and were granted ownership of their personal fund or *peculium* (see Sarris (2011c), p. 383).

of their masters, and are pleading suits against them; if so, should there be a large number of them, he is to send most of them back to their country at once, leaving two or three to contest the suit under the procedure for representative advocates.⁷ Even then, he is to put pressure on the person hearing the suit and cause him to decide cases as quickly as possible, to avoid their having a protracted delay. This is particularly so for agricultural workers, whose presence here is superfluous, and whose time away from work on the land is injurious both to themselves and to their masters.

3

Should the majority of incomers not, in fact, consist of agricultural workers but of others, or of those with lawsuits against other people, he is not to give up, but is to make every effort to urge the judges to get their controversies dealt with quickly, release them from their suits and deport them to live in their own countries and cities. It may possibly be that the hearer of the case, or the agricultural workers' masters, keep putting it off themselves, despite having been pressed by our appointee as office-holder to release the litigants or persons attending court, instead of dealing rapidly enough with the case or the court-attendance; if so, the person appointed by us to this office is then to have the litigants, or those who are petitioning their landowners for a right of theirs without success, brought before himself, and to examine them. After making a swift order on the business for which these people are staying in this great city, he is to deport them to their homelands or, in general, to the places from which they have come. All privilege and special plea⁸ against this is cancelled.

4

If any of them are in our city not to make a living or for a lawsuit, so that they are living either by begging, or if that does not suffice for what they want, by crime, he is to consider what their physical condition is. If they

⁷ *Coloni adscripticii* had the right to sue their masters (see Van Der Wal (1998), p. 160, note 2). However, the grounds upon which they could do so were severely constrained: see *Codex* 11.50. It is striking, nevertheless, that some had the means and opportunity to pursue their masters in legal cases even as far as the imperial capital. For discussion of litigious *coloni*, see also Sarris (2011c).

⁸ 'Special plea' (Greek παραγραφὴ φόρου) = Latin *praescriptio fori*: a formal objection to a claim on the basis that the prosecuting party or tribunal did not possess jurisdiction because the plaintiff had been granted the privilege of only being heard before a special court (see Garbarino (2000)).

have a strong physique and are capable of withstanding labour, should they be someone's slaves, he is to find out whose they are, and deport them to their owners, whether they like it or not; but should they be of free status, and have come from certain provinces or cities, he is to deport them to the particular provinces from which they have come.

5

Should they be of native birth here, and be physically strong but without respectable means of livelihood, he is not to permit them to be a useless burden on the land, but is quickly to assign them for service under public works engineers, bakery managers, market gardeners and various other crafts and employments in which they are capable simultaneously of enduring fatigue, and of earning their keep, thus changing their idle way of life for the better.⁹

1. Should any of them refuse to stay in the employments to which they have been assigned, he is to expel them from this sovereign city. This legislation of ours is out of leniency for them, so that their idleness does not impel them into unacceptable activities, with the result that the laws would seize them for punishments by handing them over to our authorities.

Men or women who are physically handicapped, or grey and infirm, are by our command to remain in this good city unmolested, and be supported by those prepared to act piously.¹⁰ He is to interrogate each of the rest on their motive for being here; and when he finds out, he is to take the action appropriate to their case, so that they do not just sit here idle, but return to their own countries when they have done what there was for them to do.

6

Should there be any among either the inhabitants of this city or arrivals from abroad who have a complaint against any persons of having been charged money by them, perhaps for what are called *sportulae*,¹¹ or for

⁹ See *Codex Theodosianus* 14.18.1 for similar treatment of able-bodied beggars in Rome. The beggars of Constantinople were presumably primarily employed as labourers, with such forced labour being regarded by the emperor as morally improving (as discussed by Hillner (2015), pp. 210–11). For the market gardeners who employed them as such, see *J. Nov.* 64. The distinction that Justinian draws between native Constantinopolitans and others deemed foreigners is a novel feature of this law (see Laniado (2015), pp. 215–16).

¹⁰ A rare mention of the disabled, who were seemingly entrusted to the care of the city's charitable foundations (on which see Constantelos (1991), pp. 149–78).

¹¹ '*Sportulae*' = fees (see Kelly (2004), pp. 64–8 and 175–7).

illicit reasons in that connection, and claim that they have either contravened our laws on the subject, or served notice of summons on them without a court order, he is to conduct a careful search for those who have offended in that way, of whatever status and rank they may be and under whichever authority they may belong, and simultaneously detain them and, after proofs, exact from them the penalties threatened by our laws; no authority that they are connected with is to be able to oppose that. For one thing, he is to ensure that those who have been wronged are indemnified; and for another, he is to exact in addition the fines specified by our constitutions, and transmit the proceeds to us, to be spent on whatever we may decide.

7

In addition, he is to find out about all complaints of forgery, or what is called ‘counterfeiting’, in any kind of transaction.¹² He is to detain those against whom an information has been laid on these charges, and, after prosecution and proofs, punish them; we are giving him the authority to hear such cases as well. Should a victim of such a crime have laid an information before the person appointed by us as office-holder under this law, but have failed to gain just consideration of it, so that he is obliged to report it to us or to the Sovereignty of the time, the person who has taken up this office is to be clearly aware that he will personally repay to the victim of his culpable negligence the sum that he ought to have received from the offender, as well as justly experiencing our more serious displeasure for having had the temerity to contravene our commands.

8

Most importantly of all, the holder of this office will constantly pursue the object of conducting all business with clean hands,¹³ keeping his subordinates wholly unsmirched and above any base gain, and himself officiating with untrammelled purity. Should he find any such offence being committed by his subordinates, he is both to punish it, and to make them the foremost example of his combined firmness and morality. To this end, we are assigning him ten pounds of gold for his expenses, with one hundred *solidi* to his assessor and a stipend of three hundred *solidi* to his

¹² As noted in the Introduction, forgery was one of Justinian’s major legislative concerns: see also *J. Novs.* 44, 47, 49 c. 2 and 73.

¹³ ‘With clean hands’ = echoing the words of the oath for governors in *J. Nov.* 8.

subordinates, as their expenses; we have ordered a schedule of these sums to be appended to this law.¹⁴ This is so that they shall be adequately supplied by their honoraria from the public treasury, and keep their hands off what belongs to others; they will thus be meticulous servants of God and of ourselves, enjoying the favour of heaven and of ourselves, and handling the work of the office with greater ease and greater adherence to the law.¹⁵

9

We are also giving the holder of this post freedom to put pressure on office-holders, to report to us, and to act appropriately on his own initiative, so that he cannot blame lack of power, or anything else at all, for being found unequal to our judgment of him. Similarly, we give him licence to write official letters to provincial governors informing them that they will receive any help they need from the law in sending his deportees on to their own countries, to live there without problems.

A particular point of his concern will be to avoid being inconvenienced more than once by the same people, when they have been sent off after skulking here unwarrantably but then, possibly, come back again and cause him trouble for a second time by their immediate return. Should he catch them skulking unwarrantably in this fortunate city again, after he has got rid of them once and sent them back to their own country, he will subject them to fitting castigation, and deport them again, more forcibly. In this way our cities abroad will be populated, and this great city will be freed of disturbance.

Should he decide to station some members of his staff in bases over the sea, to confront arrivals from abroad, to receive those sent from here and send them on to their provinces, that is something he will also do, in his constant quest for the good of the state.¹⁶

¹⁴ The numbers of pounds of gold and gold pieces (= *solidi*) are given in Latin. This section resembles the schedule appended to *J. Nov.* 8.

¹⁵ As with *J. Nov.* 8, the logic of the provisions contained in this section of the law is that if officials were properly paid they would be less prone to bribery and corruption or tempted to engage in embezzlement. Nevertheless, Procopius claims that 'the one they called *quaesitor*, when he got under his power those who had fallen foul of him, would deliver to the emperor whatever he wished to give up, while he himself would become rich none the less, in defiance of the law, on the property of other men' (*Anecdota* 20.11).

¹⁶ Procopius records that Justinian stationed an official at the customs house at Abydos on the Hellespont 'watching out to see . . . whether anybody was putting out for Byzantium without carrying a permit' (*Anecdota* 25.3). That official may well have been one of the agents of the *quaesitor* alluded to here.

10

It is out of care for our subjects that we make all this legislation, to avoid their abandoning their homelands and leading a wretched life over here, perhaps dying deprived of what is theirs, and without even the benefit of their ancestral burial-grounds.¹⁷ That was why those who have laid down laws before us, and who founded communities, made this a not unimportant part of their concerns: idleness was actually an indictable offence, and the whole population was subject to scrutiny. This is no new or unusual aim of public policy; it is both proper and old-established, but has meanwhile become disregarded. As a result of negligence – so deleterious to everything – it was gradually becoming in danger of falling into decay and disappearing, until we found it to be useful and advantageous, and so have re-introduced it to our realm.¹⁸

1. Just as we desire the *quaesitor* himself, and his staff, to remain entirely unbribable, and to receive nothing apart from what we have directed, so too we command that they are to be kept free from costs: they are not to pay anything either for their warrants or on account of their stipends, or for any other cause whatever, now or in time to come, either in our divine Sovereignty, or in your excellency's court for codicils or letters of instruction;¹⁹ nor to the heads of your excellency's exchequer for stipends provided through them to himself, to his assessor or to his staff. What is given as an honorarium from us is to be kept unencumbered for them in all respects; it will be satisfactory to everyone that his honourable discharge of his office, in return for proper remuneration, is to everyone's great benefit.

Conclusion

Your excellency, in the knowledge of these decisions of our Majesty, is accordingly to take pains to put them all into effect, and to acknowledge our care in adding a new office, and in our constant concern for our subjects.

Given at Constantinople, March 10th in the 12th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Apion

539

¹⁷ The law here provides an interesting insight to attitudes to burial.

¹⁸ The salvaging of the empire from the slothfulness of past administrators is another rhetorical theme of Justinian's legislation: it is prominent, for example in *J. Edict* 13.

¹⁹ 'Letters of instruction' (Greek προστάγματα) = Latin *mandata* (on which see *J. Nov.* 17). This regulation is in line with *J. Nov.* 8.

81 | Constitution releasing sons from subjection to another's authority by reason of high rank and of episcopate¹

Emperor Justinian Augustus to the sacred Senate of the sovereign city

Preamble

We are constantly considering anything that regards the benefit and good order of the realm entrusted to us by God, and we take pains to put it into effect. It was to that end that we have already laid down a law on our Most Illustrious patricians, which, by the grant of that rank, renders them free from subjection to paternal power; we deemed it unbecoming that those whom we have included in the order of 'fathers'² should belong under the authority of another. Given that in antiquity the act of *emancipatio*,³ which took place under instances of what were called *legis actiones*,⁴ freed people from that form of bondage by means of insults and blows,⁵ how could the

¹ According to Roman law, all members of a family or household (*familia*) were under the authority of the eldest living male relative on the male side (the *pater familias*), who possessed 'paternal power' (Latin *patria potestas*). Such *potestas* permitted considerable control over both person and property. The head of the family could, however, free those within his power by a procedure known as emancipation (*emancipatio*): see Borkowski (2015), pp. 118–19. Some individuals, however, were automatically freed from paternal power by virtue of their office or dignity. In ancient Rome, for example, vestal virgins were exempt (see Gardner (1986), p. 22). Under Justinian, those holding the highest imperial honorific of patrician status had already enjoyed automatic freedom from paternal power. In this constitution, Justinian adds to those so privileged the holders of a number of high imperial offices (i.e. ordinary or honorary consuls, praetorian prefects, urban prefects and *magistri militum*). The emperor also confirms that those appointed as bishops were also automatically freed from *patria potestas* (on which see *Codex* 1.3.33 and 1.3.49). 'Subjection to another's authority' = the condition of being *in potestate* (Latin) or, in this instance, *in patria potestate* (Greek ὑπεξουσίος).

² A reference to *Codex* 12.3.5. 'Order of our fathers': the word 'patrician' (Greek πατρικίος) is derived from the word for 'father' (Greek πατήρ). The title was revived by Constantine as the senior honorific title in the empire, although it was not linked to any specific imperial office: see Jones (1964), pp.106, 254, 528 and 534.

³ 'Emancipatio' = the voluntary emancipation of a son or daughter from the power (*potestas*) of the head of the family (*pater familias*).

⁴ 'Legis actiones' = legal actions.

⁵ The reference to 'blows' is an allusion to the procedure of manumission by slap or blow: in classical times (for which there is only one source, Phaedrus 2.5 line 25) and later (when it is frequently mentioned, e.g. Ephraem Syrus, Sermon Pasch. Salv. 34), the owner would touch the slave with a symbolic blow (Latin *alapa*, Greek ῥάπισμα). See Harper (2011), pp.168 ff.

granting of the most august badges of status in the whole world, by the universal Sovereignty, not have been going to liberate patricians from subjection to the power of another?

We now have in mind an act of further munificence and honour for our realm, by legislating in just the same way both for Most Illustrious consuls – as it is they who, next after the reign, give their name to the dating, and are the only ones honoured with the insignia of consular authority – and also for the offices capable of giving release from council duty, that is, those of prefect and of general, but only if recognised as such by actual tenure of the high office in practice.⁶ The aim of this is that the conferring, on anyone whom we have approved for it, of any such rank and position as also releases them from council duty, is to have the power to release them as well from subjection to the power of their fathers or grandfathers. Given that we have legislated that any slave who, with his master's knowledge, is found to deserve a position in the service, or is given any rank by the Sovereignty, is at once freed, and actually rescued into free birth, how is it not right for those found worthy of such exalted insignia also to become free from subjection?

1

For that reason, we are accordingly using this most august law to decree that should there be any consuls *ordinarii*⁷ who are subject to authority, they are, as a concomitant of the word that grants them that rank, transferred to being independent;⁸ and that for those honoured with insignia of consular rank, also, should they be under their father's hand, that codicil becomes their cause of being independent. So too, anyone whom we appoint as one of our Most Illustrious prefects of our sacred *praetoria* in any diocese, or make urban prefect in either Rome, or a general is also at once to become independent.⁹ We have deemed it unworthy both of our

⁶ I.e. those offices (held in a non-honorary capacity) which were deemed to free the holder from curial obligations: see *J. Novs.* 38 and 70. 'General' (Greek στρατηγός) = Latin *magister militum* (on which see Southern and Dixon (1996), pp. 58–9, Treadgold (1995), pp. 152–3 and Lee (2005), p. 117). As is exemplified by the novels, years were dated according to the name of the consul in office.

⁷ '*Ordinarii*' = ordinary or regular. The distinction being drawn here is between regular and honorary consuls, each of whom were to enjoy emancipation. On the ordinary consulship, see Jones (1964), pp. 532–3 and 558–9. For the honorary consulship see *ibid.*, p. 533.

⁸ 'Independent' (Greek ἀνεξούσιος) = Latin *sui iuris* (under one's own legal jurisdiction): see Berger (1953), p. 723.

⁹ The same offices are identified with respect to freedom from curial obligations in *J. Nov.* 70. The generals referred to were the supreme regional commanders or *magistri militum*, on whom see Lee (2005), p. 117.

laws and of our era that the man with so many under his authority, and so many under his command, should still remain in subjection, and not be enrolled among those who are independent.

1. As stated above, we are legislating that, in general, every rank and office capable of conferring release from council duty also brings to those honoured with it the reward of being independent. This also renders their fathers still more estimable, in that they are the parents of those so honoured by the Sovereignty; if they, too, were not themselves equally desirous of it, they would not be putting requests to the Sovereignty on their sons' behalf. Thus for anyone who now is, or hereafter shall be, enjoying any of the honours and offices that we have enumerated above, the status of being independent is to go with it; it grants them *peculium*,¹⁰ free will, and action in keeping with their honour and with the choice of them by the Sovereignty. That will be much more of a compliment to their fathers, and will provide them with a source of great satisfaction.

2

An injunction we are adding to the law is that such grants of the status of independence are not like those ensuing on *emancipatio*; by these grants, the Sovereignty is bestowing an exceptional gift. We do not intend the person who has become, or is becoming, independent in this way to lose any of his legitimate rights: the family's legitimate and natural rights in respect of them, and theirs in respect of the family, are to be preserved intact. Their children are to fall under the same authority on their grandfathers' death as if their parents had become independent on the death of their own father, instead of as a result of this law; and on the death of their own father they are, reasonably, to have their own children under their authority. This is so that no augmentation received from the Sovereignty is to be regarded as depriving them of anything, because it is proper that whatever accrues to mankind from God, or from the Sovereignty acting in compliance with God, should be good in itself, and be unmixed with anything thing bad or detrimental.¹¹

¹⁰ 'It grants them *peculium*' = control of their own property. The *peculium* was a personal fund which the *pater familias* otherwise formally controlled (see Berger (1953), p. 624).

¹¹ The effect of this convoluted passage is that, unlike with respect to emancipation proper, emancipation from paternal power through promotion to high office does not have the effect of sundering all legal familial ties and leaves intact rights of succession under intestacy (this would be rendered obsolete by *J. Nov.* 118). Moreover, any children of the office holder remained under the authority of their grandfather (see Van Der Wal (1998), p. 62 (entry 472)).

3

It is clear that, as everyone knows, the right of being independent accrues to most holy bishops, above all, simultaneously with their appointment. How could the spiritual fathers of all belong under anyone else's authority? No; it is appropriate that they, too, should enjoy such honour, and reap that additional benefit from this legislation of ours.

Conclusion

It is our wish, most venerable fathers, that these decisions of ours, for the furtherance of the awe and respect in which you are held, should stand out in our realm as being simultaneously a distinction for you and a mark, which we have conferred on our fathers, consuls and priests, of our munificence.

Given at Constantinople, March 18th in the 12th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

82 | Judges; choice of them not to be accompanied by an oath¹

[Heading in Latin] *Emperor Justinian Augustus to John, praetorian prefect in the East, ex-consul, patrician*

Preamble

A constitution on the conduct of legal proceedings, laid down by Zeno² of pious destiny, has in later times received many alterations, and has gradually reached the state of being almost completely obsolete. All the arbitrators³ named in it have departed this mortal life, and many of its

¹ In this constitution, Justinian overhauls the imperial judiciary. First, he criticises the appointment of private citizens, often untrained in the law, as specially assigned judges acting on behalf of governors and other high ranking office-holders with judicial responsibilities (many – although not all – such judges were known as *iudices dati* or *iudices pedanei*, on whom see Berger (1953), p. 518 and, on the exceptions, Van Der Wal (1998), p. 15, note 13). Second, he replaces specialist judges in Constantinople with legal generalists, whom he regarded as better placed to hear cases of all sorts, and appoints as assigned judges in Constantinople a series of named lawyers, declaring that henceforth office-holders were only to delegate cases to these men. These judges were also to hear cases on the emperor's behalf. Third, he seeks to expedite the workings of justice by legislating that cases worth under three hundred *solidi* were to be heard under special procedures that obviated the need for full-blown submissions or an authenticated account of the case put before the judge of first instance, whilst also making other attempts to render legal proceedings cheaper and less time-consuming. Lastly, Justinian reverses an earlier law of his own making concerning private arbitration under oath. Litigants who went to private arbitration under a judge of their own choosing were no longer to be compelled to agree to such arbitration under oath, but were henceforth to agree to a penalty that was to be payable in the event of refusal to accept the arbitrator's judgment. Plaintiffs who had gone to arbitration would hereafter be free to appeal to the courts, but only on forfeiture of that penalty. Such private arbitration is amply recorded in the sixth-century papyri from Egypt: see Gagos and Van Minnen (1994), esp. pp. 30–5. The assigned judges appointed by Justinian are accorded the title of *δῆτριταιί* ('arbitrators'), but they are also referred to as those who shall hear (*οἱ ἀκροάσονται*) (e.g. c. 3) or as those presiding over 'hearings' (*ἀκροάσεις*) (e.g. c. 4). This would suggest that they should probably be identified as forerunners of the judges alluded to in the legislation of the iconoclast emperors of the eighth century and described as *ἀκροαταί* (on whom see Humphreys (2015), pp. 107–11). The constitution thus furnishes a further possible example of a 'Middle Byzantine' institution originating in the Justinianic period. For arbitration in Byzantine law, see also Papadatou (2000).

² The law of Zeno referred to is no longer extant.

³ 'Arbitrators' (Greek *δῆτριταιί*): the Latin of the *Authenticum* translates the word with the term *iudices pedanei*, who were private persons appointed as judges to whom governors and other officials often delegated judgment if their official duties made it difficult for them

legal provisions have fallen into silence, not having been specifically cited; usage has taken them over, and re-shaped them into different form.

Accordingly, in view of the completely disorganised condition of the judiciary, we have come to the conclusion that we must regulate it by a law that will put it into proper order; because another conclusion we have come to is that we must not have people bearing the name of judges who, above all, are ignorant of the law, and moreover have not gained practical experience. After all, our office-holders do at all events also have assessors at hand explaining points of law, and covering for them when they are busy; as they are beset with the numerous responsibilities they have under us, they quite rightly fulfil their judicial role by having their assessors with them.⁴ But to take the case of those with no official position, and not in our service: if they are not going to be able to master law for themselves, but have to pick up from others the proper way to try a case, what else could it be but a very serious constitutional defect? It means leaving them to look for others from whom they can learn what they have to say when passing judgment, instead of putting cases in the hands of those with their own understanding of what is to be done.

This is what has, properly, prompted us to the present law, in our care for our subjects and our desire that their litigation should proceed smoothly and easily, and be settled without any delay.

1

We are entirely abrogating the original form of the constitution of Zeno of pious destiny, which assigned specific judges to each court. Instead, we have decided to select judges who are well spoken of on every side; and, having been chosen from every side, they will be judges for all cases, in general.⁵ This has in fact already been done: our chosen judges are the admirable Anatolius, recently retired from advocacy and enrolled as one of the admirable treasury advocates;⁶ the Most Distinguished Flavianus, at

to hear a case (see *Codex* 3.3 and Berger (1953), p. 518). That translation is, however, avoided by Julian in his *Epitome*, and one should not therefore assume that the *διατηρηταί* of this novel were simply *iudices pedanei*. Rather, they appear to have been the equivalent of the *chamaidikastai* (χαμαιδικασται) alluded to in *J. Nov.* 60 c. 2: see Van Der Wal (1998), p.15, note 13.

⁴ Assessors were legal secretaries appointed to assist governors and generals. See *J. Nov.* 60.

⁵ I.e. specialist judges are to be replaced with competent 'all rounders'.

⁶ Anatolius: see *PLREIIIA*, p. 71 (Anatolius 4). He was the highest ranking of the lawyers here appointed to the judiciary by Justinian.

present treasury advocate,⁷ then Alexandros,⁸ Stephanos⁹ and Menas,¹⁰ most learned advocates and arbitrators of your court; another Alexandros,¹¹ who, as we have been informed, is also an arbitrator in the court of the Most Illustrious *magister* of the sacred *officia*;¹² followed by two others who are advocates in your court: Victor,¹³ and Theodoros of Kyzikos.¹⁴ These are to be promoted from advocates to judges.

1. It is appropriate that there should also be higher judges of more elevated rank, with experience either from much legal practice, or from long tenure of the highest offices or a large number of such offices, and with long service under our Piety. We have accordingly decided to enrol among our judges the following Most Illustrious patricians: the Most Illustrious Plato, who has had long tenure, on two occasions, of the high office of urban prefect;¹⁵ the Most Illustrious Victor,¹⁶ another with experience of high office both in Greater Greece and in the important city of Alexandria, as well as having had charge of the urban prefecture, and being no stranger to the law; and the Most Illustrious Phocas,¹⁷ a man whom your eminence well knows as having held your office with approbation, and who is also knowledgeable in legal matters. In addition to these, there is the Most Magnificent Marcellus,¹⁸ ever at our side, who is admired for his observance of justice and is, for that reason, in demand by almost everyone who brings suit before us; he also has the services of

⁷ Flavianus: see *PLREIIIA*, p. 486 (Flavianus 1).

⁸ Alexandros: see *PLREIIIA*, p. 43 (Alexander 3).

⁹ Stephanos: see *PLREIIIB*, p. 1184 (Stephanus 5). He had previously worked on the composition of the *Digest*.

¹⁰ Menas: see *PLREIIIB*, pp. 874–5 (Menas 2). He had previously worked on the composition of both the *Digest* and the *Codex Iustinianus*.

¹¹ Alexandros: see *PLREIIIB*, p. 43 (Alexander 4).

¹² I.e. the court of the *magister officiorum*, who was ‘the effective head of the empire’s central administration’ (Haldon (2005), p. 41).

¹³ Victor: see *PLREIIIB*, p. 1372 (Victor 2).

¹⁴ Theodoros of Kyzikos: see *PLREIIIB*, pp.1248–9 (Theodoros 11).

¹⁵ Plato (twice former Urban Prefect of Constantinople): see *PLREIIIB*, p. 1044 (Plato 3).

¹⁶ Victor (former Urban Prefect of Constantinople): see *PLREIIIB*, p. 1371 (Victor 1).

¹⁷ Phocas (former Praetorian Prefect of the East): possibly to be identified with *PLREIIIB*, p. 1029 (Phocas 1), who worked on the commission that compiled the first edition of the *Codex Iustinianus*. Unusually, Procopius goes out of his way to praise Phocas’ conduct in office, describing him as ‘a most scrupulous respecter of justice’ who ‘remained clear of any gain whatsoever while in that office’ (*Anecdota* 21.6–8: see also *Wars* 1.24.18).

¹⁸ Marcellus: see *PLREIIIB*, pp. 814–16 (Marcellus 3): a close ally of the Emperor Justinian, he was notoriously humourless and taciturn: see Procopius, *Wars* 7.32.33. Like Phocas, however, and unlike many of the other courtiers of the time, Marcellus’ devotion to justice was such that Procopius was unable to accuse him of either corruption or cupidity.

an assessor praised for his ability to handle legal issues, namely the Admirable Appion, a treasury advocate regarded by both ourselves and others as having earned good report.¹⁹

2

These, then, are the ones we intend to be judges under our office-holders; and we will ourselves depute cases to them all, as we see fit. Should any of our office-holders wish to delegate cases, he will depute them to the said arbitrators whom we have appointed, and to no-one else at all, except that he may hand trials over in part to his assessors, while he himself is to carry out the judgment of the case as a whole.²⁰

3

The arbitrators will sit continuously, right from dawn until late evening, in the chambers they are now using for their trials, in the Palace colonnade.²¹ They will hear not only those cases that will be launched before them after this law, but also all that had been launched before others[, not*] under the original procedure, but have now been ordered by us to be transferred to them.²²

* Omission of 'not' [οὐ, S/K, p. 403, line 4] makes far better sense, and is supported both by a similar transfer of judicial process in *Edict* 8 c. 1.1 and by the comparable insertion of a clearly wrong οὐ in *J. Nov.* 39 c. 2 [S/K, p. 257, line 29], where, just as here, it is copied with *non* in Auth.

¹⁹ The 'Appion' referred to here may well have been a member of the Apion family from Oxyrhynchus in Egypt whose private archive survives papyrologically. If so, he was probably a cousin of the Apion who was consul when this law was issued. See Sarris (2006), p. 23.

²⁰ See *J. Nov.* 60: assessors were permitted to hear parts of a case but not to sit in place of the governor or other official for the whole case.

²¹ 'The Palace Colonnade' or 'Royal Stoa', opposite Hagia Sophia, was the site of the main courthouse in sixth-century Constantinople (see Mango (1959), pp. 48–51 and Procopius, *Buildings (de Aedificiis)* 1.11.12).

²² 'Under the original procedure' = (Greek) κατὰ τὸ ἀρχικὸν σχῆμα. Alternatively, the term could mean 'according to the gubernatorial procedure' or 'under the office-holder's procedure', i.e. *in lieu* of the governor or office-holder. The translation proposed here is lent support, apart from the erroneous 'not', by the words of the *Authenticum*, where it is

4

It is to be observed that if there are appeals arising from the arbitrators or men of Illustrious rank,²³ should they be cases delegated from ourselves, they will either, according to their value, be tried by our Illustrious office-holders sitting jointly, or be delegated to others in the customary manner of divine *consultationes*.²⁴ However, should cases have been delegated to them by any of our Illustrious office-holders, the appeal will go to the actual persons who deputed the hearings to them, and such cases will again be judged by those, in the manner stated.

5

If the case is below three hundred coins in value, all judges will hear it under the procedure for interlocutory judgment;²⁵ this will mean that cases are judged more quickly, and the whole process of the litigation will be released from the roundabout procedures of investigations, and loss of time. It is to be clear, however, that even should they be hearing cases under interlocutory judgment, judges will nevertheless deliver a written conclusion, showing their opinion. No-one at all is to be refused leave to appeal on these cases, unless it is the third time that someone has wanted to appeal, or he has been contumaciously absent; such people are also refused leave to appeal.²⁶

6

We wish appeals from this great city to judges, from arbitrators,²⁷ to have a time-limited delay in the running of the set days of not beyond

translated by '[*non*] *secundum antequam motae schema*' ('[not] according to the procedure formerly in operation').

²³ 'Men of Illustrious rank' = the highest senatorial grade of *illustres*. These senators had been charged with enhanced judicial responsibilities in *J. Nov.* 62.

²⁴ 'In the customary manner of divine *consultationes*': for the procedural requirements associated with such upward referrals of judgment and appeals, see *J. Nov.* 28, note 19.

²⁵ 'Interlocutory judgment' (Greek παρασημείωσις): i.e. in low-value cases, judgment would be made on the basis of an abbreviated (possibly entirely oral) version of the pleas: see Van Der Wal (1998), p. 183, note 108. It is possible that this procedure is alluded to in *J. Novs.* 17 c. 3 and 28 c. 3 (which permit judgment without written submissions). See Steinwenter (1959), pp. 306–20.

²⁶ I.e. one could only appeal twice.

²⁷ I.e. appeals arising from judgments issued by the arbitrators (δαιτηταί) of Constantinople: see Van Der Wal (1998), pp. 178–9 (entry 1159).

two months, after which the set days must begin to run their course.²⁸ No *reparationes*, as the legal term is, can have any place in such cases.²⁹

7

No-one is to have the temerity to exceed what we have decreed³⁰ on *sportulae*³¹ and on court costs; all are to abide by that, for fear of the penalty that our divine constitution has determined for such offences.

1. Those doing the preparatory work for trials are to be as hitherto provided, as far as their level in the service is concerned. However, each judge is to have the services of two men acting as clerks and also two doing the preparatory work for the cases and keeping them moving; the same pair of these cannot serve more than one judge, or perhaps two at most. They must be reliable and approved in every way, so that they commit no error, breach of trust or crime. Their selection, together with their service, is to be on the responsibility of the staff, *scholae* or *scrinia*³² that provide them. Should they be at fault in any way, the consequent liability is to rest with those who appointed them, who are themselves to take the blame for it, and to make good any loss caused by those men to those who have suffered it. The respective office-holders are obliged, if petitioned, to make sure that in all cases members of their own staff, *scholae* or *scrinia* who are nominated to serve make good the consequent loss to the person who has suffered it. Should the judge have detected any malfeasance on the part of any of those serving under him, he will expel from his court those whose work is not well regarded, and install others, on the choice and nomination of those who, as we have just stated, have been given this liability.

²⁸ 'Set days' (Greek ἡμέραι κύριαι) = Latin *dies fatalis*: the last day of a period in which something had to be done. See Berger (1953), p. 435. Justinian here decrees, therefore, that an appeal must be launched within two months. See Van Der Wal (1998), p. 179 (entry 1159) and note 88.

²⁹ '*Reparationes*' = *reparationes temporis*: extensions of time granted by the emperor to appellants who had missed the *dies fatalis*. See Van Der Wal (1998), p. 179, note 89. On appeals, see also *J. Nov.* 20.

³⁰ A reference to *Codex* 3.2.5.

³¹ '*Sportulae*' = fees. See Kelly (2004), pp. 64–8 and 175–7.

³² '*Scholae*' = 'schools': used in the late Roman period to mean units either of military men (such as the palace guards) or palatine officials. '*Scrinia*' = sub-divisions of the offices of the imperial Chancery. See Berger (1953), pp. 691 and 692 and Delmaire (1989), p. 127.

8

If ever any Most Illustrious or most learned judge ceases to try a case, for whatever reason, no-one else is to take over the hearing³³ unless we should approve, and hand over the trial of the cases to another as his replacement.

9

So that this work on the part of our arbitrators does not go unrewarded, we decree that for each case pleaded before them, even if delegated to them from our Divinity, they are to be paid at the rate of two gold pieces from each party at the joinder of issue, and two at the conclusion of the case, but no more than that; they are to rest content with that alone, which is also what our predecessors determined. It is to be clear that the existing privileges for certain persons, for reduction of their costs, are to be kept intact for them all, in accordance with their rank. We mean these costs to apply for cases whose value exceeds one hundred gold pieces; should the valuation of the case be below that figure, we wish the parties not to be charged anything for court costs, because one who makes a deduction from so very small an amount is depriving the person so burdened of a very large proportion of his victory. Nor are we confining ourselves to that fee, as we are also rewarding them from our own resources: we wish each such arbitrator to earn two pounds of gold annually from your excellency's exchequer, and they are to be content with just that. They are to be quite unbribable, and to be above all financial inducement; the reason for our choosing to impose this charge on the public treasury is so that each of them can be content with this payment from us, in addition to the rate of four gold pieces, and keep his hands clean before God, before us and before the law, bearing in mind what penalties previous legislators have laid down on this.

10

The requirement for judges, without fail, to look carefully into the matter of costs in all cases – this being another valuable provision in the decree of

³³ 'Hearing' (Greek ἀκρόασις). This noun and the related verb are used throughout this constitution. In the eighth-century legislation of the Iconoclast emperors, we find references to judges termed 'hearers' (ἀκροαταί). The evidence of this law would suggest that these eighth-century ἀκροαταί were possibly descended from or are to be identified with the arbitrators (διαιτηταί) of Justinian's legislation. On ἀκροαταί, see Humphreys (2015), pp. 107–11.

Zeno of pious destiny,³⁴ and one that we have not disdained to incorporate in our own decrees – is to remain observed in the same form, with just one addition: should the judge require the winner to take an oath as to his costs, of course within the total that seems correct to the judge (*taxatio*,³⁵ as the laws call this), and should he have duly taken the oath, the judge has no licence to award less than the amount sworn, or to show himself more generous than the law that prescribes this. Should he decide, because of some possible complication in the case, that he must not impose liability for costs on either party, he is to declare that explicitly in judgment.

Everything else to do with appeals, with objections, and with the avoidance of precipitate or forced joinders of issue by having a twenty-day period of delay, is, as we have said already, to remain in its own force without fail, as is any other provision that we have made on legal proceedings.³⁶

11

We have a number of petitions from some people who choose as judges men entirely devoid of legal expertise and experience alike, and who enthusiastically take an oath to abide by the jurisdiction of men whom no-one would trust on any matter at all – they may even go so far as to persuade the judges to put such an oath to them! Yet these are men who have not the least understanding of what justice is at all, or how it is observed; so, unsurprisingly, the litigants suffer – and then, oblivious of the oath they have sworn, they request a review of the case. This is a problem that we have deemed to deserve attention.³⁷

1. As we have discovered from practical experience that such a situation is unsafe, to avoid people falling into unintentional perjury, by being forced to break their oath as a result of the judges' incompetence, we decree that there is in future to be absolutely no-one acting as chosen judge, and trying cases, with the backing of oaths. Instead, those choosing a judge, or judges, are in all circumstances to select them with a penalty attached, of whatever amount the parties mutually agree on. They are then to be obliged either to abide by the judgment, or, if they should wish it to be re-examined, to begin by paying that sum into court. That done, they are to have licence to

³⁴ A reference to *Codex* 7.51.5.

³⁵ '*Taxatio*' = the maximum for which it was decided the litigants in any given civil trial could be liable. See Berger (1953), p. 730.

³⁶ See *J. Nov.* 53 c. 3.

³⁷ In fact it was a problem of the emperor's own making; in *Codex* 2.55.4 he had legislated to encourage arbitration under oath. Here he effectively rescinds it. See Van Der Wal (1998), p. 114, note 33.

withdraw from the provisions of the judgment, and go before a different judge. Our office-holders, should they be petitioned, are to collect the money paid in, and cause it to be paid over to those ordered to receive it. Those choosing judges are to be aware that if they should fail to act in that way and to stipulate a penalty, in the belief that the backing of an oath is sufficient, and should then suffer at the hands of the judges they have thus chosen, they will, if it is deliberate, undergo the penalty for their perjury from God; but if it should be from ignorance that they find themselves in this situation, they will gain nothing by their oath. Our aim is that there shall be no perjury on anyone's part; and we are not permitting litigants to be subjected any more to grave loss by respect for their oath, because of judges' incompetence.

All previous enactments on either *compromissorii*³⁸ judges or chosen judges, whether in ancient legislation or in our own, are to remain in their own force, with no modification resulting from this law of ours except on the compulsion to take oaths.

12

We decree, moreover, that our office-holders are, without fail, to accept appeals; no-one at all is to have freedom to refuse them, with the one exception of your excellency's high office, to which the Sovereignty has some time ago granted the alternative recourse of re-examination.³⁹

13

Every judge, whether an office-holder or trying a case in another capacity, is to observe the laws, and to pass judgment in accordance with them. Even if a command of ours, or a divine directive, even a pragmatic one, should be issued during the course of a case, with instructions to decide the case in such-and-such a way, he is to follow the law. What we intend is that what our laws intend should be paramount.

If there is an appeal on the case, the judge is, without fail, to accept the appeal being lodged, absolutely without making any objections whatever, in all cases on which a right of appeal exists at all; the recourse of appeals is to be available to everyone. By it, an injured party can lodge a complaint

³⁸ '*Compromissorii*' = arbitrators chosen by common consent (*compromissum arbitri*) of the parties to a dispute. See *Codex* 2.55 and Berger (1953), pp. 366 and 401.

³⁹ A reference to *Codex* 7.62.19.

and obtain rectification, whether from the judges of appeal or from ourselves, should the judgment be brought before us.

14

If, in the course of their adjudication, judges should find that an issue is debatable, we give them licence to inform us of the circumstances, inquire of us, and receive the answer they need. Thus instructed on what to do, they can make their judgments at once both just and reasoned.

Conclusion

Accordingly, your excellency will advertise these decisions of ours, made for the benefit of our subjects, both in the sovereign colonnade⁴⁰ and in the other quarters of this great city of ours, so that they are published to all, and so that all learn of our constant concern for their freedom from danger and trouble.

Given at Constantinople, April 8th in the 13th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Apion

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⁴⁰ 'The sovereign colonnade' or 'Royal Stoa' = the main courthouse in Constantinople.

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

There are numerous sacred laws that we have enacted on most God-beloved bishops and the whole priesthood under them, and also on most reverend monks. As we have recently made one² with the intention that most reverend monks are to be subject to legal proceedings only before the local bishop under whom their monasteries belong, we have been requested by Menas,³ most God-beloved bishop of this fortunate city and ecumenical patriarch, to grant that privilege to the most reverend clergy, as well.

Thus, should anyone have any financial suit against them, he is to begin by going before the most God-beloved bishop who is the cleric's superior, bringing the case against him, and receiving an unwritten judgment.⁴ Should that be done, he is not to harass him, drag him before civil courts, or keep him occupied away from his sacred ministry: the strife between them is to be resolved by having the case tried without written documentation, free of extra charge, and receiving a decision – perhaps even a written one, should the parties decide on that and request it.

1. However, should it become impossible for the most God-beloved bishop to reach a decision on the case, owing to the nature of the issue, or

¹ This law confirms that clergy could only be tried by their bishop and not, in the first instance, by secular magistrates. However, in the event of the bishop being unable to reach judgment, in certain circumstances a case against a clergyman could be referred to a civil magistrate or official. For the right of bishops to preside over legal cases (known as *episcopalis audientia*) and the relationship between the Church and the legal profession, see Lomoreaux (1995) and Humfress (2007), pp. 135–268. The constitution appears to refer to the legal procedures alluded to in *J. Nov.* 82.

² A reference to *J. Nov.* 79.

³ Menas was appointed Patriarch of Constantinople in 536 and would hold the office during a period of heightened theological tensions with the Papal authorities in Rome (on which see Sotinel (2005), pp. 278–82).

⁴ 'Unwritten judgment': possibly according to the procedure for interlocutory judgments as mentioned in *J. Nov.* 82.

to some difficulty, then, provided that all privileges granted by divine constitutions to the most reverend clergy are upheld, the plaintiff is to have licence to resolve his difficulties by the method of going before the civil authorities as well, and having the case contested and a conclusion reached. The Most Distinguished office-holders are to take pains to decide the suits according to our laws with all energy and speed, so that the clerics are not kept occupied away from their sacred functions for reasons of this kind and do not have to endure court hearings, with their commotions and the consequent perturbation to the litigants' souls, when they should be saying their prayers to God and doing the work proper to priests.

2. As for any criminal charges against clergy, for civil offences here the judges are to be the relevant office-holders; in the provinces, they are to be the governors. So that the proceedings reach a rapid conclusion, the case is not to overrun the two-month time-limit from whenever the joinder of claim has been made.⁵ What must be clear is that, should the provincial governor find the accused guilty and deserving of punishment, the most God-beloved bishop is first to strip him of his priestly rank; only then is he to fall into the hands of the law.

1

However, should the offence be an ecclesiastical one, requiring chastisement and penalties of an ecclesiastical nature, it is to be the most God-beloved bishop who judges it, with no part being taken by the Most Distinguished governors of provinces. It is our wish that cases of that kind should not even come to the knowledge of the civil authorities at all; they must be tried ecclesiastically, and the offenders' souls are to be amended by means of ecclesiastical penalties in accordance with the sacred canons, with which our laws do not disdain to comply.

Any cases that have already had their joinder of claim are to remain under the same procedure, and come to a rapid conclusion; and all our previous legislation, whether on most holy churches, most God-beloved bishops, clerics or monks, is to have its own force.

⁵ As per *J. Nov.* 82.

Conclusion

Accordingly, your excellency is to make our decisions, manifested by means of this divine law, public to all by means of proclamations of your own, and to take pains to observe them for ever.

Given at Constantinople, May 18th in the 13th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

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Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

It has already been said a number of times, in the preamble to laws, that nature keeps deploying numerous new states of affairs from every direction; and it will go on being repeated for as long as she continues to act in her characteristic way, putting us in need of numerous new laws.²

The topic of successions by *legitimi* and *cognati*³ is one that we also find discussed by the ancients, and from the original state of the law their successors have taken it on, right down to ourselves; our amendments have included many aspects of it. A case that has come before us is one such, as follows.⁴

1. A man has married a wife, and children have been born to him by her. Then, on her passing away, he remarries, and this second wife also bears him children, these being only paternal, not maternal, siblings of the first family. He then embarks on yet a third marriage, and has children from that, too; and after his death, his wife goes on to a second marriage, by which she had further children, not paternal but only maternal siblings of those by her first husband. Now it came about that, after the mother's

¹ This constitution addresses the issue of uncertainty of rights to succession between the offspring of multiple marriages.

² This is a standard Justinianic justification for legislation and legal reform. See Lanata (1984a), pp. 165–88 and Bjornlie (2013), pp. 254–67.

³ '*Legitimi* (*heredes*)' = heirs with a statutory claim upon intestacy: see Buckland (1963), p. 370 and *Codex* 6.15; '*cognati*' = blood relatives (including relatives through the female side): see Berger (1953), p. 393. The constitution therefore deals with the law of succession, into which Justinian's *Institutes* had introduced a measure of confusion and complication: see *Institutes* 3.5.1 and Buckland (1963), pp. 374–5. Only with *J. Nov.* 118 would Justinian fully overhaul the inherited system and impose a measure of order on it (see *ibid.*, pp. 375–85). In the present law, Justinian can be seen to be struggling with some of the problems of priority of succession which could arise. The emperor was evidently aware that the law of succession had undergone many changes in the past, but was here concerned primarily with the matters of priority between claimants in the second and third grades in the praetorian law of succession (*legitimi* and *cognati*) which still prevailed, although it had undergone many modifications. Among *legitimi*, agnates still had priority over non-agnatic claimants, and *legitimi* still had priority over *cognati*, although the agnatic principle had been much weakened. See Arjava (1996), pp. 106–7.

⁴ The law thus furnishes a further example of legislation inspired by actual litigation.

death, one of these died both childless and intestate, having left a large number of siblings, some of them maternal, some paternal, and some simultaneously both maternal and paternal.

That, roughly, was the new situation devised by nature; and now that she is giving us this starting-point, we can think of further cases, as well, which could bring about such a situation, produced by the death of a husband, the death of a wife, or by various other legitimate marriages. The problem was thus whether the call to inherit from the deceased brother must go to them all: the maternal siblings, the paternal ones, and those who are maternal and paternal simultaneously.

1

After careful consideration of all the laws that we have assembled, both ancient and our own, we found that this problem had not arisen.⁵ It is therefore high time for us to regulate it with a law, taking into consideration that some of the siblings have rights in respect of the deceased as being *cognati* – which we have coupled with those of *legitimi* –, others as being *legitimi* in their own right, by sharing his paternal descent, in the same way as those others do by his maternal descent; and yet others, also in their own right, have the clear support of both law and nature, inasmuch as they are offspring of the same mother's womb and had only the one father's seed. The status of these last, as *legitimi* in all respects, stood out like a kind of badge. A brother of that kind, had he decided to relieve both the law and the disputants of their difficulties, would have taken steps to make a will and made his purpose public, and those honoured by its terms would be being called to the inheritance. However, as he was either unwilling or unable to do so (human affairs are manifold, and innumerable obstacles arise, including sudden death), this law of ours will arbitrate on the position.

1. This law's intention is that, in succession to the deceased, those with the double distinction of being simultaneously paternal and maternal siblings are superior to those who are paternal or maternal only. Undismayed by the complexities of nature, we shall give a legal form and judgment to what she has devised, by assigning the better part to those more fully qualified, and not accepting those less qualified as being on the same level with them.

⁵ See, however, *Codex* 6.59.5.

2. We have several motives for this, the first of them being another law of ours⁶ which, in the case of a son dying childless, calls firstly his siblings by the same marriage, secondly those by a different marriage, and after them his father, to inherit the possessions that have come to him from his mother, his marriage, or some other adventitious source, as may be. That was a proof that our legislation has been bringing this matter to birth for some time, because if the position is that even when his father is still alive, the deceased's maternal and paternal siblings are given preference over his half-brothers and sisters, as well as over his father himself, it follows that once his father is no longer alive, but only his siblings, those who are maternal and paternal alike have preference over those related to the deceased through one parent alone; and it would be consistent with that for the previous legislation on property inherited maternally, matrimonially, and also adventitiously, to be in force and use also for the remainder of the deceased's effects.

This, then, is the law that is to be laid down for the case that occasioned it, as has been described. Further, given that this innovation on nature's part arose from three marriages, there is nothing to prevent one from supposing that the outcome in which some siblings are related only through the father, others through the mother, and others through both at once, could also be produced by just two marriages; or, again, one could grant that the series of marriages could have been extended, making such a situation still more possible. Thus the law is to keep its own force for such cases as involve any such distinct classes of siblings: those whose claims are double are to exclude those able to advance only a single one.

2

Should there be a different kind of situation, one in which there are only maternal or only paternal siblings at the death of one of them, it is to depend on the previous laws that have already determined their successions. This law, though, is to have applicability not just to the case that prompted the action, but also to those that there will be in future, or that are still pending; thus previous cases that have been resolved, whether by judicial pronouncement or by compromise-agreements, are to retain their own decision without requiring any judgment under this law.

⁶ See *Codex* 6.59.11 and 6.61.6.

Conclusion

Accordingly, your excellency is to make our decisions, manifested by means of this divine law, public to all by means of proclamations of your own, and to take pains to observe them for ever.

Given at Constantinople, May 18th in the 13th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

539

*Emperor Justinian Augustus to Basileides, Most Illustrious magister of the sacred officia*²

Preamble

Ever invoking our great God and Saviour Jesus Christ and his aid, we take pains to preserve all our subjects – whose government God has entrusted to us – free from harm and abusive treatment, and to prevent the internecine wars in which, out of their own folly, they choose to engage, thus involving themselves in a twofold penalty: the one that they bring down on themselves, and the one to which they are subjected as a result of the laws that punish their madness.

1

Accordingly, in our desire to free people from such deaths, we have decided that no private person is to work on the manufacture of armaments. The only people to produce weapons are to be those collectively enrolled in the public armament-factories, or *fabricae* as they are called; and no

¹ In this constitution Justinian upholds the long established ban on private citizens bearing or trading in arms. In particular, he reiterates the ban on the private production of weapons, and bans the sale of state-produced or state-owned weaponry. The law casts incidental but revealing light on the potentially violent nature of both urban and rural social relations, the uses to which mechanical weapons (*ballistae*) were put, and provides names for items of weaponry and armour which are otherwise rarely attested. The law suggests that there may have been a particular problem with the siphoning off of state armaments onto an illicit private market in Egypt. Certainly, private armed retainers, and imperial troops illegally engaged in private service are amply recorded in the documentary papyri. They were, for example, evidently a feature of life at this time on the estates around Oxyrhynchus owned by members of the Apion family, under the consulship of a member of which this law was promulgated (see Sarris (2006), pp. 162–75). For the illicit use of imperial troops as well as imperial weapons, see also *J. Nov.* 116. The state's earlier attempts to restrict the use of violence in Roman society to authorised persons were enshrined in the *lex Iulia de vi publica seu privata* ('the Julian law on public or private force' – of uncertain date, whether attributable to Julius Caesar or Augustus), on which see Berger (1953), p. 554.

² For Basileides see *PLREIIIA*, pp. 172–3 (Basilides). 'Magister of the sacred officia' = *magister sacrorum officiorum*, whose responsibilities included the supervision of state-owned arms factories (*fabricae*): see Jones (1964), pp. 368–9.

maker of armaments is to sell them to any private person.³ Nor do we allow armourers, also known as *deputati*,⁴ who are enrolled in military units and earn stipends from the public treasury, to make weapons, or sell them to anyone; they are only to work on maintaining the arms of the soldiers enrolled in the units in which they are serving. Any new item they do produce is to be taken from them and brought into our divine *armamentum*,⁵ as an addition to the publicly owned equipment stored there.

2

We wish exactly the same to be observed also by the detachments of *ballistrarii*⁶ whom we have stationed in various cities, and to whom, also, we have attached some skilled producers of arms; these, too, are to repair and renew only the publicly owned weapons stored in the state arsenals of each city. Any new item of equipment they produce is, similarly, to be delivered to the public arsenal; they are absolutely not to sell it to anyone else.

3

The observance of that by members of the *ballistrarii* will be on the liability of the fathers of the cities,⁷ under whose command we have put the *ballistrarii* themselves, and whom we have appointed to oversee and safeguard the public armouries. Should any *deputati* or *fabricesii*⁸ prove to have been selling armaments, the local authorities will see to it that such persons are subjected to punishments, and also that the armaments are taken away from the purchasers without payment, and claimed for the public treasury.

The design that we have received from God, who gives us guidance, and that we are decreeing by means of the present law, is that in no city or province of our realm are private persons, or anyone else, to have licence to

³ On the prohibition set out here, see also *J. Nov.* 17 c. 17 and *J. Edict* 8. c. 3.

⁴ '*Deputati*' = (literally) 'delegated men'.

⁵ '*Armamentum*' = armoury.

⁶ '*Ballistrarii*' = soldiers who operated the *ballistra* (Greek) or *ballista* (Latin): these were large mechanical crossbow-like devices the bolts fired from which were capable of piercing armour. An eye-witness account of their use is to be found in Procopius, *Wars* 5.21.14–22 and 5.23.9–10, describing Belisarius' use of them to defend Rome from the Goths. Both this law and Procopius' account thus suggest they were frequently used to defend cities.

⁷ 'The father of the city' (Latin *pater civitatis*) was a civic official answerable to the provincial governor. See Liebeschuetz (2001), pp. 210–12.

⁸ '*Fabricesii*' = *fabricenses*: armaments workers.

make, sell or trade in armaments in any way at all; only those assigned to *fabricae* are to produce them, and they are to deliver them to our divine *armamentum*.⁹ We decree that this is to be upheld by your excellency and those who will take up your office after you, and that the *chartularii*¹⁰ under your excellency, on the liability of their five principal members, are to detail certain members of the *scrinium*¹¹ of the *fabricae*, of good repute and capability, to conduct a survey of armourers in this fortunate city and in other cities of our realm; they are to prevent private persons, and any others apart from those enrolled in the sacred *fabricae*, from engaging in the business of manufacturing arms, and wherever they find any private persons daring to do so, they will take the arms away and add them as acquisitions to the public *armamentum*. Should they succeed in finding any capable craftsmen among private persons doing that work, and should these wish to be enrolled in positions in the service, they are to enter their names on a register and send their register of craftsmen over to us, so that by means of a divine rescript of ours we may allocate them to the places where there are public *fabricae*, for them to make publicly owned arms and to earn stipends from the public treasury.

Once that is being done, and is being strictly observed by the above-named persons, no-one at all, either private persons living in cities or country people working on estate properties, will be given any licence to use weapons against each other and to dare to commit murders, resulting in numerous killings and in loss of tax-revenue to the public treasury from agricultural workers losing their lives, or being frightened into absconding.¹²

1. After those despatched by your excellency from the said *scrinium* of the *fabricae* have put a stop to arms-manufacture by private persons, they must receive from the local office-holders, from the staff under them and from the defenders¹³ and fathers of the cities, an undertaking not in future to permit anyone to engage in any of the actions that we have forbidden, but to uphold what has been decreed by means of the present law, on pain of capital, as well as pecuniary, punishment. Specifically, we decree that the prefect of the great city of Alexandria, if he ignores the terms of our legislation, will pay a fine of twenty pounds of gold and will forfeit his office, and his staff will similarly pay a fine of twenty pounds of gold, and

⁹ Note the emperor's claim of a direct link to God.

¹⁰ *Chartularii* = secretaries.

¹¹ '*Scrinium*' = office or bureau: see Berger (1953), p. 692.

¹² A revealing insight into the sometimes violent nature of social relations in the countryside, on which see also Sarris (2006), pp. 71–80.

¹³ 'Defenders . . . of the cities' = (Latin) *defensores civitatum*: see *J. Nov.* 15.

will be subjected to capital punishment.¹⁴ Office-holders in provinces elsewhere will be subject to a fine of ten pounds of gold, and they too will be liable to forfeiture of their posts; and their staffs, and also the defenders and fathers of the cities, will have the penalty of a fine of three pounds of gold and will suffer capital punishment, if they allow any such occurrence that they have discovered to go unheeded and do not punish it, or inform those able to do so.

4

With the aim of making explicit our prohibition of the manufacture of armaments by private persons or anyone else other than those assigned to our sacred *fabricae*, or the sale of them to private persons, we have decided, by means of the present law, to make the following clarification.

We forbid private persons to manufacture and to purchase bows and arrows; broadswords and rapiers (generally called ‘parameria’¹⁵); what are called ‘zabae’ or *lorikia*;¹⁶ pikes and spears of whatever construction or form, including what the Isaurians¹⁷ call ‘monokontia’;¹⁸ the so-called ‘zibunni’, or *missibilia*;¹⁹ also shields or *scutaria*, and helmets or *kassides*,²⁰ those too being included in what we are allowing no-one to produce except those enrolled in the sacred *fabricae*. The only items that we do allow to be made by private persons and sold to private persons are small knives that no-one could use in warfare.

¹⁴ The severity of the fine imposed on the Augustal Prefect of Alexandria (on whom see *J. Edict* 13) would suggest that this was an especially pronounced problem in Egypt. For private armed retainers and violence in Egypt, see Sarris (2006), pp. 162–75 and Booth (2011).

¹⁵ We are grateful to Professor Doug Lee for information on this topic. For παραμήρια he suggests ‘side-arms’.

¹⁶ Such ζάβαι (meaning ‘coats of mail’) are also mentioned in the sixth-century military handbook the *Strategikon* of Maurice. There, as here, they are coupled with the λωρικιον (a Hellenised diminutive of Latin *lorica*, ‘breastplate’ or ‘cuirass’) signifying body armour: see Maurice *Strategikon* 11.1.15 and Dennis (1985), p. 114 ([‘the Persians] wear body armour and mail’).

¹⁷ Isaurians were the inhabitants of an upland region of Asia Minor (Isauria, on which see *J. Nov.* 27), the natives of which had a reputation for toughness and martial spirit. As a result, many Isaurians were employed in the army, rather like the Nepalese Gurkhas in the British and Indian armies.

¹⁸ The word μονοκόντρια means ‘single-spears’.

¹⁹ *Zibunni* presumably derives from σιβύνη, so could be glossed as ‘hunting spears’; *missibilia* (Latin) literally just means ‘throwables’.

²⁰ Such κασσίδες (apparently connected with the word used in Greek for ‘tin’) are also mentioned in Maurice’s *Strategikon* 1.2.12 (see Dennis (1985), p. 12: ‘helmets with small plumes on top’).

Your excellency is accordingly to publish the present general law of ours in this sovereign city, and also in the other cities of our realm, so that all may know of these decisions of ours, and observe them.

5

You will also communicate, to the secretaries of the said *scrinium* of the *fabricae* who will be in charge of seeing that this is observed, the fact that they will not only be subject to financial penalties for negligence, but will also undergo corporal punishment, and forfeiture of their post in the service. Furthermore, their *scrinium* itself will no longer be permitted by us to serve on this duty; supervision of *fabricae* will be entrusted to others.

Conclusion

Your excellency, and those who will hold your office after you, are accordingly to take pains to put our decisions, manifested by means of this law, into practical effect; and they, too, are to fear our displeasure, should they fail to uphold something so advantageous to our state.

Given at Chalcedon, June 25th in the 13th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

Governors putting off the hearing of a petitioner's lawful claims are to be constrained to act on it by the bishops; when someone mistrusts the governor, he is to have the bishop of his city to hear his case jointly; those injuriously treated by the governor are to petition the bishop; other supervisory role of bishops to be fully confirmed¹

In the name of the Lord Jesus Christ our God. Emperor Flavius Justinianus Alamanicus Gothicus Francicus Germanicus Anticus Africus,² pious fortunate glorious victor triumphator, ever revered Augustus

Preamble

Ever since God set us to reign over the Romans, we have been putting every effort into constantly doing everything for the assistance of the subjects of the realm entrusted to us by God, and acting to release them from all distress, harm and oppression, so as to avoid their having to be away from their homeland and suffer hardship abroad, for litigation and other causes.³

1

That, then, is also the reason for our present decision to send out the present edict to the whole subject population, and to make it known to the

¹ In this constitution Justinian seeks to achieve two distinct but related goals. Firstly, as with respect to his legislation on appellate procedure and *J. Nov.* 80, he seeks to curtail the flock of both lay and ecclesiastical petitioners to Constantinople. He does this by prohibiting clergymen and monks from coming to the capital without patriarchal consent, and also by effectively appointing the bishop as a court of appeal over and above the governor at a provincial level (see Hillner (2015), pp. 86–8 and Jaeger (1960), pp. 234–8 and 257–62). Secondly, he effectively tries to establish the bishop as the emperor's 'eyes and ears' in the provinces, expediting delays in the workings of justice and keeping the governor under careful scrutiny. On the reasons for and challenges posed by this attempt to use the episcopacy as agents of the imperial will, see Sarris (2006), pp. 205–34.

² On Justinian's triumphant titulature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ The novel here provides a powerful expression of Justinian's sense of providential mission.

inhabitants of all cities and villages. It is to the effect that anyone who has a controversy with someone else, whether on a financial matter, or on dispossession of property (movable, immovable or ambulant),⁴ or on criminal charges, must first bring suit before the Most Distinguished governor of the province, for him to try the counts in accordance with our laws, and uphold justice for each. If anyone does not obtain his rights by bringing his case before the governor of the province, we then command him to bring it before the most holy bishop of the locality, who is to send to the Most Distinguished provincial governor, or go to see him in person, and to cause him, without fail, to hear the petitioner, and give him deliverance with justice under our laws, so that he does not have to travel away from his homeland. If the governor goes on putting it off, even under pressure from the most holy bishop to settle the litigants' issues with justice, or if he does judge the case, but does not uphold justice for those receiving it, we enjoin the most holy bishop of that city to give the party who had not obtained justice a letter addressed to us, stating that, despite his pressure, the governor had put off hearing the claimant and deciding the issue between the claimant and the party against whom he has had a complaint. This is so that, on being informed of it, we may impose penalties on the provincial governor for having failed to decide the controverted issues, despite having been both petitioned by the injured party, and pressed by the most holy bishop.

2

In the event that a subject of ours mistrusts the governor, we command the most holy bishop to hear him jointly with the Most Distinguished governor, so that the two of them either settle the controverted issues by amicable compromise, or decide between the parties by written interlocutory judgment, or by examination, and give a verdict in accord with justice and law, so that our subjects are not compelled to be absent from their homeland for such reasons.

3

Should someone who thinks he has an action against anyone, of whatsoever kind, have neither brought it to court before the Most Distinguished provincial governor nor appealed to the most holy bishop of his city, but

⁴ 'Ambulant' property would have included slaves as well as livestock.

have just come here without a letter from the most holy bishop, he is to know that he himself will be subject to such penalties as those to which the governor would have been subject, had he been petitioned by him but not taken the trouble to uphold justice for him.

It is for the benefit of the population of our cities and villages that we have decided to make all the provisions of this decree, to avoid their leaving their homelands and enduring hardship abroad, to the detriment of their affairs. That is also our purpose in appointing governors without fee, and putting them under oath: so that for everyone who brings suit before them they should uphold his rights, in accordance with our laws.⁵

4

However, in the event that one of our subjects has been unjustly treated by the Most Distinguished governor of the province, we command that he is to take his case to the most holy bishop of that city, who is to decide the issue between the Most Distinguished governor and the person who thinks he has been unjustly treated by him. In the event that judgment is lawfully and justly given by the most holy bishop against the governor, he is in every way to compensate the person who has brought suit against him; and if the governor refuses to do so, and the said case comes to us, should we find that he has not carried out the judgment lawfully and justly given against him by the most holy bishop, we command him to be subjected to the most extreme penalties for being found unjust, when it is his own duty to vindicate those unjustly treated.

5

We also command the staff under the governor's command, and all those who serve under Most Distinguished governors, to make every effort to let petitioners have their deliverance, without taking any payment beyond what is included in our constitutions. If they do not observe that, we command them to be subject to extreme penalties.

6

Should we find any most holy bishop ignoring justice, out of favour to any person, we command canonical chastisement to be inflicted on him. This is

⁵ See *J. Novs.* 8 and 17.

so that they take pains to give just judgments, in fear of God; and so that people do not have to abandon their cities, provinces and localities, and come running over here, as a result of their not receiving justice.

7

In cities which are not the seat of governors, our command is that those with cases are to take them before the defender and he is to judge the issues between them. If the parties to the case want it tried by the most holy bishop, not the defender,⁶ that is what we also command to be done.

8

We command that no monk, cleric or bishop is to come here without written authorisation from their most holy patriarch; otherwise, they are to know that they will be rendering themselves unworthy of their position.⁷

9

If anyone who is of magisterial or prefectorial rank, or has any official status whatsoever, receives more as *sportula*⁸ than what is defined in our divine constitutions, we command the governor of the province, at his own peril, to punish that without fail in accordance with our law, by inflicting chastisement on those who dare to behave like that. If the governor does not take punitive measures over these crimes, we give licence to the most holy bishop of that city to inform us of the facts, and of the service-position or rank of the person who has dared to do that. This is so that we may both bring home the liability onto the governor who has disregarded our command by permitting this, and give orders for the punishment of the actual person who dared to behave like that.

Given April 17th in the 13th year of the reign of the Lord Justinian, consulship of the Most Distinguished Apion [Date missing; supplied from Athanasius]

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⁶ 'Defender' = defender of the city (Latin *defensor civitatis*): see *J. Nov.* 15.

⁷ See *J. Nov.* 67. For monastic petitioners at the imperial court, see also, *Anecdota* 12.24–7.

⁸ 'Sportula' = fee (see *J. Nov.* 8 and Kelly (2004), pp. 64–8 and 175–7).

87 | City councillors: gifts made by them *mortis causa*¹

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

It is our desire that malpractices on the part of city councillors should not be able to cause harm to the public treasury, but that the law should counteract such intentions in every way.² It has come to our knowledge that after we prohibited³ for city councillors their device of making gifts, by not permitting them to donate, or to bequeath by will, immovable property worth more than three *unciae*,⁴ leaving a minimum of nine *unciae* for the city council, they have devised malpractices against the law, such as the following.

They knew that we had found the ancient law-givers at variance over the form of a gift *mortis causa*,⁵ as to whether it constituted a gift or a *legatum* – some counting it as a gift, some as a bequest –, and that we had selected the views of the majority, and the best, of the legislators, and declared it to be

¹ As already noted, much provincial and urban administration in the sixth-century empire continued to rest on the shoulders of local landowners enrolled as councillors (*curiales*) onto their local city council (*curia*). Justinian was eager to maintain the cohesion and viability of such councils, despite a tendency on the part of city councillors to attempt to evade their curial obligations (*munera*): see Liebeschuetz (1996). Accordingly, *curiales* were prohibited from bequeathing outside of their family more than a certain portion of their estate, so as to ensure that the heirs of such *curiales* still had the financial wherewithal to meet the costs of civic office. This law reveals that city councillors had been attempting to circumvent such regulations by decreasing their estate through making gifts that became operational upon their death (*donationes mortis causa*). In this constitution, Justinian seeks to curtail this practice (see Van Der Wal (1998), pp. 94 (entry 664) and 155 (entry 1025)). For a sixth-century papyrological example of a *donatio mortis causa*, see *P. Vindob. G. 15300* in Koroli and Papatomas (2016).

² ‘City councillors’ = (Latin) *curiales*: see *Codex* 3.25 and 10.22.

³ A reference to *J. Nov.* 38 c. 1. See also *J. Nov.* 89 c. 6 and *J. Nov.* 101 c. 3.

⁴ ‘*Unciae*’ = twelfths.

⁵ ‘*Mortis causa*’ = *donatio mortis causa*: this was a gift made by a donor on the assumption that he would die before the donee and which became effective upon his death. The difference between a *donatio mortis causa* and a legacy (*‘legatum’*) was that the former was not set out in a testament. However, as this law testifies, the two institutions gradually became increasingly assimilated and regulations concerning the law of legacies were extended to cover such gifts: see *Digest* 39.6, *Codex* 8.56, and Berger (1953), p. 443.

definitely a *legatum*, needing no entry in the records, but with licence to make it, and also to include in it any conditions the giver decided; and, should he have done so, to have licence also to renounce the power of a donor, if he changed his mind over such gifts, to revoke them; and also to include in gifts *mortis causa* any conditions he wished. That was as legislated by the most judicious Julian, and entered by us in Book 39 of our Digest,⁶ in which we incorporated, in brief, every ordinance both of the ancients and of our own.

In this knowledge, then, these people thought they should make some gifts *mortis causa* in that way, including an agreement, in accordance with the law, with the effect of abrogating their power to change their mind about the gift and revoke it; and they saw fit to add to these gifts another condition, at their discretion, with the purported aim of enabling themselves by these means to make irrevocable gifts, and thus to reduce the size of their own estates.

1

Despite the fact that every way of enabling them either to bequeath by will, or to alienate by way of gift, more than three *unciae* of their estate, had already been abrogated for them by our previous legislation,⁷ we are nevertheless, in order to put a stop even more firmly to their malpractice, now also decreeing that no city councillor may make any gift, even *mortis causa*, except only either in the form of pre-nuptial gift for themselves or their own children, or by way of dowry, up to the amount that our constitution says they may give to daughters on their marriage. Otherwise, there is no alternative way in which they can give away immovable property: that is to remain permanently in their possession, and be subject to the obligations of city councillors.⁸ All that they are allowed is to sell it, and that only in accordance with the terms of our novel constitution.⁹ Gifts *mortis causa* keep their own force: people other than city councillors can make the said gifts *mortis causa* to whatever persons they wish, include conditions in them, and renounce the right of changing their mind about the revocation of the agreement, should they wish to do so. Even so – and this is an addition to our legislation – the

⁶ *Digest* 39.6.13–18 (the *Authenticum* incorrectly gives Book 38). Salvius Iulianus was a second-century jurist.

⁷ A reference to *J. Nov.* 38 c. 1. See also *J. Nov.* 101 c. 3.

⁸ ‘Obligations’ (Greek λειτουργία) = (Latin) *munera*.

⁹ This novel is not included in the current collection, again indicative of the Greek collection’s private rather than official origin.

property is to remain under the terms of gifts *mortis causa*; such gifts are to be valid and secure.

This is not the first time that we have legislated in this way; but we are now giving a fresh interpretation and confirmation, in our own words, of what has already been legislated for all persons other than city councillors, as stated; that exception is due to our earnest concern for the public treasury.

Conclusion

Accordingly, your excellency is to take pains to uphold our decisions manifested by means of this law, and, above all, to take every care for the benefit of the public treasury.

Given at the seventh <milestone>¹⁰, May 18th, in the 13th year of the reign of the Lord Justinian Augustus, consulship of the Most Distinguished Apion

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¹⁰ A series of milestones stretched across the empire, measured from the central milestone (μίλιον) that stood in the heart of Constantinople, in front of Hagia Sophia: see Kazhdan (1991) 2, pp. 1346 and 1372.

88 | Deposit; injunctions on tenants; suspension of bread-issue¹

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

Recently, in the course of our hearing a case – which is something we do frequently, in public session at the Palace – a problem cropped up that we solved then and there; but, as we have learnt that this kind of problem is of frequent occurrence, we have taken it as right to rule on it by a universal, general law.²

1

Anyone who should at any time receive gold or any other property on deposit, on certain conditions, is subsequently, when the conditions have been met, to have full obligation to return the gold or property. Once the conditions have been fulfilled, there is no licence at all for anyone to make use of any extraneous injunctions and withhold repayment of the deposit, on which numerous other privileges have been granted by our predecessors as legislators, as well as by ourselves. The person trying to prevent the repayment does have licence, without taking action against the person entrusted with the deposit, to take out proceedings against the intending recipient of the gold or property, over matters at issue with him personally, and to receive his legal entitlement; but he is not, for that reason, to subject to heavy costs the person who has received the injunction, and compel him either to call up *defensiones*,³ or to get into difficulties and be unable to meet his obligations to the depositor, even when he is willing to do so.

¹ In this constitution Justinian legislates against those who attempt to hold on to deposits unjustly and litigants who attempt to divert rental and other income (e.g. a share of the Constantinopolitan bread dole) from those against whom they claimed an action or debt (similar to what, in Common Law, would be regarded as a ‘garnishee order’, but without the prior adjudication of a court).

² The novel thus provides a further instance of a specific case leading the emperor to issue a law of general effect.

³ ‘*Defensiones*’ = the procedures by which one combats an opponent’s claim: see *Digest* 50. 17.43 (concerning those who deny a debt) and Berger (1953), p. 428.

Should the server of the injunction act in any such way at all, and should loss of the property or money, or any other fortuitous mishap, ensue and be proven, it will be his lookout; this is because we must not be content with merely prohibiting offences, but must also wield at offenders a justified menace.

Additionally, not only if the deposit whose recovery has been blocked is in gold, but also if it comprises other property, he will have to acknowledge liability for payment of interest at one-third of 1 per cent⁴ from the date of the serving of the injunction, to the person prevented from receiving what is his; so that, for fear of that, people may desist from groundless and malicious impediments to the fulfilment of obligations.

2

In fact, we have decided to consider this whole matter of injunctions, and also to deal with it by law, as we have been seeing it become very prevalent, especially in this sovereign city. There are people serving injunctions on those who supply the public food-allowances, or procuring mandates from the prefect of the *annona*,⁵ with the intention of having the supply suspended, and depriving the person, whose sole means of support it may well be, of the supply that provides him with all he has to live on. And there is something even harsher and more unfeeling: a number of people are maliciously disposed towards landlords of premises in this fortunate city, and, just when those are about to receive their tenants' rent, serve abusive injunctions on the tenants against making their payment to the landlords.⁶ The tenants are delighted to receive these: some of them, being hard up, may use the rent-money for food, while others simply leave this great city; and the rent-payments to those whose sole support they may well be (as we have just said about the civic food-allowances) go entirely unmet.

1. There is, therefore, no-one to whom we grant licence for this. Everyone who has any case against someone under an obligation to him

⁴ 'One-third of 1 per cent' = the monthly rate of interest (= 4 per cent *per annum*).

⁵ 'Prefect of the *annona*' (Latin *praefectus annonae*) was the official charged with issuing the civic dole of bread rations to those households in the city of Constantinople which were entitled to receive them: see *Codex* 1.44, Jones (1964), pp. 486, 600 and 692. For the food-supply of Constantinople and its legal regulation, see also Teall (1959), Durliat (1995) and Sirks (1991). For the transportation of grain from Egypt to Constantinople to bake the civic bread, see *J. Edict* 13. The implication is that litigants were applying to have ascribed to them the dole of those whom they claimed as their debtors, or against whom they had some other claim.

⁶ Again, the litigants appear to have been suing to have the rents paid to themselves instead.

is not to shut his eyes to one-side of it and devise mean, utterly malicious injunctions instead; or else, he is to know that should he do anything of the kind, and should either the bread-supply, or the tenants' rent-payment, fall through by his fault, he will himself bear the resulting liability for having served an injunction either on the tenants or on those who supply the bread, or for having suspended the bread-supply. It is our intention that nothing of the kind shall be done at all; we decree that he is to compensate all loss to the property-owner from whenever he effected the injunction, and is, further, to acknowledge liability for interest at one-third of one percent of any money or property that the person wronged in this way has been unable to receive because of him.

No-one is to put up *defensiones* against this, to the effect that it is open to the party with the right of reclaim to recover what is his by giving a *defensio*, either on the deposit or on the other property; it is not easy for everyone to provide a guarantor for his *defensio*, as our laws lay it down that no *defensio* is worth anything at all unless made with a guarantor and access to a guarantor is not, in all circumstances, readily available or possible.

We thus wish this to be observed from now on and for all time to come, for the protection of our subjects, so that the benefit of this legislation of ours to our realm is everlasting. It occurred to us in the course of a trial, and has given birth to the present law as a benefit to our subject-population in common.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect, and to observe it perpetually.

Given at Constantinople, September 1st in the 13th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

No interest had previously been taken by Roman legislation in those dubbed illegitimate, and there was no humane feeling for them; they were regarded as something alien, and entirely unconnected with the citizen body. Since the times of Constantine of pious destiny, however, there has been mention of them in the statute-books,² after which emperors have gradually been coming round to a moderate and humane attitude. Some of the laws that they have been enacting do actually state that it is right for both gifts and bequests to be made to illegitimates by their fathers; and others also envisage a method by means of which they could be released from their previous illegitimacy and, by becoming legitimate, actually be their father's heirs. Gradually, too, legislation³ extended to their descendants as well; and, by the time it reached our own days and those of our immediate predecessors, the subject had taken on considerable complexity. Our own object has been twofold: both to advance a large number of people from their former state of slavery to freedom, and also to

¹ Roman law had traditionally taken a harsh line with respect to the rights of illegitimate children, and that severity had been largely upheld by the Emperor Constantine, who took a dim view of the institution of concubinage, and thus was disinclined to encourage it by according rights of succession to the children of concubines. Constantine did, however, allow such children to succeed to their father's property, but only on condition that their mother was of free birth (*ingenua*). Eastern emperors after Constantine, however, had taken a more liberal approach, and this trend within imperial law would culminate in this constitution. In it, Justinian allows not only the sons of free concubines to succeed to their father's estate in certain circumstances (such as the absence of any legitimate heirs), but also extends that right to the off-spring of concubines who were current or former slaves. The distinction between 'freed status' and 'free status', had effectively been broken down by *J. Nov.* 78, and Justinian here facilitates the legitimisation of illegitimate children of all social backgrounds, so long as their mother was a regular concubine, and not simply a casual sexual acquaintance. The Emperor is especially keen to render legitimate those potential heirs to an estate who were willing to meet curial obligations, thereby once again reminding one of Justinian's determination to ensure the survival and cohesion of city councils at a time when they were evidently under pressure: see Arjava (1996), pp. 210–17, Evans Grubbs (1995), pp. 294–304 and (2014), pp. 47–9, and Liebeschuetz (1996).

² See *Codex* 5.27.1 and Evans Grubbs (1995), pp. 284–92 and 297–305.

³ See *Codex* 5.27.12.

bring them from illegitimacy to legitimacy, because one should concentrate not on punishment and prohibition, but on remedying what is unhealthy, and on ‘avoiding what is bad by finding what is better’⁴ in every way.

In the statute-book that we have compiled out of the whole body of the legislation of previous sovereigns,⁵ there are some things that have been laid down concerning illegitimate children;⁶ and there are others that we have in part legislated on ourselves when dealing with the subject of guardians,⁷ and have in part found already completed. We ourselves have also made a number of constitutions on them, some in the said collection of constitutions, and others since that.⁸ Accordingly, so that the subject shall not remain in a piecemeal condition, we have thought it good to assemble it all in a single constitution, which will be sufficient, in place of all of it, as amendment and legislation on the subject of illegitimates.

1

Some people, obviously, are simultaneously both free and legitimate; others, not previously so, become so by subsequently rising from being slaves to being free, and from illegitimacy to legitimacy; some are in fact illegitimate, and have some rights of succession, while to others not even so much as the distinction of illegitimacy is applicable, but they have proved not to deserve even that. We must, therefore, make our constitution in such a way that no-one* is ignorant of any part of what should be applicable to illegitimates.

* Adopting S/K’s suggestion in app. crit. of μηδένα for μηδέν [p. 429, line 30], in line with Auth. *nullus*.

We shall begin our law by stating who it is who are illegitimate; by what means (the majority of which we ourselves have invented) they will proceed to legitimacy; what are their rights of succession; how antiquity treated them harshly, and how we have treated them humanely. Nor shall the question be omitted of who it is that, as has been stated, are not deemed by the laws to deserve even the appellation of illegitimate.

⁴ Adopting a proverbial expression.

⁵ I.e. the *Codex*.

⁶ See *Codex* 5.27.

⁷ See *Codex* 5.28.

⁸ See *J. Novs.* 18 c. 5, 19 and 74.

Originally, then, when it was nature⁹ that made the law on procreation of children, and no written laws were yet in place, she brought forth all alike as both free and well-born; the earliest parents' earliest children were given their existence by Creation as alike free and legitimate. But wars, battles, self-indulgences and lusts shaped matters differently: it was war that invented slavery, and the lapse from morality that produced illegitimacy; and it was the law, in turn, that remedied wrongs of these kinds by devising freedom for those in slavery, taking much trouble over the subject and introducing innumerable methods, while constitutions of sovereigns opened up the routes to legitimacy for those irregularly born. We, too, are legislating on that, as a matter of not just incidental importance; and we also wish our subjects not to be remiss in their compliance with this law.

1. People's legitimate successors are the issue of marriages that they enter into either with marriage contracts or without them, if the males' intention, in their cohabitation with the females, is to have a legitimate marriage with them from the outset.¹⁰ Observing that this relationship was being impugned, we defined by law¹¹ what must be done to prove legitimate marriage, firstly by those whom fortune has raised to high rank, and secondly by people in an intermediate situation; also what has been permitted for the remainder, a majority. Thus the successions for the issue of these marriages are self-evident: should they be counted as legitimate, the law, which has taken much trouble over these matters, at once explains the ways in which the successions go.

That, then, in round terms, is how it is for legitimacy. For issue not of that kind, but free although not from a lawful marriage, or also remaining illegitimate but found to deserve freedom though born in slavery, there are various methods leading them to legitimacy. After enumerating these, we shall then proceed to the remainder of the legislation.

2

The earliest method of legitimation that existed, one which was also of direct benefit to cities, was introduced by Theodosius, of pious recent memory.¹² The possibility has been legislated by him of presenting

⁹ On 'nature' in Justinian's novels, see Lanata (1984a), pp. 92–5 (discussing this law) and Bjornlie (2013), pp. 254–67. For the Justinianic concept of 'natural law', see especially Waldstein (1994) (who refers to this novel at pp. 55–6).

¹⁰ The next sentence shows that this applies only to the 'remainder', i.e. according to *J. Nov.* 74 c. 3, 'the lowest classes, soldiers, and agricultural workers'.

¹¹ A reference to *J. Nov.* 74 c. 2 and c. 3.

¹² I.e. Theodosius II: see *Codex* 5.27.3.

illegitimate sons, all or some of them, to city councils, or of marrying daughters to city councillors.¹³ This method involved legislation¹⁴ that was not simple, as it has various provisions for both presentations and successions, on the questions of how they themselves succeed and from whom, and, again, by whom they are succeeded; so we have thought it right to begin by settling this head of the legislation, and only then to proceed to the rest of the methods leading to legitimacy. From then on, the provisions are entirely straightforward.

1. Should there, then, be a father of illegitimate sons, whether himself a member of the city council or free of it, he will have licence to present them, or some of them, to the council, even should the children have attained an *illustris* rank,¹⁵ other than one that would have released people from that status, had they been city councillors. (For this, it is immaterial whether he is the father of legitimate children, or not, but only of illegitimate ones.) One way of making the presentation may be in the father's lifetime, when a person presents his son in public, as was done in the case of Philocalus, an illegitimate son who was made a city councillor in Bostra¹⁶ by his father: he has presented him by making a declaration to that effect in the theatre there, in accordance with what it says in the constitution laid down by Leo¹⁷ of divine destiny. That, then – a paternal declaration – is one way in which a person may become a city councillor; another is his father's presenting him by making an entry in the official register that he is to be so; another is that he may, at his death, have put a clause in his will that his son is to be a city councillor: if the son then accepts the clause, he is at once released from illegitimacy, and becomes legitimate once and for all. Further, if the son or sons present themselves even after their father's death – provided, though, that there be no legitimate issue – they will in this case also be both legitimate and city councillors. Thus, a father will present his non-legitimate sons to the council even if he has legitimate ones; but someone taking this step for himself will only be heard when there is no legitimate one subsisting.

That, then, is how presentations are to be made; we are embodying in the present law what had been legislated separately. Even so, presentation will be neither simple nor haphazard; we still have to make explicit the ways in which their presentations will be made.

¹³ 'City councils' = (Latin) *curiae*; 'city councillors' = (Latin) *curiales*.

¹⁴ See *Codex* 5.27.3, 4 and 9 and *J. Nov.* 38 c. 2–4.

¹⁵ '*illustris*' = members of the highest senatorial grade. For the prefectorial and magisterial posts alluded to, see *Codex* 10.32.66, *J. Nov.* 70. and *J. Nov.* 81 (pr.)

¹⁶ Bostra was capital of the Roman province of Arabia: see *J. Nov.* 102.

¹⁷ The Emperor Leo I (r. 457–474). The law referred to is *Codex* 5.27.4.

2. In the case that a person (whether he be a city councillor, or free of such status) comes from a city, he may present his illegitimate child to the council of the city from which he had come. Should he not be from a city, but have come from an estate property or village, he is to be presented by his father – or is to present himself – to whichever city it is under which his estate property, or his village's affairs, belong. It is to be clear that should it be his father, grandfather or even a remoter forebear who presents him, he can do so even if he has legitimate sons; but should someone be presenting himself, we allow that only when there are not also other brothers who are legitimate.

3. However, if one of those able to present his illegitimate sons to city councils has come either from this great city or from the even older Rome, we give him licence to make the presentation to any metropolitan city he wishes.¹⁸

This is also to be the rule for daughters: he is to marry them to city councillors either from the actual city from which he has come, or under which his estate property or village may belong; or else, if both free and either from Rome or from Byzantium,¹⁹ to a member of any other council whatsoever, provided that it is a metropolitan one.

Such is our concern for the city councils, and our satisfaction with this method of legitimation, that we grant that a councillor who is the father of none but illegitimate children, even should he have had them by a slave-woman, may free them and present them to the city council in the manner we have described above. And our legislation goes further still: even should his father not present him, if he ever becomes free he can also present himself to the city council, provided of course, in that case also, that there is no surviving legitimate issue.

3

As the matter of succession from such persons has also been subject to various legislation, it is, in our opinion, not out of place also to regulate matters to do with succession, as we said earlier.

If, then, an illegitimate son should become a city councillor in this way – that is, by presentation – he will be his father's successor both in intestacy and by will, with no difference from legitimate ones, and he will also be able

¹⁸ 'Any metropolitan city' = any provincial capital. The Senates of Constantinople and Rome also served as their respective city councils, and such people evidently could not simply be catapulted into the senatorial order.

¹⁹ See note 18 above.

to acquire from his father by gift; always provided that he is not to have a larger amount than the one who has the least, out of those legitimate from the outset. Once they have accepted the presentation and have thus ascended to legitimacy, we do not allow them *abstinere*²⁰ from their father's inheritance, nor to purport to be rejecting the gift made to them and acquiesced in by them, and withdrawing from their status. They will remain as city councillors and have what has been given or left to them, in the proportion previously stated by us.

1. Should they, however, decline the presentation at the outset, preferring to remain free of it, even if in illegitimacy, rather than becoming richer and being city councillors, but later prove to be in possession of either all or part of what was given or left to them, or also to have alienated it, they will be bound to curial status in any case, whether willing or not. This is to prevent their proving to pervert our legislation by pursuing the gains pertaining to presentation, while disencumbering themselves of the status in virtue of which they were deemed to deserve those gains.

This legislation of ours applies equally for male children presented to the city council and for daughters marrying city councillors; there is no difference, whether a person's intention be to enlarge the council through male children, or, by way of his daughters and sons-in-law, to do what he can through their children, and add their sons to the existing members, as new councillors.

4

It is only in respect of his father that we are legitimating a son who is being brought to legitimacy on this ground. We are certainly not using it as a device for putting him into relationship also with his father's tertiary kinship, by which we mean the father's parentage, his collaterals on either side and his descendants. The terms of our decree are that it is only to his father that a natural son presented to the council becomes a legitimate successor; he has no connection with his father's ascendants, descendants or collateral relatives, either *agnati* or *cognati*,²¹ nor with their succession. We are also giving him the same exception: just as he does not become their

²⁰ *Abstinere* (Latin) = 'to abstain'. What Justinian effectively means here is that he refused them the *ius abstinendi*, i.e. they were unable, on the father's intestacy, to refuse to accept the inheritance, even of a *damnosa* ('ruinous' – i.e. debt-ridden) *hereditas*, whereas legitimate *sui heredes* had long since been granted this right by the praetor's edict (Gaius, *Inst.* 2 157–8).

²¹ *Agnati* = relatives through the paternal line of descent (privileged in terms of intestate succession); *cognati* = blood relatives, including those on the maternal line.

successor, so they are not called to his succession, either – that is, unless he should appoint them, or be appointed by them. It is in respect of their father alone that they become legitimate, and are taken as his kin.

5

Another question calling for legislation is that of who it is that are rendered successors to those becoming legitimate in this way.

Should such a person have sons or grandsons born to him by lawful wives, and they, as may well be, are also city councillors, they are in any case to succeed him; after all, what is more in accordance with law than a legitimate son's succession to his father? Should he, though, have sons born to him, at whatever time, who are not councillors, then the legal proportion is to come to the council and the public treasury, and the residue, of whatever amount, is to go to the children who are not councillors. Should he have no issue at all, and die intestate, the city council and the public treasury are to have nine *unciae*, in accordance with our recent legislation²² on this, while those called by the law will all come into the remaining three *unciae*;²³ otherwise, should he have made a will, it will go to those appointed as heirs. Once he has become a councillor, and the law has received him and entered him in the council, it has given him his successions, and all the rest of his prescribed successive course of life. Should there be anyone either of his family or an outsider,²⁴ whether appointed, it may be, or not appointed, who decides to petition the Sovereignty and present himself to the council, he is to have licence to do so, receiving the portion assigned to the council and succeeding to both its rank and its obligations, should the Sovereignty give its assent.

6

Should someone not have legitimate children but have only illegitimate ones, he is to be allowed to appoint them as heirs, with the burden of the council. The appointment is to stand instead of any presentation; as in the ancient laws, it is to need no addition, nor presentation in their lifetime. By the mere fact of their appointment, provided that they are free, they are

²² A reference to *J. Nov.* 38 c. 1–4.

²³ '*Unciae*' = twelfths.

²⁴ 'Outsider' = (Latin) *extraneus*: an heir who is not subject to the testator's authority at his death (i.e. from outside the family or household): see *J. Nov.* 1, note 1 and Berger (1953), p. 466.

to become city councillors and heirs simultaneously, and have the nine-*unciae* share of the estate as their own, in whatever way their father may apportion it between them. Should he actually decide to leave them the entirety, he will be doing something better still; but in any case he is to leave them a minimum of nine *unciae*, in the awareness that even should he leave them less, the full amount of property will in any case be made up from his estate by the law. Should they so choose, they are to become city councillors; should some so choose but others refuse, the shares of those declining are to go to those accepting. Should they all decline, the entire nine *unciae* are to come to the council as if it were a case of childlessness. In any case where he himself has said nothing and he has no issue of legitimate sons, the legal share is then to go to the heirs in intestacy; but if the illegitimate sons are willing to present themselves to the council, whether some or all of them, they are to do so, just as they wish. In any case, the nine-*unciae* share of the estate will devolve on the city councillor or councillors.

Should he have children born to him by a slave woman, provided that he should have manumitted them either in his lifetime or in his will, and presented them, they are to be accepted in this case as well, and be city councillors, either by the wish of the testator or as their own desire has brought about. Whether he should have put that in a will or, equally, have departed without having come to that conclusion, they will receive the nine *unciae* by presenting themselves to the city council, as stated, because it is our intention in every case that those entering the council are to have the nine *unciae*. Should he only have freed them, without having presented them, and should they, or some of them, opt to look towards the city council even so, in that case also the nine *unciae* are to be given to the one, or, proportionately, to the ones, who serve on the council. Should none of the illegimates either opt or be presented, the council is then to take the nine *unciae*; it being understood that the public treasury will benefit at the same time in all respects, in accordance with the constitution laid down by us on that.

Those, then, are to stand as the clear terms of our legislation on illegimates who become legitimate by means of entry to the city council, both as to the method of their presentation and as to their successions.

7

Three other constitutions have been laid down.²⁵ The legislation of Zeno of pious destiny has practically nothing to do with what was to come, but only

²⁵ See *Codex* 5.27.5 (law of Zeno), 6 (law of Anastasius), and 7 (law of Justin I).

with matters now past; the only reason that we have allowed it to remain enacted is so as not to take away, from those who may have benefited under that constitution, their benefit derived from the fact that their issue descends from it. Similarly, we shall not permit that of Anastasius of pious destiny, which offers adoption of illegitimates, to cause any trouble to our subjects in future; we are letting it lie, but solely so that any benefit there may be in store from it, for anyone, should not be seen as being abrogated by our laws. After all, while one must always be initiating something good, one must not undo the benefits previously provided by others. As for our father's constitution, prudently introduced and aptly enacted, we accept it: it prohibited adoption of illegitimates, on the grounds that that involved much that was undesirable, and admitted illegitimates indiscriminately, as if they were some kind of interlopers to legitimacy.

8

There remain the methods devised by us, which we shall go through, to provide legitimacy for the illegitimate. As for their right of succession, we shall have no trouble over that, either, because simply by rendering them legitimate, we are granting them the same successions that are possessed by those classed as legitimate from the outset.

Here, then, are our methods.

Should anyone draw up a marriage-settlement with a woman free from the outset, or with a freedwoman, with whom it is anyhow allowable to live together, when he is cohabiting with her as his concubine, we decree that, whether or not he had already become the father of legitimate children, the marriage is lawful, and the children, including both those born and conceived, before the contract, are legitimate. Even should he have no subsequent children, or should they be born but die, the earlier issue has nevertheless become legitimate; his intention towards the children born in those circumstances, which is what prompted him to the marital contract, has given the second family, as well, their basis for later legitimacy. It would have been absurd if the valid reason, received by the later children from the earlier ones, did not give the earlier ones, as well, their basis for subsequent legitimacy – and, simultaneously, their unimpeachable rights of succession to their fathers. Clearly, the younger children have become legitimate as a result of the law's respect for the marriage-settlement; while the settlement itself had its origin and its *raison d'être* in the previous close relationship. We have thus classed both sets as one, and done away with the vexatious actions that used to ensue, by means of a number of constitutions

in which we said that even if a father had no later children, but had nevertheless made marriage-contracts, he would have his children as legitimate all the same. Chance had the power and the opportunity for him to have further children, just as it had the power to deprive him of them once born; but there was nothing at all such as could deprive him of the proof of intention towards his children born previously (that is to say, before the marriage-contract), which is what gave those born previously their legitimacy.

1. It has been added, on even more reasonable grounds, that if a child had been conceived before the marriage-settlement but born after it, he benefits himself, just as he could benefit those born before him. We have also devised a regulating principle that gives the best guide to the status of neonates: as there was dispute over whether it was the date of conception or of birth that had to be taken into account, we decided by law that the date to be considered was not that of its conception, but that of its delivery, because that was in the children's interest; thus should there, imaginably, turn out to be circumstances such that the date of conception is more to its advantage than the time of delivery, we ordered that what should be paramount was the one that would be the more advantageous to the child.

9

Another piece of our past legislation²⁶ is for any case in which someone wants to make his issue legitimate, but is without a wife who is such children's mother; or else, who is extremely fond of his children, but his wife's behaviour towards him may not be faultless, and he may think that she does not deserve any title of legality. Thus the woman may be dead, or be not regarded as deserving a legal form of cohabitation; or else there may have been criminal subterfuge on the children's part in having the wife deliberately kept in concealment (either by the children, or in some other way) after she has come into some source of wealth, so that the father should not, by legitimating the children, obtain from them, as being under his authority,²⁷ the use and proceeds of their mother's property in the event of her predecease.

If, therefore, someone with no legitimate children, but only illegitimate ones, should wish to make them legitimate, but either have no wife at all or have one either not faultless, or not to be found, or alternatively, should he

²⁶ See *J. Nov.* 74.

²⁷ 'Under his authority' = *in patria potestate*.

have no funds for making a marriage-contract (or, what if one of them has taken up a religious calling?), we give him a right, as we have also done before, to bring his illegitimate children to legitimacy by one of the following methods, provided, as we have already said, that there are no legitimate ones.

Just as there are methods of bringing slaves simultaneously to freedom and free birth, and giving them restitution of free birth status, so a father without legitimate issue who wishes to give children restitution of free birth status²⁸ and true original birth is to do so, provided that they were born to a free woman, by means of a rescript from us. Originally, after all, when nature alone was giving mankind its laws, before written laws came in, there was no difference between legitimate and illegitimate; as we said at the beginning of the present law, the earliest parents' earliest children were legitimate as soon as they made their appearance. Just as, in the matter of liberty, nature has created everyone free, but wars devised slavery, so too, in this case, nature brought forth legitimate issue, but the deviation into lust smirched it with illegitimacy.²⁹ The two conditions being similar, the remedy, too, must be by corresponding means, of which one was devised by our predecessors, the other by ourselves.

1. Accordingly, a father in the foregoing situations is to have licence to leave the mother in her former state, and to present a petition to the Sovereignty saying that he wishes to give his illegitimate children restitution of free birth status, true birth and legitimacy, with the result that they will be subject to authority under him, and be no different from lawful children. That done, the children are to enjoy such benefit from then on.* By this single method, we are remedying for those without legitimate children all such evasions and stratagems of nature, using so economical a supporting action to rectify so strong an assault on nature.^{-*30}

- Except for ἐκβάσεις [S/K, p. 439, lines 7–8] instead of παρεκβάσεις, this whole sentence is identical with that at the end of *J. Nov.* 74.2.pr. [p. 373, lines 36–40].

²⁸ 'Restitution of free birth status' = *restitutio natalium*: see *J. Nov.* 78 and Berger (1953), p. 591.

²⁹ I.e. under natural law (*ius naturalis*) all men are free, whereas slavery is the product of manmade law (*ius gentium*): see *Institutes* 1.2.

³⁰ On the role of the emperor in curtailing or emending 'nature', see Bjornlie (2013), pp. 260–7.

10

If, moreover, a father of only natural children³¹ should, as a result of some fortuitous circumstances, have been unable to do that, but should at his death, in one of the aforementioned situations, have written a will with the intention that his children should be his legitimate successors, we give him a right for that as well, provided that in that case his children put in a petition after their father's death, containing that information and exhibiting their father's will. They are then to inherit under the law; they are to have that as a gift to them from both father and Sovereignty, or in other words from both nature and law.

11

For all the above-mentioned methods of transference to legitimacy in general, we wish them to apply only if the children acquiesce in them. Given that it is not allowed for fathers to give up their authority against their children's will, much more do we regard it as unjust, and uncharacteristic both of the Sovereignty and of legislation, to subject an unwilling child – perhaps one apprehensive about paternal status – to authority,³² whether by presentation to the city council, or by the making of a marriage-contract, or by any other device.

1. Should some of a number of children accept and others refuse, those who accept are to become legitimate, and the rest are to remain illegitimate. In saying this we are not doing away with any of the above methods, but are adding this to the others, for where those are not available. Generally, when legitimate children subsist, and illegitimate ones have either followed or preceded, those would not be given legitimacy at all except either by means of the city council or by means of our constitutions that introduced the method of marriage-contracts.

2. The method of adoption was regarded in the past, by some of our predecessors as emperor, as being not inadmissible for illegitimates; but it is one that we are rejecting, as has been stated, in accordance with the force of our father's constitutions.³³ Like him, we do not find it acceptable; strict morality has been our aim, and it would be inappropriate to bring back again into usage what has been very properly rejected.

³¹ 'Natural children' = those born outside of wedlock.

³² 'Authority' = *potestas*.

³³ A reference to the legislation of Justinian's uncle (and adoptive father) Justin I. See *Codex* 5.27.7.

Now that we have made this legislation, and it has been made public how the transition to citizenship and legitimacy is to be duly made, we find that there is nothing to be said about successions, because their successions must take place in just the same way as for the others, who have been legitimate from the first.

12

Accordingly, now that the distinctions have been made between those that have become legitimate and those that have remained illegitimate, it is time to regulate the successions of the latter, as well. It was to Valens, Valentinianus and Gratianus,³⁴ all of divine destiny, that it first occurred to take some humane action towards illegitimates: they deemed them, should their father have legitimate issue, to deserve just one *uncia*, and even that was in conjunction with their mother; they permitted nothing beyond that to be given, either as gift or by last will.³⁵ Further, if there were no illegitimate children but only a concubine – this being, obviously, for a man with no legitimate wife, as they are the only ones allowed to have a concubine –, all they granted was one-half *uncia*. However, if there were parents without legitimate children, and also without father or mother, these were permitted to leave or give the illegitimates up to three *unciae*, that, too, being in conjunction with their mother; and anything they might have come into, in whatsoever way, was only to be included with that, while the greater part was to go to those called by law. That was also what the sons of the elder Theodosius had legislated, albeit inadequately.³⁶

1. We have previously, by the use of a humane law,³⁷ granted them six *unciae* by their fathers' gift of honour, instead of three *unciae*, where there are no legitimate children. Now, though, in the light of subsequent events, we are taking a more complete and more generous view, in laying down the present law. There are several such past mistakes, which remain in error in our own times, which we think deserve rectification. We are also saving people from impiety, because some people, having no licence to leave their natural children as much as they wished, have been purporting to choose men to appoint as heirs on condition of their returning the inheritance to

³⁴ Valens was Eastern Emperor from 364 to 378; Valentinian I was Western Emperor from 364 to 375; Gratian was the eldest son of Valentinian, and was appointed to rule jointly with him in the West in 367.

³⁵ See *Codex Theodosianus* 4.6.4. and Evans Grubbs (1995), p. 301.

³⁶ See *Codex* 5.27.2 (law of Arcadius and Honorius). '*Uncia*' = one-twelfth.

³⁷ A reference to *Codex* 5.27.8.

the children; but these men have been either simply committing the impiety of contravening what the testators had planned, or – most fickle act of all – committing perjury. We say nothing of what history has handed down to us about illustrious persons who committed such offences in the past.

2. So as not to let this kind of offence become permanent, and to prevent people from doing to their own natural children what they are not allowed to do even to outsiders³⁸ and those not even known to them at all, we are decreeing in the present law that, should someone have legitimate children, he cannot leave or give more than one *uncia* to his natural children or his concubine (a provision of the former constitution which we regard as valid); that should he attempt to give them anything more, by whatever means, it is to become the property of the legitimate ones; and should there be no children, but only the concubine, we permit her to be left or given one-half *uncia*.

3. Should he, however, have no legitimate children, nor any ascendants to whom it is the duty of testators, under legal compulsion, to leave a proportion of their estate, there is to be licence for them to appoint their natural children as heirs of up to the full twelve *unciae*, and to divide the property between them in whatever way they wish, transferring their estate to them either as gifts (ordinary, pre-nuptial or by dowry), or in any other lawful way whatsoever. They will thus have no more need of people ready to commit impiety or perjury, but will be making their own dispositions at their own unhampered discretion. Should they have some ascendants, they are to leave them the legal share which the law, and we, have ordered, and are to have licence to pass on all the remainder to their natural children.

The above refers to those who record their intention in written, or legal, wills; . . .

4. ³⁹ . . . **however**, suppose that **at his death** someone has no legitimate issue at all – that is to say no children, grandchildren or any in the subsequent succession –, nor a lawful wife, but during his lifetime has had in his household a free woman living with him as his concubine, and children by her. (This legislation of ours applies only when the concubine has quite unquestionably been kept within the household, and the [**illegitimate**] children have been born and brought up there.) Suppose then that he dies without testamentary disposition of his property; and that

³⁸ ‘Outsiders’ = *extranei* (see *J. Nov.* 1, note 1).

³⁹ Sub-sections 4 and 5 are copied verbatim from *J. Nov.* 18 c. 5, with the few divergences marked in **bold**.

then, perhaps, a relative appears or possibly a manumitter, upsetting the possession of the estate and trying to get hold of it, or even that our own crown treasury does so; as far as this is concerned, we do not make allowances even for that. In this case, we grant the illegitimate children, even when their parents die intestate, possession of two *unciae* of the parental estate, to be shared with their mother, however many children there may be, on the basis that the mother takes the same proportionate share as one child.

We mean this for any case where he lives with a single concubine and has [**had**] children by her; or where the concubine has either predeceased him, perhaps, or separated, but his children remain in the household. We then grant them the call to their two *unciae* in intestacy.

5. However, should the consequences of his concupiscence reach exorbitant lengths, bringing in more and more concubines in addition to the first, with numerous women as his whores – a fairer term –, and should he have children by them, and die leaving a number of concubines together, such a person is abhorrent to us, and he is to be totally and permanently excluded from this law, **together with such children and concubines**.⁴⁰ Just as someone living with a lawful wife could not bring in other women while the marriage was still in existence and have legitimate children by them, so, should he have died intestate, we shall not allow any by-product of his pleasure to be also included in the succession, after the concubine recognised [**by the law**] in the way we have stated and after his children by her. Without this provision of ours in the law, it will be impossible to distinguish between the women's positions, as to which he loved more, which less; and the children's position will also be indistinguishable. We are not conceding legitimacy* to libertines, but to men who behave decently. Further, we are making no distinction in the children's position as to whether they are male or female; just as nature makes no specific distinction in such matters, so no more do we lay down one law for males and another for females in this respect.

* Reading τὸ νόμιμον, with *J. Nov.* 18 c. 5 [S/K, p. 132, line 12], instead of τὸν νόμιμον [p. 443, line 8].

6. However (as one must go down every road of rigour and piety together), should someone with legitimate children also leave illegitimate ones, we intend that, in intestacy, there is to be nothing at all for the

⁴⁰ I.e. only the children of regular concubines could succeed: see Van Der Wal (1998), p. 131 (entry 901 and note 19).

illegitimates; we decree that those are to be fittingly supported by the legitimate ones, up to a proportion of the estate approved by a good man, which is called in our laws *boni viri arbitratu*.⁴¹ This same principle is also to be observed should he have a wife, but also have illegitimate children born to him by a predeceased concubine: they too are to be supported by his successors. As for illegitimate descendants, what we have already specifically determined on them is to apply.⁴²

13

In the cases in which we have called illegitimate children to succession, they too are to observe their due obligation to be dutiful towards their natural fathers. To the same extent as parents care for their natural children, under our law, they too are to requite their parents, whether as to successions or as to support, just as we have legislated for them.

14

Since it has been stated previously, in certain constitutions,⁴³ that fathers must also provide guardians for their children in respect of what they give or leave to them, and that these are to be *confirmati*,⁴⁴ we lay down that this is still to be in force. In accordance with what has already been constituted on this subject, we are also giving a mother guardianship over natural children as well; she is to take every action that has been directed for legitimate children.

15

A final part of the law awaits us, for it, too, to receive its proper ordering, and for us to enumerate who they are that do not deserve even the appellation of 'illegitimate'. For a start, anyone originating from copulations (we shall not use the term 'marriages') that are either *nefariae* or *incestae* or *damnatae* shall not even be called 'natural'; nor will he be brought up by his parents, or

⁴¹ '*Boni viri arbitratu*' = 'by the judgment of a good man' to whom a case has been submitted: see Berger (1953), p. 366.

⁴² 'Descendants', i.e. grandchildren.

⁴³ A reference to *Codex* 5.29.

⁴⁴ '*Confirmati*' = (Latin) *tutores confirmati* = guardians confirmed by the court: see *Codex* 5.29 and Berger (1953), pp. 406–7.

have any part in the present law.⁴⁵ Thus, despite the fact that Constantine of pious destiny, in his constitution addressed to Gregorius, has had something to say on such children, we are not accepting it, as it has also fallen into abeyance through disuse.⁴⁶ It mentions civic notables of Phoenicia, Syria, generals, and persons of great distinction,⁴⁷ including those of Most Distinguished status,⁴⁸ expressing the intention that their offspring shall not even be 'natural', thus also barring them from the enjoyment of munificence from the Sovereign. That constitution is one that we are abrogating completely.

1. That is to be our legislation. No-one at all will be in ignorance of our laws, nor of who are freeborn and who illegitimate, of how means have been given them for legitimation, of how they are deemed to deserve humane treatment even when remaining illegitimate, and of how those too are given appropriate respect, by being dissociated from those not even deemed illegitimate.

Conclusion

Your excellency is accordingly to make public to everyone, by means of proclamations posted up, the decisions that we have made in this law, decreed for the service of mankind and for the making good of nature's defects. From these proclamations, the law will be clear to all; they will know how to conduct themselves in such matters, and they will be conscious of our concern in putting assistance to them before all other business.

Given at Constantinople, September 1st in the 13th year of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

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⁴⁵ 'Nefariae', 'incestae', 'damnatae' = 'nefarious, incestuous, or condemned': see *Institutes* 1.10. These appear, by virtue of the 'either... or... or', to be regarded as different from each other; but cf. *J. Nov.* 12, note 3.

⁴⁶ See *Codex* 5.27.1.

⁴⁷ 'Generals': in fact the law refers to magistrates (*duumviri*). The *Authenticum* gives *magistrati*.

⁴⁸ 'Those of Most Distinguished status' = *clarissimi*: senators of the third grade.

[In Latin] *Emperor Justinian Augustus* [rest in Greek] to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

The use of witnesses for proofs was devised long ago to make sure that no fact easily goes undiscovered. However, owing to the strong criminal tendency that has developed in the human personality, its position is in danger of being reversed: most people give evidence with the aim, not of bringing the facts to light, but of concealing them still better. Those who know one thing but report another, or who make statements on things they know nothing about, are admitting, by doing so, that they have in fact no wish for what actually happened to be made public, nor for judgments to be handed down on that basis; they state as fact things that never happened, and those are what they seek to be brought to judgment.

To abolish witness-statements altogether in the conduct of cases would be hazardous, as there are many things that would not come to light in any other way, if there were no witnesses reporting them; but allowing everyone to be witnesses, including the lowest of the low, is something that was prohibited also by our predecessors as legislators. That is why they make many exceptions, excluding many people from even so much as the appellation and function of witnesses. However, as there is still corruption in the matter of witnesses even after those prohibitions, we too have thought it

¹ In this constitution, Justinian responds to a case in which a will was falsely signed and authenticated by attempting to ensure the credibility of witnesses and witness statements in trials. Two especially revealing aspects of the law are the efforts the emperor makes to prevent members of the lower classes from providing testimony, and the licence he gives for such witnesses to be physically tortured. The reality of such judicial torture is sometimes denied by Roman historians, but Justinian is very clear on the fact. For such treatment of the lower orders (Latin *humiliores*), see Garnsey (1970), pp. 221–80 and Harries (2007), p. 82. Justinian's preference for witnesses from respectable and professional backgrounds appears to have mirrored common practice with respect to the witnessing of legal and other documents as revealed by the documentary papyri from Egypt. Thus, of the documents examined by Worp (2008), all were witnessed by free-born men (*ingenui*), with 159 of the witnesses holding clerical or related office, 169 involved in the civil or military administration, thirty-two identified as professionals of various sorts (ranging from a philosopher and a doctor to a banker and a painter), leaving a mere twenty-nine witnesses from other backgrounds: see Worp (2008), p. 149.

necessary to do something to increase the rigour of the process, and to reduce as far as possible the giving of false evidence. We have just now found out about an incident of that kind, when a dreadful case of forgery over a will, on the part of witnesses, was proved under the Most Distinguished governor of the province of Bithynia.² A testatrix had died while her will was still being drawn up, and some of the witnesses were proved, as they finally confessed, to have taken hold of her now-dead hand and pulled it sideways and up and down on the papyrus, to make it look as if the deceased had drawn the sign of the precious cross.

Accordingly, with these things in view, we have thought it necessary to make rulings both as to the character of witnesses and as to their station in life. As a preliminary, we are enacting that everything that has been stated by past legislators on prohibition of those whom they exclude from giving evidence is to remain in force.

1

We then decree that especially in this great and fortunate city, where (God guide the words) there is absolutely no lack of good men in large numbers, witnesses must be of good repute. They must either be above any kind of imputation to the contrary, thanks to the unquestionable level of their rank, their position in imperial service, their wealth or their occupation, or should they not be of such a kind, they must at least be attested as trustworthy by others, and no menial,³ low or totally insignificant types are to come forward to give evidence unless they are such as could be easily proved, if there is a challenge after they have testified, to have lived a blamelessly virtuous life; . . .

1. . . . but that should they, as well as being unknown and completely obscure, be evidently aiming in any way to falsify the true facts in their statements, they can actually be subject to torture. The judges, if governors, are to carry that out themselves; those other than governors, if here, are to call in the assistant of the Most Magnificent *praetor* of the people or, if abroad, the defenders of the localities,⁴ and conduct the examination under torture through those; so that thus, at least, they will not conceal any part of

² Bithynia was a province on the western Black Sea coast of Asia Minor.

³ 'Menial' = Greek ἐπιθήριοι: literally 'sedentary', i.e. casual labourers who sat on benches waiting to be employed, just as Procopius describes the future Empress Theodora, as a child prostitute, touting for business from a bench in public: see Procopius, *Anecdota* 9.10.

⁴ 'Defenders of the localities' = the local *defensor civitatis*: see *J. Nov.* 15.

the truth, or may also be convicted in this way of being paid for their evidence, or of committing some other malpractice in connection with it.

2

Despite the fact that we have already legislated⁵ that no proof of undocumented repayments against documented loans should be accepted from witnesses, except under the rule laid down in that law, which we wish to be in force, we are nevertheless renewing it now, as well.

Should a loan be one with written documentation, and should proof of an undocumented repayment be proffered by the litigants or through witnesses, it is only to be acceptable by judges either when there were witnesses adduced to the actual fact of the payment being about to be made, or to the mention of a payment's having already been made and to its being admitted by the recipient of the money, and when trustworthy men are now testifying to that; or, possibly, also when they make that clear in affidavits. Insubstantial, casually-made witness-statements are on no account to have any validity at all, nor such non-factual statements as 'I happened to be there, on some other business, and I heard so-and-so say that he had received money from so-and-so' or '... that he owed it to so-and-so'; these are clearly suspect, in our view, and worthless. We actually found something like this once, in the course of trying a case: whereas large sums of money were said to have been paid, there was no witness present, but just two *tabularii*⁶ who said that they had heard it; yet it was in fact a documented loan, and the person purporting to be paying it was literate, and could have made it clear in a document of his own. It is our detestation of that, ever since, that we have taken as the occasion of the present law.

Again, someone else was brought in who resembled the victim of the fraudulent accusation, and who purported, in the presence of witnesses and of *tabularii*, to be acknowledging his own indebtedness. He had been paid to do that, and then disappeared; and repayment of the debt was charged to one person, when it was someone else who had, supposedly, admitted it as his. This did not go undetected later on, as God does not allow such things to remain concealed for ever.

⁵ A reference to *Codex* 4.20.18.

⁶ '*Tabularii*' = state notaries charged with drawing up official documents. In late Roman law they were allowed to assist private citizens and so effectively became synonymous with notaries public (*tabelliones*): see Berger (1953), pp. 727–9.

3

Therefore, whenever those said to have acknowledged a debt are literate and could have used writing, and also could have made the acknowledgement⁷ in court and given the fact uncontrovertible credence, we do not (as we have said before) trust such statements from witnesses, nor the depositions of *tabularii*. We are not permitting them to go on playing havoc with the truth, nor do we accept any existing transaction of this kind. What we demand is that the point should be proven by testimony from witnesses brought in for this precise point by the person calling them; and that these too should be *rogati*,⁸ as for wills, and of good repute. That is the way in which the transaction is to receive proof from them; an affidavit without the signed deposition of witnesses actually present is not, in future, to be valid, either. Should the witnesses not be such as we have described above, we order that they are also to be subjected to torture. Should any of them have flatly contradicted themselves, or each other, judges are to pay particular attention to that; and should they find contradictions in the more crucial parts of the statements, they are to reject such statements, and are to heed those of the more reliable, and the majority. Should their falling into contradiction prove to be the result of deliberate malpractice, judges are not to leave them unscathed, as long as their contradictions are shown up as being not merely due to some mistake, as is quite likely, but deliberate.

4

Many people rest their case after calling witnesses more than once, even three times, and take copies of the witness-statements, but then try to trouble us with petitions, wanting to bring witnesses forward for a fourth time. We decree that these are people over whom our judges must exercise particular care. If the witnesses have come forward three times already and the person calling them has rested his case and taken copies of their statements, and they are then asked to give evidence for a fourth time, judges are absolutely not to accept them, because there is a suspicion that earlier witnesses may have left out something; that that fact has now become obvious from evidence; and that what that person wants is not

⁷ 'Acknowledgement', i.e. of indebtedness: see Van Der Wal (1998), p. 170 (entry 1109).

⁸ '*Rogati*' = *testes rogati*: witnesses who have been specifically asked to witness the payment: see *Codex* 4.20.18.

the production of witnesses, but either an addition, in the form of something previously missing from the testimonies, or an amendment to what they testified before. However, take for example a situation in which the person who called the witnesses has not taken copies, and neither he nor any of his advocates has perused the testimonies; whereas his opponent, alone, has taken copies, and has entered objections without disclosing them to the person who has by now called witnesses three times, so that he could not find out about the objections⁹ and have made his additions, not present in the statements, in the light of those. In that case, even a fourth production of witnesses must be granted to the person requesting it; but he must first take an oath that neither he nor an advocate, nor anyone acting for him at all, has either taken copies of the statements or perused them; and that his request for a fourth production of witnesses was not a trick, subterfuge or artifice, but was because he had previously been unable to make use of their statements in evidence. Should that have been done, there is to be no need, as there used to be, for a command from the Sovereign as well; the law allowing that is sufficient in itself. There is to be licence to make use of the witness-statements for up to four productions, but not over a long period, to avoid that being a further cause for the prolongation of trials; they must in all cases be handled with such despatch as the judge may think practicable.

1. It is accepted that should someone rest his case after producing witnesses only once or twice, and have either copied the statements and studied them, or, when his opponent has done so, has himself copied the objections and learnt what witnesses have said in that way, he will have no licence at all to use any further production of witnesses, even should a divine command be proffered to that effect.

5

We are aware that, under an existing law,¹⁰ anyone who is pleading a case here, but needs it to be partly conducted in his province, may call his

⁹ 'Objections' (Greek παραγραφάι) appear to have been quite distinct from the *exceptiones* of the classical formulary procedure (on which see Berger (1953), p. 458). The word is translated by the term *disputationes* in the *Authenticum*, and as *praescriptiones* in the *Epitome Iuliani*, in which see Novel 83, chapters 325, 328 and 330. Van Der Wal takes the latter to be the standard Latin translation, noting that the words *praescriptio* and *praescribere* are used to mean objections made against the use or deployment of evidence in the *Collatio Carthaginiensis* and the writings of the fourth-century statesman Symmachus (see Van Der Wal (1998), p. 170, note 49 and Simon (1969), pp. 222–4).

¹⁰ A reference to *Codex* 4.20.16.

witnesses in the province if the judge so decides, fixing an adequate time-limit; and that the case is then to be transferred over here, and to be decided under the original judge after the proceedings so far have been brought over. That being so, very many such petitions have been being made to us from people with cases being tried in the provinces, but with witnesses here: they want the law to be applicable in such situations as well, with licence for the judge in the province to send over here for the witnesses to appear and the whole set of proofs to be given, and for the case to be then referred back to him; or else for him to request this to be done from one province to another.

We therefore decree that this too is to apply, in the interest of the availability of proofs: on the determination of a judge in the province, witness-statements may also be sent over here by him, and given before one of the most learned judges appointed by us. Witness-statements for one province can also, on the judge's determination, be given in another, before a defender¹¹ or the governor. The definitive opinion must of course be given in the place where the case was made. The purpose of this is to make what has already been put into law for the production of witnesses on referral from here, before defenders or governors in a province, applicable also as between provinces, or from a province to here, so as to ensure that everyone always has perfectly easy access to proofs.

However, witness-statements are not to be disclosed in the provinces, either: the proceedings, in the form of an official record, under seal, are to be given personally to those calling the witnesses, or also to their opponents; and that is how they are to be despatched by the judges, over here or in the provinces. This is because otherwise, should the nature of the case require other witnesses as well, as it may, disclosure of the statements would preclude the calling of the extra witnesses.

1. The above provisions are all meant for financial trials; on criminal charges, in which what is at stake is of the highest importance, it is without fail essential that witnesses appear before the judges to tell what they know. There will then also be opportunity for torture, perhaps, and for the rest of the full procedure.

¹¹ 'Defender' = defender of the city (*defensor civitatis*): see *J. Nov.* 15.

6

In a case where it is alleged that someone wishing to testify is of slave¹² status while he insists that he is free, his evidence, should it be free birth that he is claiming, is to be implemented, while the question of his status is to be reserved for objections; thus, should he prove to be of servile status, his evidence is to be null and void. Should he be saying that he is a freedman, he is first to be made to exhibit the document by which he obtained freedom, and only then to give evidence. Should he, however, say that it was in another province that he obtained his freedom, or that he does not have the proofs to hand, he will take an explicit oath to that effect, and his testimony is to be recorded; but if his documentary evidence of manumission is not produced, the person calling him will not have the use of his testimony.¹³

7

In any case where someone claims that the person coming forward to testify is an enemy of his, possibly to the extent that he is actually facing charges from him, should he give immediate proof that there is in fact a criminal case in progress between them, the person so hostile as to go to law on criminal charges is not to come forward to testify. Should there be some other cause for the alleged enmity, or should it be a financial suit in which he is the defendant, the testimony is to proceed, but the outcome of such hearings is to be reserved for the opportunity of objections.

8

We did lay down a law with effect that reluctant witnesses should have to testify even in financial cases, with the exception that any who had been intermediaries between the parties should not be made to give evidence; and there are people who take advantage of that, and are not prepared to testify.¹⁴ Hence, we are now decreeing that should each party agree that the person who has acted as their intermediary should testify as to what he himself said, he is to be made to give evidence even against his will, as the

¹² The word used here for slave is οικήτης, on which see Sarris (2006), p. 161 and Harper (2011), p. 174. 'Void', in Greek ἀντί μηδὲ γεγονότος 'equivalent to not even having taken place', for legal Latin *pro nihilo* (see Berger (1953), p. 652).

¹³ On the simplified Justinianic procedure for manumission, see *J. Nov.* 78.

¹⁴ See *Codex* 4.20.16.

obstacle, by which our previous law did not wish him to testify against his will, has been removed by the agreement of the two parties.

9

There is another common practice of which we are aware. People go before either the defenders of the localities,¹⁵ or the provincial governors, or, as may be, before the Most Distinguished *magister censuum*¹⁶ here, and complain that they have been the victims of a crime, or have been wronged or suffered loss in some other way; and they want to produce witnesses. Then, to avoid any subsequent objection against them that the proceedings have been one-sided, the other party, if resident in the city where the witness-statements are made, has to appear, on notice served by the governor or defender, and listen to them. Now should he refuse, and be in consistent contempt, so as to have the witness-statements rendered useless by the very fact of being one-sided, we decree that such witness-statements are as valid as if they had not in fact been single-sided, but had been made in his presence; because should he decline, and refuse to come and hear the depositions, despite being out and about and having no inescapably compelling reason for being unable to be there, he will count as if he had been there. He will gain no advantage from his contumacy, as the proceedings are to be regarded as having been made face-to-face; but any objection that he might be entitled to make against them will be allowable for use, except only that their apparent one-sidedness, due to his obstinate failure to appear, cannot be used as an objection.

All other statements and legislation on witnesses, either of our own or of our predecessors, are to remain in force and be observed by our judges, whether higher or lower, and whether in this great city or in the provinces. Our purpose in adding the subject of witnesses to what we have amended, to the best of our ability, is to cause trials to be conducted in a more religiously uncorrupt manner. We have legislated that the hearings in them are to be held with the divine scriptures on display before the judges, and we have directed that both plaintiffs and defendants, and their advocates, are to take an oath; we have set God before the souls both of litigants and judges, as well as witnesses, so that legal proceedings may be uncorrupt and

¹⁵ 'Defenders of the localities' = the local *defensor civitatis*: see *J.Nov.* 15.

¹⁶ '*Magister censuum*' = a high-ranking official who served under the Urban Prefect of Constantinople: see Berger (1953), pp. 386 and 570. However, in c. 1 of this constitution, Justinian suggests that the appropriate official to hear such cases in Constantinople was the recently created *praetor plebis* (on whom see *J. Nov.* 13).

above suspicion throughout, in mindfulness of God's presence. We wish this law to be in force for all time to come.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours, manifested by means of this divine law, into practical effect.

Given at Constantinople, October 1st in the 13th year of the Lord Justinian Augustus, pius princeps, Augustus, consulship of the Most Distinguished Apion

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1. When a husband has remarried and there is a demand for repayment of both first and second dowries, the first wife, or the children of the first marriage, are to have precedence
2. When a wife, or person contracting the dowry on her behalf, is willing to give her husband what has been contracted, but the husband delays in accepting, payment of the pre-nuptial gift contracted by him is to be demanded on dissolution of the marriage¹

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

A controversial point, in a case that we were trying recently, calls for serious consideration; clearer legislation on it would not be undeserved.²

For example, a man had married a first wife, lost her, and then married a second one, having received a dowry from each of them. He then departed this life, leaving children by his first wife, with his second still living. Accordingly, the second wife, making use of the privilege granted by us,³ wished to demand repayment of the dowry paid by her; but this was opposed by the children of the first marriage, who also claimed it as a mother's dowry. There was controversy as to whether the first wife's children should receive

¹ This constitution serves to protect the interests of widows in two respects. First, it protects the claims of a woman whose husband had re-married but then died, giving her precedence over the second wife when it came to the re-claiming of dowries. Second, it allows a woman whose dowry had not been accepted by her husband or his family to sue for a pre-nuptial gift upon his death. This law forms part of Justinian's radical reform of dowry law, for which see also *Codex* 5.13.1, 1b, *J. Nov.* 97 c. 3 and *J. Nov.* 98. These reforms are summarised in Buckland (1963), pp. 108–11. For Justinian's concern for women plaintiffs in general, and widows in particular, see Krumpholz (1992), pp. 162–204.

² A further instance of legislation motivated by an actual case.

³ See *Codex* 8.17.12.

the second dowry, for which they were contending, even though she was no longer alive, because we have not hitherto given, nor do we give, this privilege to others, either heirs or creditors, but only to children.⁴

In fact, more than one point of controversy has arisen in this case. The second wife argued that her husband, before he had ever entered on his marriage to her, had already spent the whole of his first wife's dowry; and that, as it was found that her husband had left only as much as would suffice for the second dowry, it was unjust for her to lose her own dowry while those children took the dowry that had already been spent. They put forward hypothecs as their defence against that, on the ground that when there is any property at all belonging to the deceased, it is the deceased wife's hypothecs that have precedence over those of the second.⁵

1

These, then, were the controverted issues. What is already beyond dispute, and has been legislated by us, is that should there prove to be any property pertaining either to the first or to the second dowry, that necessarily belongs to the first wife's children or to the second wife; or, should the second wife also be deceased, to her children, each in respect of whatever he shows to be properly his. This is because, in that situation, the *in rem*⁶ concerning the ownership applies intact, and each must have what is his own, with no need for a privilege. Should there, however, not prove to be anything pertaining to the property of either wife, or should some parts prove to be there while others are missing, whether the wives should be alive (perhaps because the first marriage was dissolved by *repudium*⁷ and the wife was entitled to the dowry), or should one or both of them have died with children, it is the first wife who has priority in respect of what is missing, as also do her children, when they put forward a claim to her dowry as having precedence. The same is to be said of grandchildren, great-grandchildren, and the whole succession, of whichever sex. Just as, if there had been two debts to the public treasury, the longer-standing one would have to have priority over the supervening one, so that is also the basis on which, here, privilege must be given first to the first dowry, and only then to the second. It is not that one dowry must be

⁴ See *Codex* 7.74.1.

⁵ 'Hypothecs': here used in the sense of a general lien in Common Law.

⁶ 'The *in rem*' = the *actio in rem*: an action by which the plaintiff asserts a right to a certain thing (in this case, ownership): see Berger (1953), p. 346.

⁷ '*Repudium*' = a unilateral divorce: see Berger (1953), p. 676.

adjudged preferable to another dowry, or one hypothec to another hypothec; it is that what is of longer standing, and demanding respect by reason of its age, is to keep its own strength and privilege. We are in no way choosing to reverse or cancel the dating of hypothecs.

In saying this we are not unaware that this has, of course, been settled elsewhere in our legislation as well. The reason that we have arrived at the need for the present law is that the matter has anyhow been raised before us, and that it involved certain problems of other kinds; our present purpose is not to introduce any new legislation, but to make it clearer to everyone.

2

There is a further point that is desirable to add to the law; similarly, it is a problem that has been raised, and that has made it necessary for us to legislate.

It is for a case where a woman owes a dowry, and either she herself or the person providing it for her, whoever that may be, whether a close relative or an outsider⁸ – the dowry thus being either *profecticia* or *adventicia*,⁹ as the legal terms are – has wished to pay it, whereas the husband, or perhaps his father or grandfather, is not prepared to accept it. Suppose, then, that the party of the wife makes a witnessed declaration and is ready to pay it, or that it goes further and perhaps even produces it, putting it under seal (if it is movable property) and depositing it according to law; or that it goes to court unilaterally and demands completion, and emissaries from the judge report that to the party of the husband. Should he, even so, persist in putting off his acceptance, he cannot evade a demand for payment of his pre-nuptial gift, on dissolution of the marriage, on the pretext that no dowry has been contributed; a would-be donor, in a case where the person called on to accept is declining acceptance, is on the same footing as a donor.

This provision is to be in force alongside the others on the subject of dowry. Just as we have subjected a woman whose delay results in non-payment of the dowry to denial of the pre-nuptial gift, so too, should she have wished to pay and the recipient deliberately declines acceptance, we

⁸ 'Outsider' = *extraneus*. See *J. Nov.* 1, note 1.

⁹ '*Profecticia* or *adventicia*': the (*dos*) *profecticia* was a dowry given by the father of the bride or wife ('*a patre profecta*'), whereas the (*dos*) *adventicia* was a dowry provided by somebody else, or by the woman herself if she was *sui iuris*, i.e. not under paternal authority: see Berger (1953), p. 444.

grant her the demand for the pre-nuptial gift if the marriage is dissolved, even if, through her husband's fault, she has not brought in her dowry.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours, manifested by means of this divine law, into practical effect.

[Date missing; restored as October 1st, 539]

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul ordinarius, patrician

Preamble

We have already made rulings on the Falcidian and its share, increasing it by no mean addition.² Excessive inequality was highly displeasing to us; and although preference must be given to any of his children that a father so decides, he must not so far disparage the others that the disparagement is intolerable to them.

1

Accordingly, while the law enacted by us is to remain in its own force, what we intend is that, should anyone be conferring a disproportionate gift on a child or children of his, in the distribution of his inheritance he must keep for each of the children as large a proportion under the law as there was before the father conferred his gift on the child or children honoured in this way. They will thus no longer have any complaint against the gifts, as they will have from their father their legal share of the estate as a whole, that proportion being increased by the amount that the property contained before being drained by the gifts. Nor will the children honoured by the gifts be able to say that, while they are satisfied with these disproportionate gifts, they intend to renounce their father's inheritance; they are not obliged to accept the inheritance if they are content with the gifts, but

¹ In this law, Justinian legislates to protect the rights of siblings not to be disadvantaged by an over-generous bequest to one of their number by a deceased parent. Justinian decrees that the favoured child must redistribute his inheritance to his siblings until they are each brought up to the minimum level of inheritance (*portio legitima*) as set by recent legislation (see *J. Nov.* 18). The preface gives the impression that the constitution concerns the *Lex Falcidia*, but this appears to be an error of the imperial Chancery: see Urbanik (2008) and *J. Nov.* 66.

² See *Codex* 3.28.31 and *J. Nov.* 18. If the preface is indeed here referring to *J. Nov.* 18, it repeats an error also found in *J. Nov.* 66, in that, strictly speaking, *J. Nov.* 18 concerns not so much the 'Falcidian share' of an estate that had to be preserved for the heir (or heirs) given charge of executing a will (who could be an *extraneus*) on which Justinian had legislated in *J. Nov.* 1, but rather the 'legitimate share' (or '*portio legitima*') which had to be left to those relatives who were entitled to succeed under the law on intestacy: see Berger (1953), p. 618, Urbanik (2008), pp. 128–37 and the *scholion* found at *Basilica* 41.4.2.

they are by all means obliged to make up to their siblings the consequent difference, in the proportion that we have stated, so that those have not less than is owed them under the laws, because of the disproportion over the gifts. If the father has a fair attitude towards all his issue over this, he can be somewhat more generous to those he loves best, without detriment to the rest of his children as a result of the consequent disproportion in favour of those he loves best, and without contravening our aim.

This was something that we had had in mind from the outset, but we have been putting it off hitherto as a test of people's characters.³ The reason for our making this addition to that law now is that we had been observing them slipping into such favouritism, and being carried away by it.

1. What we have been saying relates to children who have endeared themselves to their fathers, not to those who are contrary, and whom their father has just and lawful occasion to charge with ingratitude.⁴ Should that prove to be the case, and grounds of ingratitude are proven, the laws laid down on ingratitude are to hold good, unimpaired by anything in this law.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours, manifested by means of this divine law, into practical effect.

Given October 10th <in the 13th year of the reign of Justinian, consulship of the Most Distinguished Apion> [missing part restored from Athanasius]

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³ The emperor here attempts to excuse inadvertent omission in earlier legislation by means of a characteristic display of self-righteous bluster.

⁴ On ingratitude, see *Codex* 8.49 and Berger (1953), p. 501.

93 | **Appeals: if litigants resort to arbitrators during the course of a case before an appeal-judge, should the two-year period meanwhile elapse, and it happens that the case comes back again to the appeal-judge, the expiry of the two-year period is not to be made an objection¹**

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul ordinarius, patrician

Preamble

Our subjects' cases that have been brought before us present us with occasions for framing laws for the well-being of those under us.

An advocate has* [Greek: 'Certain people have'] brought a case before us on the plea that, as the law intends an appellant to forfeit his appeal proceedings if he has not put his case for as long as two years, or else has entered an appeal but not pursued it, he can go no further; the verdict has been confirmed, and the judgment is binding on both sides. Hesychius² and his opponents* [Greek: 'He and his opponent', followed by a lacuna] had launched proceedings before a delegated judge,³ and judgment was given against the said Hesychius. He appealed, and it happened that the case was referred to your court; but while it was being contested in your excellency's court, they abandoned the proceedings under you, and made a mutual choice of arbitrators, in writing.⁴

* In these two places [S/K, p. 459, lines 15–22], the translation follows the text of the *Authenticum*, rather than that of the Greek, which shows signs of having been altered in order to generalise the specific reference to the case of Hesychius. There is also some incoherence in the Greek, perhaps as a result of the alteration.

¹ This constitution addresses the procedures to be followed when an appeal has been lodged before an appeal court, but the litigants then decide to take their case to arbitration, only for that arbitration to break down (see also *J. Nov.* 82). For further discussion, see Bianchini (1983).

² The identity of Hesychius is unknown.

³ On the underlying case, see Humfress (2013), p. 247. 'Delegated judge' = (*Authenticum*) *iudex pedaneus*: see Berger (1953), p. 518.

⁴ On such arbitration, see *J. Nov.* 82.

Together, they contested parts of the case before their chosen judges; but subsequently they became contemptuous of their chosen arbitrators, and did not pursue the case in progress under them. Because the two-year period had expired, his opponents made use of the rule that he could no longer conduct such a case in your court, but that once the two-year period had gone by it had to stand confirmed; whereas the reason for his not having pursued the matter before your distinction was that the case had been being pleaded before the judges they had chosen as arbitrators.

1

On the said case, as a result of which we received this submission, our decree is that it is not to suffer in any way by the passage of time, and that the judge's verdict is not to be binding, once the appeal had been lodged; instead, there is to be a further enquiry before your distinction, and the case is to receive a lawful conclusion, never mind if an immeasurably longer period than two years has passed, or may pass. And in future, in every case in which something of the kind happens, and others are chosen as arbitrators while the case is in progress before the appeal-judge, or even when it has not been set in motion, and for that reason the two-year period should elapse within which the appeal-judges should have decided the case, and if it should then come back again to the appeal-judges in any circumstances whatsoever, the parties may use all other arguments as if they had not in fact gone to their chosen judges, but they cannot use the expiry of the two-year period. Once someone has chosen other judges, he would have no right to complain of inaction on the part of the person who has suffered injustice because of having relied on the outcome of the choice of judges, and because his not having pursued or completed the trial there was due to the fact that pleading of the case had taken place before those judges.

Conclusion

Accordingly, we wish these provisions to be observed on every case by your court, and by every other court trying cases under the appeal procedure, so that nothing untoward takes place in respect of our subjects. However, should two years elapse even after the abandonment of the chosen judges, the judgment is then to stand, in accordance with the constitutions made on that by us.

That is what we wish to be in force for cases of this kind that occur in future. All else that has been stated on appeal-cases in previous laws, and recorded by us in our law-books, is to remain in its own force.

Given Oct.11th <in the 13th year of the reign of Justinian, consulship of the Most Distinguished Apion> [missing part restored from Athanasius]

539

PROOF

94 | **Mothers not to be barred from guardianship of their children, even despite the children's being under an obligation to them, or their being under an obligation to their children; nor to be subjected to an oath not to remarry¹**

The same Sovereign to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

From the frequency of cases for trial before us concerning minors, we have been finding out about the malpractices that are committed over their guardianship, and in order to prevent any misconduct by such persons in respect of the minor, from their having power over the minor's property, we have recently laid down a law² to the effect that no-one who is under an obligation³ to minors, or who claims to have them under an obligation, should be their guardian. That law itself is to be a valid one of ours, reinforced by the present one; . . .

¹ This constitution exempts mothers from the regulations contained in *J. Nov. 72*, which forbade those indebted to or with a claim against a ward from becoming that ward's guardian or tutor. Mothers were permitted to act as guardians for their own children so long as they did not re-marry. Indeed, contrary to the spirit of *J. Nov. 72*, by virtue of the present law, such mothers adopting the role of guardian with respect to their children may henceforth have been expected to put their own property under lien or *obligatio* to them (on the meaning of which, see Berger (1953), p. 603). Justinian informs us that he was driven to issue this law in response to attempts by plaintiffs to preclude mothers from acting as guardians on the basis of *J. Nov. 72*. Given that *J. Nov. 72* had only been issued the previous year, the constitution thus casts useful light on the rapidity with which knowledge of laws circulated, and the highly litigious nature of Byzantine society. In the Greek of this novel, it should be noted, ἐπίτροπος and κηδεμών and their cognates appear to be used indiscriminately throughout as 'guardian', although the *Authenticum* consistently has *tutor* for ἐπίτροπος and *curator* for κηδεμών. For further discussion of the translation of these terms into Greek, see Van Der Wal (1999a), pp.128–30.

² A reference to *J. Nov. 72* c. 1–4.

³ 'Under an obligation' = indebted or subject to a claim.

1

... but, contrary to our aim, that constitution has been incorrectly raised as an objection against mothers who wish to undertake the guardianship of their minors, and who request it, in accordance with laws both ancient and our own. We therefore intend the persons of mothers to be excepted from the provisions of that law. For one thing, we regard it as completely unacceptable to deny them a role whose introduction had always been for the minors' benefit; and for another, no-one would place a mother in the same category as other people, because her naturally devoted love for her children puts her, in general, above suspicion, whereas the position of those without any compelling obligation of goodwill towards children is not to be taken as comparable with that of mothers.

Thus, mothers are to have licence, in accordance with ancient practice, both to renounce their own property and to put it under an obligation, in the form in use previously, and for taking charge of their children without fear of such exception.⁴ Their position is to be just as if the law on this had not in fact been enacted at all. Thus if minors are claiming dowries or pre-nuptial gifts, or other debts owing to them, from their mothers, or their mothers from minors, perhaps on grounds derived from the fathers, or in their own right (careful thought and consideration would reveal numerous causes), those rights are to be intact on both sides, and are to be judged and used in accordance with previous constitutions, whether the children in their mother's guardianship are legitimate or natural.⁵

2

We are particularly anxious not to have oaths by the great God being sworn thoughtlessly, and broken. For that reason, we have decided that we must also amend the law⁶ that intends mothers, when they are about to take on the guardianship of their own children, to swear an oath not to enter on a second marriage. We know that this law has been contravened, and perjury has been committed, almost as often as an oath has been sworn. It is thus quite clear that we are making a mistake in imposing an oath that will be broken once it is sworn, because the fact that some people have kept their oath must not be

⁴ I.e. she is to be allowed to place it under a hypothec: see *Codex* 5.14.11.2 and Van Der Wal (1998), p. 66, note 60. For further discussion of the development of the hypothec under Justinian, see also Van Der Wal (1999b), pp. 154–8.

⁵ 'Natural' = (in Justinianic law) illegitimate: see Berger (1953), p. 473.

⁶ See *Codex* 5.35.2 and *J. Nov.* 22 c. 40. This constitution thus has the effect of replacing an oath with a simple but binding promise: see Van Der Wal (1998), p. 76, note 38.

a reason for women who disregard it to have occasion for blasphemy. As ancient wisdom has it,⁷ lawgivers do not focus on unusual events; what they look at, and deal with, is that which is of general occurrence.

For that reason, we accordingly decree that all other procedure that we maintain for mothers is to be in force in its previous form, including renunciation of the *Velleianum*⁸ decree and of all benefit, and they are to carry out everything that has previously been directed; but they are not to take the oath: their renunciation of a second marriage, along with all else, is to suffice on its own, without any oath being taken on that point. However, immediately on entering a second marriage, she is at once to be ejected from her guardianship, and the same steps are to be taken as she would have been subject to had she in fact taken an oath, simply for having told a lie in court, and for having put her second desires before her own agreement and deposition.⁹

Conclusion

Accordingly, this law is to be enacted for the sake of piety; it is legislation that we have made for the avoidance of any affront to the honour of God, and is to be in force from now on.* Your excellency is to make this law public in all provinces. Here, we shall be communicating the law on these matters to the Most Distinguished prefect of this fortunate city whose concern such matters are, for it to be observed for ever, under his care and that of the Most Distinguished *praetor*¹⁰ whose concern that is.

* At this point, the version for Constantinople, referred to with 'Here . . .' in the last sentence of the above Conclusion, diverges, as follows:

Thus there is to be complete protection for all property of orphans in matters concerning guardianship of minors. In particular, accurate lists are to be made in the presence of the Most Distinguished *scriba*¹¹ to whom the care of such matters has been entrusted, and of the others customarily attending such proceedings. Sureties are to be given meticulously, and all other steps taken that have been stated in our

⁷ 'Ancient wisdom' = the writings of the jurists: see *Digest* 50.17.64.

⁸ 'The *Velleianum* decree' = the *senatusconsultum Velleianum* (of c. 46 AD) which forbade women from assuming liability for other persons: see Berger (1953), p. 700 and Saradi (1990).

⁹ I.e. she will be subject to public disgrace (*infamia*): see Van Der Wal (1998), p. 49 (entry 362).

¹⁰ 'Praetor' = the *praetor plebis*; see *J. Nov.* 13.

¹¹ 'Scriba' = a public scribe or official clerk (in this instance, one who was evidently a high-ranking subordinate of the Praetorian Prefect: see Van Der Wal (1998), p. 18, note 31).

laws, under the care of the Most Distinguished *praetor* whose concern this matter is. You will yourself post this up in this sovereign city, so that it is public to all, and no-one is unaware of what we have legislated.

We have communicated the law on this to the Most Illustrious prefects of our sacred *praetoria* as it is to be observed in the provinces.

Given Oct. 11th <in the 13th year of the reign of Justinian, consulship of the Most Distinguished Apion> [missing part restored from Athanasius]

95 | **Governors to spend 50 days in their provinces after their period of office, whether it be a military or a civil post that they hold¹**

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

We are aware that a law² has already been laid down with intention that those who have held office, whether civil or military, shall not be able to leave, even when they have come to the end of it, until they have spent fifty days in the metropolitan cities,³ appearing in public and defending themselves against those wishing to bring charges; nor shall they be able to withdraw from their province even by reason of a summons from here. Also that should they do any such thing, they are to be sent out to the province again. However, we have found that there are some men of such effrontery that, even now that this law has been laid down, they dare to leave their provinces before laying down office, and to come to this fortunate city, in fear of what they have done, and to avoid standing trial for their offences.

1

Accordingly, we decree that no governor at all, of any province whatever of east, west or either latitude, is to have licence to leave it before laying down his office, and that even after doing so (as we are renewing the long-standing rule) he is to spend the period of fifty days appearing in public in the province that he governed; and he is to enter the date of his departure from the province in the official record, so that it can be made clear whether he has confidence in his actions or not.

¹ This constitution re-iterates the provision that governors were obliged to remain in the provinces where they have served for fifty days after demitting office so that any plaintiffs could sue them. Those who failed to observe the law were to be liable to the death penalty (see Van Der Wal (1998), pp. 118 (entry 829) and 47 (entry 352)).

² See *Codex* 1.49.1 and *J. Nov.* 8 c. 9.

³ 'Metropolitan cities' = the capital city of each province.

1. Take the case of anyone leaving his province when either holding, or having laid down, a military or civil office: one who leaves it while still in office, without an order from us, is to be guilty of high treason; he is to be sent out again to the province, and after making his defence to the charges he is then to suffer the extreme penalties for high treason.⁴ Should it, however, be after laying down his office that he absconds from the province, by failing to stay for the statutory number of days and to show himself in public to everyone, what has already been legislated on that by us is to apply.

2. Something that we are proclaiming to all governors is that, when they take over any office, they are to hold it. Those in process of succeeding them in office are not to send so-called ordinances⁵ from outside the territory, or terminate the tenure of the governors while they themselves, at their leisure, go travelling, stay here, or go to some other province first to see their homeland,⁶ doing all the things that people are in the habit of doing when they have the good fortune to be idle. Instead, they are to make their way quickly to the place where they have taken on the reins of office, so that the province does not remain without a governor while one lot has stepped down and the other lot is not there. Not more than two days before entering the province where the present governor is, he is to send him an amicable letter desiring his staff to be sent out to meet him; till then, the person who is in office and discharging it is to be paid the stipends. The date is not to be calculated from his codicils of office, nor from your eminence's letters of instruction;⁷ he is only to receive the stipends from the public treasury from the time when, as has been stated, he actually sets foot in the province. Till then it is the person in charge of affairs who is to receive them, and no-one else at all. It is unacceptable, intolerable, for the province to be left entirely without a governor, and for our appointee to put in some purported substitute to take his place – maybe a man without any knowledge of affairs – while the person actually on the job is in fact leaving the province before his time arrives, and being deprived of the stipends that he ought to be receiving until he lays his office down. It is whenever his successor arrives in the area, only two days before he sets foot in the province, that he will lay it down.

⁴ 'High treason' (Greek καθοσίωσις, lit. '[lack of] fidelity') = Latin *crimen maiestatis* [*laesae*], for which the punishment was death: see Harries (2007), pp. 81–2 and Berger (1953), p. 418.

⁵ 'Ordinances' = Greek διατάγματα, Auth. *interdicta*.

⁶ 'To see their homeland': under Justinian, governors were generally forbidden from governing their native province, although note Conant (2013), pp. 200–3.

⁷ 'Letters of instruction' (Greek προστάγματα) = *mandata*: see *J. Nov.* 17.

Conclusion

We wish all this to be observed by your excellency's high office in perpetuity, and the stipends to be transferred from the previous holder to his successor from whenever you are informed of his arrival in the area. Otherwise, you are to supply them to the previous holder, in accordance with our instructions, until his successor reaches the province and shows himself to the subjects.

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

Given at Constantinople, November 1st in the 13th year of the reign of Justinian, pius princeps, consulship of the Most Distinguished Apion

96 | Court clerks; plaintiffs; counter-accused persons¹

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the Eastern praetoria, ex-consul ordinarius, patrician

Preamble

As we detest barratry and set our face against all unwarrantable proceedings, we have consequently concluded that such practices require a legal remedy.

We have been informed that some people with absolutely no ground of action at all have made common cause with those who draw up indictments;² they proceed to serve writs, but then, once the defendants have been put to expense, simply leave them alone and go away, having inflicted injury on them that cannot be made good. This wrongful practice is even more prevalent in the provinces; and the plaintiffs and writ-servers share out the proceeds.

1

Accordingly, to prevent this malpractice from going on for ever, we decree that plaintiffs are not to serve a writ, and give rise to costs for defendants, otherwise than after previously giving surety,³ both to the defendant and to the writ-server, that they will at all events make their joinder of issue⁴ before the judge within two months; or failing that, will repay to the person accused double all their resulting expense. The surety is not to exceed thirty-six gold pieces.

¹ In this constitution Justinian attempts to contain the litigious instincts of his subjects. Firstly, he legislates against connivance between vexatious litigants and court clerks known in Latin as *exsecutores*, who conspired to initiate cases which were then simply dropped, to the irritation and cost of defendants. Secondly, he decrees that suits and counter-suits were to be heard by the same judge and not separately. Under Justinian, the office of *exsecutor* came to be entrusted to individuals of high rank who were charged with wide-ranging responsibilities: see *Codex* 12.60, *J. Nov.* 53 and Berger (1953), p. 465. For further discussion of this law, see Litewski (1997), pp. 495–8 and (1999), pp. 50–5.

² ‘Those who draw up indictments’ = an allusion to court clerks (Latin *exsecutores*).

³ ‘Surety’ (Greek ἀσφαλεία = Latin *cautio* (on which see Berger (1953), p. 384).

⁴ ‘Joinder of issue’ = (Latin) *litis contestatio* (see Berger (1953), p. 566). On the reform of procedure introduced here, see Van Der Wal (1998), p. 163, note 16.

2

There is another point that must be given its due amendment. We have received a petition from someone informing us that he brought proceedings against a person under an obligation⁵ to him, before one of our Most Illustrious office-holders; and that the person who was under an obligation, himself claiming to have his prosecutor under an obligation, took him before another judge. A curious situation ensued: as each of them had his own role as plaintiff, the result, simultaneously pitiable and comic, was that whenever one of them wanted to pursue his own case, his counter-prosecutor immediately took him before the other judge, the one he had himself been allotted; and they remained in a state of perpetual litigation, taking each other back and forth.

1. We accordingly decree that should anyone suppose that he has a claim of obligation against a person who has laid a charge against him, he is to bring his counter-suit, not under a different judge, but under the same one, so that there is the same judge for each case. Moreover, should he perhaps be dissatisfied with the judge before whom the case has been allotted, he may nevertheless put that right: as we concede a time-limit of twenty days from the service of the writ, after which he must join issue, he may, within that period of delay, refuse that judge and find another, before whom, again, each case is similarly to be contested. In no way are the above-mentioned artifices to be used; but each is to enjoy his own rights. Should he, however, have made no objection, but decide subsequently to launch his case before a different judge, he is to be obliged to await the conclusion of the case brought against him by the person who took him to court; once that case has reached its conclusion, he is then to put his case before another judge. This is so that we may thus do away with such artifices and mutually injurious conduct.

Conclusion

Accordingly, your excellency is to take pains to put these decisions of ours, manifested by means of this divine law, into practical effect.

*Given at Constantinople, November 1st in the 13th year of the Lord Justinian,
consulship of Apion*

539

⁵ 'Under an obligation' or 'liable' (Greek ὑπεύθυνος) = indebted or subject to a claim (Latin *obligatus*).

97 | Equality of dowry with pre-nuptial gift, and other heads¹

Addressed to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

As we observe that the majority of the problems raised in laws concern our earliest origins, that is, marriage and the procreation of children, and also our ends, such as matters of wills and testaments, the idea has recently occurred to us of investigating to find out what we could possibly see as the purpose of the ancient law² on dowry-contracts, which desires the proportion assigned by males and females to each other in their marriage-agreements to be equal. Why does it hold an equal balance towards each other between the parties in their marriage-agreements, rather than allowing the giving of a half, perhaps, to one side, but a third or a quarter to the other? Why does it demand that the settlement should be for equality on each side, holding the scale in the centre – that is, a half for each, or a third

¹ This novel provides further evidence for Justinian's concern to protect the interests of married women (on which see Krumpholz (1992), pp. 162–204) and his determination to reform dowry law in order to achieve this. In doing so, it casts interesting light on the way in which gender was socially constructed in the late Roman world, with the emperor evoking an image of hapless female vulnerability and the dangers posed to women by marital and paternal negligence (see the further discussion in Clark (1993), pp. 28–62). It reveals that it was standard practice for a husband to administer his wife's dowry, and suggests that attempts were made to transfer property away from the husband's estate via dowry (*dos*) and pre-nuptial gift (*donatio ante nuptias*) so as to place the property beyond the reach of the husband's creditors. Justinian gives a priority of claim to any widow attempting to reclaim her dowry from her dead husband's estate. The most significant aspect of the law, however, is the concept that it entrenches of equality of value between dowry and pre-nuptial gift (i.e. what the wife brings with her into the marriage and what she is given by the husband), thereby signalling the final end of the purely dotal system of Roman marriage that had predominated two centuries earlier, and the maturation of an institution whereby both husband and bride made a substantial contribution to what Arjava terms the 'common household' (Arjava (1996), pp. 56–7).

² The law referred to is *Codex* 5.14.9. According to this constitution, on the death of either spouse, the survivor was to receive the same proportion (*pars*), not the same amount of money – the husband from the dowry, the wife from the pre-nuptial gift. To this, Justinian had added that, in cases where this rule was not observed, and the proportions were unequal, they were to be equalised by reducing the greater share to the same level as the smaller: see *Codex* 5.14.10.

or quarter, whatever the contributing parties wish –, when what it required a little earlier was equal proportion in the sums actually paid, while allowing some to make their contribution in the sum of, say, a thousand gold pieces, or two thousand, or whatever they wish, but others not the same amount, but less? It is as if equality were required merely in words, and in nothing but writing, not in actual facts.

1

Accordingly, that is what we are amending before all else. Amounts in dowry and gifts for marriage are to be equal in agreements both as to what is given, and as to what is stipulated: the husband is to contract for the same amount as the wife, and the stipulation³ of what they are to gain must be in the same amounts, in whatever proportion they may wish provided that the proportion for both is the same. That is the only way in which both justice and equality would be taken into account, in case they should swindle each other like hucksters by making their stipulations apparently equal, but with outcomes that would in reality remain unequal, if the amount of their contributions had been unequal to start with. Otherwise, should the husband have put in two thousand gold pieces and the wife have contributed, say, six thousand as her dowry, and the stipulation be for each to receive a quarter as their gain, the law would be absolutely ridiculous: she will then gain nothing but five hundred gold pieces from her quarter when it becomes payable, while he gains fifteen hundred from his. It would be like a puzzle: one quarter would look far bigger than the other. The automatic result of such an unsoundly purported equality will be an unacceptable inequality.

Marriage-settlements made previously are to retain their agreed form, as it is not within the bounds of practicality for what has been done to remain undone; but we decree that in future, in our whole subject territory, contributions must be equal and the proportion of the gains must be equal, so that we honour justice and equality throughout. Should one of them be richer than the other, it is open to the richer party to show generosity to the other in a different way, one that is legitimate and is recognised as such by our laws, but not by securing a one-sided increase in gain by means of inequality that feigns equality.

That is how, in general, the law on this is to stand, displaying its justice to all.

³ ‘Stipulation’ (Greek ἐπερώτησις) = Latin *stipulatio*. See Berger (1953), pp. 716–17.

2

There is another point on matrimonial contributions that we have considered and reviewed: we refer to the matter of enhancement. Statements have been made on enhancements both by our predecessors as lawgivers and by ourselves,⁴ and on such topics, too, there has been an amount of study on our part, including historical research, that would not even be easy to quantify: we have been doing away with the frauds thought up by some people, and have been amending this matter, too, in our desire for justice to be kept untainted. For instance, we have given dowries the privilege of having rights that take precedence over previous hypothecs, on the ground that the people who have been entering into contracts with their husbands have done so on the credit of the husbands' resources, not on those of their wives, who may well not even have been married to them by then, when they made the contracts.⁵ We had also, as in the past, given licence to make enhancements, allowing both husband and wife to do so, whether they should each wish to make the enhancement, or only one of them.⁶

First, then, in order to avoid any fraud, what we are decreeing is that should they decide to enhance either the dowry or the gift in respect of marriage, one side may not do so while the other remains as before; in all circumstances, it must be each side that makes the enhancement.⁷ This is not to be a matter of choice, as previously, but of obligation, with the condition that the amount must in all circumstances be equal, as our father's constitution also states.⁸ To preclude the enhancement's turning out to be fictitious rather than genuine, particularly on the wife's part, to defraud her husband's creditors by using her privilege, it is better, should they have immovable property from each side, for the extra contribution to consist of immovables, so that it can be clear and incontrovertible what was there to start with, and what had come in later.⁹ Should there not

⁴ See *Codex* 5.3.19–20 and *Institutes* 2.7.3.

⁵ The original constitution is lost but its provisions can be seen to have been operative in *Codex* 8.17.12 (8) dating from 531: see Van Der Wal (1998), p. 81, note 67.

⁶ *Institutes* 2.7.3.

⁷ As the passage goes on to make clear, the fraud envisaged appears to be one whereby the husband makes property over to his wife, by increasing her *donatio ante nuptias*, so as to place the property beyond reach of his creditors. Roman law's determination to limit transfers of property between husband and wife may always have been informed by a desire to prevent this type of fraud. However, it is never discussed by the jurists (see Arjava (1996), p. 135), and thus the issue makes its first explicit appearance here.

⁸ A reference to a law of Justin I (see *Codex* 5.3.19).

⁹ See *J. Nov.* 61.

be immovable property on both sides, the wife at least must make her enhancement in the form of immovable property, so that both dowry and enhancement may similarly have the privilege over previous creditors, the addition being entirely incontrovertible; the husband may make his enhancement in movables as well, because no harm arises from that. Should the wife, being without property in immovables, contract her enhancement in movables, she is to be aware that she will have her privilege in respect of the original dowry only, and certainly not in respect of the enhancement, which might be fictitious. In general, an initial act is not suspect, but the very fact of an additional arrangement being made later gives rise in itself to the idea of a manoeuvre against creditors; in no way do we wish the privilege given by us to dowries to cause people injury. However, should there be no debt outstanding against the husband, and no suspicion of fraud against creditors, their mode of enhancements may then be in money, and as they wish – provided that, even so, an enhancement made in this way must be equal on both sides, so that we may preserve equality. After all, what suspicion could there be of fraud when the husband is not under an obligation to anyone, and that is why the enhancements are being made without restriction?

3

In connection with the above, there is another point to decide that has been controverted in such cases.

We are aware that there are certain later hypothecs that prevail over earlier creditors, as a result of privileges granted them by law: as for example when someone has personally provided the money for the purchase, construction or overhaul of a ship, or perhaps for the building of a house, or for land or certain other things.¹⁰ In all such circumstances, later creditors, with whose money things have been bought or renovated, have priority over far earlier ones.

Suppose now that a wife claimed the privilege of her original dowry or its enhancement (in a case where that too retains its privilege, as stated above), and then wished to prevail over earlier creditors; but that another creditor came along, more recent, but with a claim that a ship, a house or land had been bought or kept up with his money, and that he ought to have the said privilege over the property that had been obtained or kept up with his

¹⁰ A fleeting insight into the extent and nature of the market for credit, on which see Sarris (2011d).

money. The problem thus arose of whether the dowry should have precedence over such creditors as well, or should it, while prevailing over any other creditors without claims of that kind, give way to these, on the ground that it was from their resources that the property has come to be acquired.

After much deliberation over this, we found that it would be unjust for the wife to give way before a privilege of that kind, because we saw the incongruity that would result: disreputable women make an income from their own body and live by that, whereas well brought up women, who make themselves and their property over to their husbands,¹¹ not only derive no income at all from husbands who do not make a good living, but they actually suffer loss, and have no prospects. On that principle, our intention is that even should borrowed money seem apparently to have been used for someone to buy land, or to renovate a house or an estate property, such privileges should not be able to be put up against wives. We understand very well the frailty of the female sex and how easy it is for them to be defrauded,¹² and in no way do we permit their dowry to suffer loss. It is bad enough for them to forfeit their gains, should such privileges be found to have priority over their pre-nuptial gift,¹³ their loss consequent on that is quite enough, and we certainly do not want them to be at risk over their actual dowry as well.¹⁴

4

Petitions have also been made to us to the effect that there are people whose position in the government service is on borrowed money, and that those who have lent the money for those purposes must have precedence.¹⁵

¹¹ Justinian here suggests that it was common for both the dowry and the pre-nuptial gift to be administered in one fund by the husband: see Arjava (1996), pp. 152–3.

¹² For such views of women in Roman sources, see Arjava (1996), p. 232.

¹³ The implication here is that the wife's claim to the pre-nuptial gift does not enjoy the same degree of protection.

¹⁴ Justinian had already granted the wife a privileged claim (or hypothec) with respect to reclaiming her dowry in *Codex* 5.12.30 (1). In *Codex* 5.13. 1 (1b) he introduced a hypothec over the entirety of the husband's property, which was privileged under *Codex* 8.17.12. Under sections 3 and 4 of the current law, he clarifies how the claims of the wife rank with respect to the claims of the husband's creditors, giving her near total precedence with respect to claims arising from her dowry: see Van Der Wal (1998), p. 81, note 66. For the one exception to the wife's precedence, see section 4 below.

¹⁵ I.e. they have lent them money to purchase office or to meet the costs of professional entrance fees. For the purchase of office through what were described with the Latin word *suffragia*, see de Ste Croix (1954) and Kelly (2004), pp. 211–13. Despite the general prohibition on the purchase of gubernatorial office introduced by Justinian in *J. Nov.* 8, it

We therefore decree that should anyone have genuinely provided money for a service position, either for his son to be a *statutus*¹⁶ or for any other such purposes, and should there be a specific statement to that effect in the contract, and the transaction have actually been made on the condition that, if the *casus*¹⁷ arises, the person who has lent money for that, and he alone, is to have precedence, then in that case alone the woman is to give way. However, it is not to be taken on trust without due consideration, or through witnesses: the transaction must be executed in writing, with witnesses' signatures, and it must actually be put into effect.¹⁸ Should it have proceeded on the whole such course, it is above suspicion, and it is right for the contracting parties not to be deprived of what is theirs; but over all others the wife has precedence, in accordance with the privilege already granted by us to wives.

5

We have already laid down a law to the effect that a father who has once endowed a dowry for a daughter who is under his authority,¹⁹ or who is independent but he has arranged for the reversion to be to himself, <is to take back the dowry if the marriage comes to an end*>. The question has been raised in some courts as to whether, when the dowry he has given returns to the father on the death of his son-in-law, it is right for him, as the original donor, to be able to reduce it when his daughter enters on a second marriage, or not right for him to do so, considering that he has once alienated part of his estate. Should his gift to her on marriage then be in the same amount again, as though she had not in fact been widowed?

* Accepting Haloander's supplement for the lacuna [S/K, p. 474, line 17].

The fact has now been reported to us that a father had endowed a dowry of thirty pounds of gold; that his daughter had been widowed; and, that

is clear from *J. Nov.* 35 that it remained legal for posts in the imperial bureaux (*scrinia*), whilst *J. Nov.* 53 c. 5.1 alludes to it with respect to the palace guard (*scholae palatinae*). See Van Der Wal (1998), p. 91, note 1 and *J. Nov.* 136 c. 2.

¹⁶ '*Statutus*' = a regular member of the imperial civil or military staff (as opposed to a supernumerary): see Berger (1953), p. 583.

¹⁷ '*Casus*' = case. For full information on this Latinism, κάσσοϛ or κάσοϛ, see Avotins (1992), pp. 116–18.

¹⁸ The fifth-century papyrus from Ravenna published in Tjäder vol. II as *P. Ital.* 47–8 A–B lists a number of documents in the possession of the Praetorian Prefect of Italy, including what are described as 'sureties on the *suffragia*', perhaps for his own purchase of office.

¹⁹ 'Under his authority' = *in (patria) potestate*; 'independent' = *sui iuris*. For the law referred to, see *Codex* 5.13.1.13–14.

when she went into her second marriage, he no longer contributed for her the sum of thirty pounds, but only fifteen, on the ground that she had in fact gained half of the pre-nuptial gift, in the sum of fifteen pounds of gold: her father has no longer contributed thirty pounds of his own for her, but now fifteen pounds himself, and fifteen from her gain as wife.²⁰ That, then, we regarded as unfair; it was as if he were going out of his way to do his daughter an injustice. Instead, <justice demands that> she should both keep for herself her gain from the pre-nuptial gift, and likewise receive the remaining half of her father's money. After all, what would he have done if she had not, in the event, gone into a second marriage, and his son-in-law had remained alive? Was he somehow* going to reduce the dowry he had already given? or appropriate what was her own personal gain, and put it into a dowry for her <putative> second husband? No! She must have that in her paraphernalia,²¹ and perhaps for that reason she could be united with a richer husband, as being the owner of not just thirty pounds, fifteen from her pre-nuptial gift and fifteen contributed by her father, but of forty-five, part of it being in her paraphernalia as the amount that had been given her by chance, and part remaining intact as her father's generous contribution.

* Reading ἡ πῶς for ἡ πῶς [S/K, p. 475, line 4].

That is what we legislate, provided that the father's estate should remain as it was before; because if some chance circumstance should have reduced his fortune, so that, even should he wish to do so, he cannot give another dowry to the same value as the first, and should the fortuitous reduction in her father's fortune be clearly proven, in that case the father is not to be compelled to give more than his resources can afford when he gives his daughter in marriage again. She is to retain the gain from her previous pre-nuptial gift intact, and to receive from her father as her dowry, in the second place, as much as the level of his fortune would warrant. It is quite clear that he is to be absolutely bound to return this asset (that is, the pre-nuptial gift, of which it is only the use that we grant him) to his daughter at his death; she becomes in all respects the secure possessor of the pre-nuptial gift, as well.

²⁰ On the size of dowries, see *J. Nov.* 22 c.18 which refers to dowries of up to 100 lbs weight of gold. See also discussion in Arjava (1996), pp. 65–7.

²¹ 'Paraphernalia' = Greek παράφερνα (late Latin *parapherna*): 'things which belong to the wife beyond the dowry (*extra dotem*)' (*Codex* 5.14.8). The wife was permitted to dispose of these 'as she pleased' (Berger (1953), p. 617).

6

There is another matter that has been problematic in an untold number of situations, on which we regard it as quite essential to legislate. A father, or perhaps a mother, has endowed a daughter of theirs with a dowry; she has handed it over to her husband; and her husband died, indigent.²² Then, on the death of her father or mother, the married daughter too is required to give a contribution to the estate²³ consisting of her dowry, or to receive less, by an equivalent amount. Should her husband be well off, the situation is absolutely easy to resolve; but if all the wife has in her secure possession is her rights of action against her husband, while those are void of substance, and it is claimed against her that she is in actual possession of the dowry she was endowed with, whereas her contribution consists only of a right of action which has absolutely no solid outcome, we have concluded that the matter deserves a law.

We are aware that in a number of judgments hitherto the somewhat harsh decision has been taken that the wife was obliged to use her dowry as her contribution or else to pay a sum equal to what was given for her benefit – from which, in the event, she has received no solid outcome at all in terms of actual proceeds. However, we shall give this situation assistance derived from other laws,²⁴ in that we have granted wives, even during their marriage, the option of taking their affairs over and managing them properly, as our constitution says, should the husband be managing them badly. Should the wife be independent and of full age, she has herself to blame as to why ever, just when her husband began managing their affairs badly, she did not come to her own rescue and take them over? In that way, she would have been going to have her own property entirely undiminished when it came to calculating the contribution, and to making her contribution in an equivalent amount.

1. Suppose, however, that she should be subject to authority and unable to take that step without her father's consent, and that she therefore

²² Note once more the implication that the husband administered the dowry. In *Codex* 5.12.29, Justinian had already granted a wife the right to lay claim to her dowry from a husband who was heading for insolvency. In this chapter of the constitution, the emperor adds to that law provisions concerning paternal negligence: see Van Der Wal (1998), p. 80, note 63.

²³ 'Contribution to the estate' = Latin *collatio*. Under Roman law, if an emancipated child wished to participate in the intestate inheritance of their father along with their unemancipated siblings, they were obliged to make a contribution to the estate including all gains that had accrued to them after emancipation. This was to ensure equity between the heirs (see Berger (1953), pp. 394–5).

²⁴ A reference to *Codex* 5.12.29.

approached her father and told him this, giving notice for him to give her his consent and to take the property in hand, even during the marriage, and keep it safe for another occasion; if he did so, she will again have her own rights over the property safeguarded for her by those means – given that, in that situation, we have also granted her the right to claim the property in the pre-nuptial gift, even during the marriage, and to be free of any consequent risk. However, if she gave that notice to her father, but he did not launch an action, did not give his consent, and has not given his daughter licence to act in that way, either, she is not to be at risk, but her contribution is to consist of the bare right of action against her indigent husband's property, and her situation will be in common with that of her siblings. She is not to lose by reason of the contribution, but the share that falls to her of her father's property is to be paid to her, and the action that is her contribution is to be launched by all the siblings; what they all get out of it is what the effect of chance may give them.

Should it be the father who contributed the dowry in such cases, and should it be his property on which the contribution is going to be expected, that is what is to apply. However, should it have been, for instance, the mother's* contribution, and that is the expectation on which the contribution turns, whereas it is the father's non-compliance that endangers her dowry by his refusal to launch an action, or to allow her to launch one, the daughter can in that case launch one on her own account; she will not have the excuse of having been unable to launch one, but can come to her own assistance and ward off the prospective threat of her husband's insolvency. The most judicious Ulpian, we know, also went into this problem, and came to the assistance of the wife when her husband had been found indigent: he desired her contribution to be in proportion to her husband's means.²⁵

* Tentatively adopting the conjecture of Heimbach and Zachariae, after Athanasius, of μητρὸς for μετρίων [S/K, p. 477, line 14].

2. However, in the multiplicity of laws that there were before we organised them and put them into clearly-discernible order, there were many points, even essential ones, that were not perceived, and decisions were made by judges in the opposite sense. To avoid any misleading over this matter, therefore, we have thought it necessary – particularly as our constitution was available that had been laid down for the assistance of a wife, even during her marriage – to take a better and more consistent path, by laying down the present law.

²⁵ Possibly a reference to *Digest* 37.7.1 (6): see Van Der Wal (1998), p. 148, note 98.

So as not to enumerate individually the persons to whom it must apply, we declare in general terms that the constitution applies to those in whose case a contribution is involved, whether it may be a father, grandfather, mother, grandmother or any remoter ascendants.

Conclusion

Accordingly, your excellency is to take pains to cause our decisions, manifested by means of this divine law, to be made public to all by means of proclamations of your own in the usual manner, and to observe them in perpetuity.

Given at Constantinople, November 17th in the 13th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Apion

98 | **Constitution prohibiting appropriation of gain from dowry by the husband and from pre-nuptial gift by the wife; they are to reserve ownership for their children, even if they do not enter on a second marriage¹**

Addressed to John, for the second time Most Illustrious prefect, ex-consul, patrician

Preamble

That which is permanently in an unchanging state needs no complicated laws, but possesses an enduring simplicity; devoid of all complexity, it enjoys laws eternal and divine, which need no amendment. In contrast, that which is confined within the turbulent ebb and flow of our world needs a helmsman's skill, derived from the laws, applied to its affairs.² Thus, because one of the tasks from which we do not shrink is that of giving judgment, numerous cases come before us; we apply a remedy to each individually, but we also take up every controversial issue and, by legislation, lay down for ourselves and our judges the action required to be taken on each of them.

Foremost among others, then, there is a matter that ancient legislation may have regarded as not without some differentiation, but which has been regarded by us as desirable to convert into simplicity, by a morally sound law; it starts from now, without interfering with anything done previously. Our reason for this, although we ourselves were previously not dissatisfied with the laws on this subject, is that we have decided that second thoughts

¹ This constitution seeks to protect the interests of children by granting them the legal ownership (*dominium*) of their mother's dowry and the pre-nuptial gift provided by the father, leaving the parent simply with a right of use (*usus*). Essentially, the rights over such property that had been granted the children of a first marriage upon re-marriage are now accorded irrespective of re-marriage and divorce. The reform, Justinian reveals, was inspired by a case of child neglect. On Justinian's concern for children, see Krumpolz (1992), pp. 117–61. The law also reveals Justinian's growing hostility to divorce, on which see Clark (1993), pp. 17–27.

² The emperor once again deploys the *topos* of the mutable character of nature as a justification for legislation, on which see Lanata (1984a), pp. 165–88.

are better.³ The subject is that of matrimonial gains.⁴ These, should one partner in a marriage have preserved the bond, remained unassailably theirs and embedded in their own estates, though being kept for the children of their earlier marriage, should they move on into union with another person. We have decided to do away with this duality, by a simple, and improved, law.

Given that a wife who has married for a second time, or perhaps a husband with a second alliance in view, reserves to the children the gains at death, and on divorce, and given that they will perhaps have other children from the subsequent marriage, where is the justice, if those with only their legal children to depend on fail to reserve to them their gains from their parents' decease, and pass them on to others instead?⁵ Yet what could be more to be prized than that children should not be ungratefully treated by their parents?

1

For that reason, we are accordingly decreeing that, in the event of a wife's death and her dowry's becoming her husband's gain, it is in all circumstances to be reserved to their children, whether or not he marries again; and that in the opposite case, should it be the husband who dies and the wife who enjoys the pre-nuptial gift, she too is by all means to keep the gains from the pre-nuptial gift to their children. The parents are to have the use of the matrimonial gains, but the ownership is to be kept for their children, come what may.⁶ What has been legislated for parents who proceed to a second marriage is to be kept in its own form.

From today, and for all time to come, this is to apply to unions which are dissolved, in whatever way; and also to unions already dissolved, whether by death or in any other way whatsoever, but still pending, in that at least one party survives. If both are already deceased, we are not giving this to heirs, but are leaving it under the old laws, as having been concluded once for all. Clearly, once these gains are the children's, and the law has taken the ownership and given it to them, the assets pertaining to the successions and to the other accessions will then also be with them, just as has been legislated for earlier children who have been entitled under the laws to some gain in consideration of their parents' second marriage.

³ This seems likely to be a version of the proverbial expression used by Plato (*Laws* 723e).

⁴ 'Matrimonial gains' = Latin *lucrum*, i.e. the dowry and ante-nuptial gift.

⁵ A reference to the provisions contained in *J. Nov.* 22.

⁶ I.e. the parents have *usus* but the children possess *dominium*.

2

There is another point, arising from a case reported to us, that we thought necessary to bring under legislation.

A husband and wife had separated from each other. Although they had children from the marriage, both parents ignored them, and they went about begging.⁷ We have therefore decided to bring in a perhaps rather severe law that exerts pressure in the direction of probity, in order that, at least for fear of punishment, people should cease to break up their marriage for reasons of dishonest gains, or to neglect their own children.

1. Should any marriage be broken up, either by dissolution or in any other way, when there are no children, previous enactments⁸ are to remain in place. However, should this happen when there are children, and both parties, without compunction even for their children, take occasion for a voluntary dissolution by mutual consent – or possibly even an enforced one, in a case where there is misconduct on the husband's part that incurs loss of his gift before marriage, or on the wife's, incurring forfeiture of her dowry –, the husband is not to gain dowry nor the wife the pre-nuptial gift, but, immediately on the forfeiture of either dowry or pre-nuptial gift, the gain of ownership is to go straight to their joint children and become theirs, only the use remaining with the divorced pair; and that is on condition that the person gaining the use is obliged to bring up the children of the marriage, and to keep them supplied with all else, on a scale commensurate with the gain of the property.

2. We are also aware of a case such that the marriage had apparently ended in divorce *bona gratia*,⁹ and the gift before marriage had returned to the man who had contracted it and the dowry to the woman who had contributed it; but still, on the purported ground of damages, and for other reasons, one side has been awarded a disproportionate amount of money. This was done in such a way that it did not look like a matrimonial gain but

⁷ A rare allusion to the abandonment and neglect of children (as opposed to infants, on whom see Evans Grubbs (1995), pp. 90, 92, and 271 and (2011b)). The law thus provides further evidence for actual cases informing legislation.

⁸ See *Digest* 24.2–3.

⁹ 'Divorce *bona gratia*' = in Justinianic law, a divorce for which neither of the partners could be held responsible (e.g. on grounds of childlessness, prolonged captivity, or mental illness): see Berger (1953), p. 440. At this point, *bona gratia* divorce could still also simply be agreed by common consent. Justinian would forbid this practice in 542 (see *J. Nov.* 117 c. 8–9), but the wording of this section of the constitution would suggest that the emperor already had doubts as to whether divorce not necessitated by childlessness, prolonged captivity or mental illness could ever be truly blameless (see Clark (1993), pp. 24–5 and Van Der Wal (1998), p. 88, note 98).

like an external¹⁰ acquisition, and was not kept for the children in conformity with the law on that, as if the gain to the party who contrived to be paid it was for a different reason.

As a remedy for the injury caused by that kind of machination as well, we decree that, even should anything of the kind occur, and one party make some gain, that too is to be kept for the children in the same way, with the ownership going straight to them, and only the use resting with the person who made the gain. Thus they will refrain from making any deduction, and from any unreasonable cupidity; thus, they will not injure their children either involuntarily or voluntarily, but will be more self-controlled, particularly in their morality, but also in the marital relationship that people should have, once they have joined themselves together. That is something full of morality, inherent in good character, and replete with paternal and maternal affection. It is thus for the common father of all, under God – that is to say, for the holder of the Sovereignty – to ensure by law, for those who have been wronged by their parents, what their parents do not safeguard of their own volition.

What has previously been decreed in this connection on gains and successions is to remain in force; we are not changing anything in that, except only what we have specifically laid down in this law.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

Given at Constantinople, December 16th in the 13th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

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¹⁰ 'External' (Greek ἔξωθεν = from outside). Possibly an attempt to render the Latin *advencium* (on which see Berger (1953), p. 352).

The same Sovereign to John, for the second time Most Illustrious prefect of praetoria, ex-consul, patrician

Preamble

We are aware that it is not long ago that we enacted a law¹ on the selection² of *mandatores*,³ guarantors and those who have given surety, containing much legislation of benefit to our subjects in general. We have, however, decided that it does at present need further elaboration and supplementation, not without merit, nor without value to the citizen body as a whole.

1

Should someone have persons under an obligation⁴ who have given mutual securities,⁵ they are all to be equally liable for proceedings against them, unless the rider has been added that there must also be full liability against just one of them. Should there in fact have been such a rider, the agreement is to be upheld, but the demand for the full amount is not to be made from an individual at the outset; for the time being, it is to be made for the share to which each is liable, and the claimant is also to proceed against the rest, provided that they are well off and are resident locally. Should that prove to be so, and they are in fact well off, and present, they are each to be liable for full discharge of their personal share of the mutually secured loan for which they are under an obligation; no individual is to become burdened with the joint debt. However, should all or some of the rest be indigent, either wholly or to some extent, or perhaps be away, an individual is to be additionally liable for what the claimant has been unable to recover from the others. The agreement will thus have been kept, in relation to both

¹ This constitution serves as an addendum to *J. Nov.* 4, and concerns actions to be taken against those who have agreed to enter into a contract of joint liability for a loan: see Van Der Wal (1998), p. 123, note 59.

² 'Selection', i.e. the selection of whom to proceed against.

³ '*Mandatores*' = those who provide backing or surety. The emperor is referring to *J. Nov.* 4.

⁴ 'Under an obligation' = liable, responsible or indebted.

⁵ The Egyptian documentary papyri reveal a number of sixth-century examples of individuals agreeing to enter into such joint liability, typically with respect to tax-collection. See, for example, *P.Oxy.* LXII 4350 and 4351 and Sarris (2006), pp. 58–60. For a papyrological reference to the law on such matters, see also *P.Hamb.* 23. Note also *J. Edict* 9 c. 3.

sides: the claimant will suffer no loss, even by any agreement made without his knowledge between themselves by the parties under an obligation to him, and they will each be liable to the extent that they originally agreed, without being allowed to contravene the agreed terms by machinations, tricks or dispute-resolutions.

1. Should each party, or all of them, be resident in the same locality, we decree that the person hearing the case is at once to bring them in as well, try the case as a joint action, and hand down a joint verdict. Thus all those liable will be under an obligation, the state of their finances will be examined, and the procedure on the debt will be in accordance alike with justice and with the dictates of the law.

2. However, should the person hearing the case be someone other than an office-holder, we grant licence either to the relevant judge here to receive a petition, or, if it is in the provinces that the matter has been raised, to the Most Distinguished governor or the appropriate judge to require them, through his staff, to attend the case also and take part in it, so that there is no impediment to this divine law.

All this is to apply on transactions in time to come, from the laying down of this law; we are leaving the past under the laws laid down prior to it.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

Given at Constantinople, December 15th in the 13th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

100 | Non-payment of dowry: time-limit¹

The same Sovereign to John, for the second time prefect of praetoria, ex-consul ordinarius, patrician

Preamble

Matters that have not been left unexamined by our laws include that of defences on the grounds of non-payment,² in some cases. We have cut down exorbitantly long delay over this, so that people shall not make a quasi-commercial profit out of their own slackness or perhaps malpractice, and put difficulties in the way of others: those wishing to provide proofs do not always have a fair opportunity to do so, and many proofs are precluded by the passage of time. For those reasons, we have done well to restrict complaints of non-payment in certain cases, as may be gathered from our existing legislation; and it is something similar that we are at present doing in the case of dowry, as well.

Husbands had been given the entire duration of their union, as long as the marriage lasted, in which to lodge a complaint that the dowry had not been paid; and there was a further extension³, in that the complaint could be lodged within a year of the husband's death, as also after a *repudium*.⁴ Hence, we have decided to use a brief, concise law by which both to accelerate the complaint of non-payment of the dowry, and to relieve the wives, in such cases, of the burden of providing proof a long time later.

¹ In this constitution Justinian attempts to curb litigation by limiting the period in which a husband or his heirs could sue a divorced wife for non-payment of a dowry which had been promised in writing in the initial marriage contract (the *instrumenta dotalia*) under the *querela non numeratae pecuniae* ('complaint of non-payment of money'), on which see *Codex* 4.30.

² 'Defences on the grounds of non-payment': an attempt on the part of the draughtsman of the Greek text to render the legal Latin *exceptio non numeratae pecuniae*. This was an objection lodged by a defendant that he had not received the money for which he was being sued by the plaintiff under the action known as the *querela non numeratae pecuniae*. The *exceptio non numeratae pecuniae* was a later development of the *exceptio non adimpleti contractus* (i.e. defence on the grounds of non-performance of contract): see *Codex* 4.30 and Berger (1953), pp. 459 and 666. The law referred to is *Codex* 4.30.14.

³ A reference to *Codex* 5.15.3.

⁴ '*Repudium*' = unilateral divorce.

1

Therefore, should someone have been married to his wife for just two years or less without receiving her dowry, he is not to suffer any wrong by his silence, nor are the husband's heirs, should he have been silent; but the complaint is to be launched within one more year. It is the brevity of the marriage that prompts us to that provision in the law. Should the union have extended over more than two years, but less than ten, we permit the husband to lodge a complaint stating that the dowry had not been brought in to him, either in whole or in part; and should he have done so, the right of complaint can be passed on, if the husband once lodged it and the wife did not show proof that she had made the payment.

1. If he has made no complaint within the ten years, we disqualify the husband from making one, by reason of his silence; we do not permit him to do so himself after the ten-year period, nor do we any longer give his heirs the year for it. As in other cases, this is not to be a punitive action on our part against certain people, but concern for our subjects' freedom from vexation. After all, should someone have chosen to say nothing, when it has been open to him to bring forward his complaint throughout such a long period (ten years, that is to say), it is clearly his intention that even if he has not received the dowry, his heirs should, in any case, concede it. The same is to apply also should it turn out that the marriage has been dissolved by *repudium*; and we make no distinction as to whether it is the wife who has contracted as having brought in the dowry, or her father, or anyone else on her behalf. As we have just said, it is the passage of time that indicates the respective outcomes for every such case, either admitting or disqualifying the complaint.

We do not accept as objection a merely verbal statement; the deposition must be in writing, because a fit of temper, or some other incidental reason, often causes a husband to say something of that kind – or it may well be that he has not said anything, but witnesses have been bribed to lie to that effect. In the possible case that someone actually wishes to give the notice in court, the wife, or in general the person who contracted to contribute the dowry, must in any case be informed; otherwise there is nothing to prevent the husband from taking the step on his own, and lodging a purported complaint for himself while the wife's party is in ignorance of what is going on, and is no way able to protect its own interest, being unaware even that there has been a complaint against it.

2

To sum up: if the marriage is dissolved within two years, either by death or by *repudium*, the husband himself, and his heir (no-one else), may lodge a complaint of non-payment within a further year. If the marriage has lasted more than two years but less than ten, we allow the right of complaint to the husband and, within three months, to his heir, and no-one else. Should the ten-year period have elapsed, neither the husband nor his heirs will then have a right of complaint: that length of time is sufficient protection for the wife, once for all.

If the husband is under age and has not lodged a complaint, we allow him, for restitution, a period not to exceed twelve years from the date of the marriage. We know that those contracting marriages do not take that step under the age of fifteen, at the very earliest; he will thus in fact have passed his twenty-fifth year, and will be able to lodge his complaint of non-payment of the dowry up to the age of twenty-seven.⁵ Should he die within the time stated, his heirs are to have the year for lodging the complaint.

1. Should the heirs of the deceased person who has not lodged a complaint (whether he was of age or not) be under age, they are to have only five years for launching the complaint of non-payment; that is a long enough time, without awaiting the expiry of all the years of minority. This was what prompted us to the present law: a wife's marriage had lasted into its fourteenth year, and someone took advantage of his minority, twenty years after his father's death, to launch a plea of non-payment⁶ against his mother, thirty-four years from the date of her marriage. We remedied that, in giving judgment; and it is because of those circumstances that we have limited the period to five years for those under age, in the present law.

It is to be understood that the person putting up the pleas of non-payment must be whoever was named in the contract as to receive the dowry; and that the case is to be decided within its proper periods, whether he is of age or not. The law is to be in force for future marriages. For existing ones, if the period of ten years is still unelapsed, or not less than two of them, he is to have that time for his plea of non-payment, which also allows him to pass it on; but if he has less than the two years left, or if the whole ten-year period has elapsed, we allow two years for the complaint of

⁵ The law here furnishes a useful insight into the age of boys at marriage. Twenty-five was the age of full majority in Roman law (i.e. it was the age by which it was assumed a young man had acquired sufficient experience of life to no longer be in need of special protection: see *J. Nov. 72*, note 3).

⁶ 'Plea of non-payment' = a *querela non numeratae pecuniae*.

non-payment for them, and within three months after the dissolution of the marriage for their heirs, so that we may safeguard their right throughout.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

Given at Constantinople, December 20th in the 13th year of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

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Addressed to John, for the second time Most Illustrious prefect of praetoria, ex-consul, patrician

Preamble

A petition from certain city councillors² has provided us with a starting-point for valuable legislation; and we are making this law not just for certain councillors, but for the whole subject realm, by which we mean all of it in the East, all that is surveyed by the setting sun, and all in the latitudes on either side.

The subject of city councillors and of presentations to councils, including the question of who are constrained into curial status and who are freed from it, has had the careful attention of our predecessors. In this context, what we are decreeing is that city councillors are to have licence not only to institute as heirs members of the same city's council (just as has been allowed hitherto), but also, if they wish to institute as heir anyone who is free of the council, to do so, only on the condition that this heir (or these heirs) presents himself to the curial position of the testator (that is, in his place of origin) and carries out the curial duties;³ he is then to receive the inheritance unhindered. We are sure that this will be an improvement on the present situation, in that what the council is now gaining under such circumstances is just the financial advantage,⁴ but under the legislation as it will be, it will gain both the councillor and his estate; councils will flourish

¹ This law reiterates the regulations in *J. Nov.* 38, where it was ordained that in the event of a city councillor (*curialis*) not appointing a curial heir (or heirs) capable of taking up his civic duties (*munera*) in his place, three-quarters of his estate would automatically go to the council. On the grounds that it was better to maintain the roster (*album*) of active councillors, however, Justinian here makes it clear that any non-curial heir willing to accept curial status and fulfil the associated civic obligations would be entitled to inherit everything that would otherwise have gone to the city council, as would female heirs who married a councillor or whose husband became one. The constitution thus once again reveals the determination of the emperor to maintain the cohesion and effectiveness of civic institutions at a time when they were evidently under pressure (on which, see Liebeschuetz (1996)).

² 'City councillors' = (Latin) *curiales*. The constitution thus provides another example of a general law issued in response to a case brought before the emperor.

³ 'Curial duties' or 'obligations' = (Latin) *munera*, the financial and other burdens of the councillor.

⁴ 'Just the financial advantage,' i.e. if nobody replaces the deceased councillor, his native council simply gains his property, whilst being denied the services of an active member.

by having more members, as well as by being in possession of their property.

1

We therefore decree that members of city councils, in making their dispositions, have licence either to have, as their heirs, councillors of the same city, if they wish (just as the law says), or some of their family or outsiders,⁵ whether they are councillors or not, and whether as to not less than nine *unciae* or as to the whole; but these must have been presented to the council, be united with that body, and fulfil its duties impeccably. This is to apply not only to themselves, but also to their children, grandchildren and subsequent successors.⁶ It is definitely not the same as the form which the very recently enacted constitution directs for those presenting themselves to city councils, without bringing the presenters' issue into that position; instead, just as if they had in fact been councillors from the outset, they are uniting their issue with the membership list and corporation of the council, together with themselves.⁷ In their institution of an heir, there would be no difference between appointing as heir an existing councillor of the same city, and one who was just going to become so.

2

Should a relative who is a city councillor, or else one free of such position, be called to inherit in intestacy from a deceased councillor because he has made no will, and wish to present himself to the council, he is to be allowed to do so, and to declare his intention in the records within six months. He is then simultaneously to be a councillor, with his own succession and estate, and to become the heir. His estate is not to be subject to any demand at all for a quarter-share, or for nine *unciae*,⁸ now that the successor to the inheritance has either become councillor already or is just about to become so, and the property is coming back to the council. Also, if anyone shall donate property that is part of his own estate (whether most of it, or in any

⁵ 'Outsiders' = *extranei* (i.e. non-family members: see *J. Nov.* 1, note 1); '*unciae*' = twelfths.

⁶ I.e. those who accept such curial status for themselves are also bequeathing it to their heirs. See Van Der Wal (1998), p. 145 (entry 978).

⁷ A reference to *J. Nov.* 89 c. 2–6.

⁸ 'Quarter-share' = the quarter-share that, Justinian reports in *J. Nov.* 38, city councillors had once bequeathed to their native council; 'nine *unciae*' = the nine-twelfths of the estate that would otherwise have gone to the council under *J. Nov.* 38 had no councillor been appointed to replace the deceased.

case not less than nine *unciae*) either to one* of the serving councillors of the same city or to someone else, on condition that he introduces himself, his estate, his issue either existing or prospective, and the subsequent succession, to the council to which the donor belongs, we decree that the gift made on that condition is valid. We regard it as all-important that the estate of councillors should not be alienated in any way from the council of the city in which they are councillors.

* Reading ἢ τῶ for ἢ τῷ [S/K, p. 489, line 13].

3

To avoid there being any suspicion of deceit over this process, and so that people gaining ownership of curial inheritances either by gift or by will (as we have mentioned above), or in intestacy, do not then procrastinate and put off their presentation, wanting to enjoy the property without presenting themselves, we decree that should the conveyance be by gift (as stated earlier), the transfer of property should not take place in advance; it is to remain with the donor until the recipient of the gift should have been presented to the council in the manner stated, and enrolled in the membership list, with an entry in the records executed before the provincial governor, for free and without any payment; only then do we wish him to be given the property also. Should the donor have conveyed the property when the covenant inducting the recipient to the city council was still unmade, a full nine *unciae* of the donated property is even so to be claimed by the council, that being the amount to which we wish the city council to be called in any case; . . .

1. . . . should it, however, be by will or by legal call that the non-councillor has come to inherit from the councillor, the council is then to meet immediately on the death of the councillor, together with the defender of the city,⁹ excluding the possibility of any future sharp practice against the deceased's property, and to make a list of it, in the presence also of the actual person called to it; and the property is to be handed over to the city council under seals of both the defender and the most God-beloved bishop of the area. When the above-mentioned entry has been made in the records before the provincial governor, and the person has been presented to the council in the oft-stated manner, together with estate and issue present and prospective, he is then to take over the property and

⁹ 'Defender of the city' = *defensor civitatis*: see *J. Nov.* 15.

be its secure possessor, as the previous city councillor was; he is to be regarded as no different from his predecessor. It is to be clear that such entry made before the provincial governor is to be without any gain and with no loss. It is to benefit the city council, not to involve it in deceit and heavy cost, that we are enacting this law; it is to remain in force perpetually, and, by means of both money and members, to enhance the composition of the city councillors as well as their finances.

However, should the person called to inherit in intestacy from the councillor, not himself being a city councillor, decide not to come forward and present himself to the council, the city council is to retain the nine *unciae* share, and he will have ownership of just three *unciae* for himself, which is what the previous law¹⁰ gave him, should he not be of curial status. Should there be more than one in the same degree called to inherit from the city councillor, some of whom present themselves while others refuse, the one or ones who present themselves to the council are to receive the nine *unciae*, while the three *unciae* go to the rest of those called by law as heirs. Our aim is that in any case the nine *unciae* should devolve on a councillor of the same city.

4

Should someone die leaving only a daughter, and should she marry a councillor of the same city, it is clear that she will have her father's property unassailably – either the whole of it, or at least three-quarters, should her father have perhaps wished the remaining quarter to go to someone else. Should she not marry someone who is not a city councillor by origin, but someone should come forward willing to accept marriage to her on the condition of being a councillor and presenting himself to the council, and should that marriage prove agreeable to her, in this case too she is to have the nine *unciae* unassailably, because of her goodwill towards the council, and because a councillor is being presented for the property, who will manage it; that is our reason for wishing it by all means to be given to his wife. Should there be more daughters than one, and should some marry city councillors (either already so, or becoming so by presentation), the nine *unciae* will be divided between those, and the three *unciae* will go to the rest. Their husbands will use the property for council purposes, even though it is in their wives' ownership: our purpose in having awarded the

¹⁰ A reference to *J. Nov.* 89 c. 5 and 6.

wives their fathers' property is so that their spouses may use it in fulfilling their curial duties.

In the event that a wife has died after being married to a man who had presented himself to the council, should she have had male children by him, the property will be with her children: they will be city councillors, and no intervention will be needed; . . .

1. . . . but if the children born to her should be female, should they too marry men who either are councillors of the same city, or ones who present themselves to the council of the same city, they too will have the property unobstructedly, and it will be subject to curial duties through their respective husbands. Should they not marry councillors of the same city, or only some marry city councillors either already being so or becoming so, then, under the already-stated division, those who have married councillors will have the nine *unciae* for the curial duties, and the others will be content with the three *unciae*. Should they have had neither male nor female children, their husband is to have the use of the property in his lifetime, as his resource for fulfilling the curial duties. Should he enter on a second marriage and become the father of male children, or of females whom he marries to city councillors, again, in the same way, the property will be attached to the member of the council. Should he die either without having entered on a second marriage, or having had daughters and not married them to city councillors, existing or prospective, the council will then receive that property directly; we do not permit that portion of the curial resources and duties ever to be alienated, even should the family survive through numerous successions; such a line descends continuously with the nine *unciae* always being saved for the council, whether through male children who are councillors or through sons-in-law who present themselves to the council.

We wish this law to be in force for all time to come, and also to cover cases that are still pending, not having received judicial decision or amicable settlement.

Conclusion

Accordingly, your excellency is to take pains to observe these decisions of ours, manifested by means of this divine law, above all taking every care for the support of the public treasury.

Given at Constantinople, August 1st in the 13th year of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Apion

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

There are numerous other governorships whose position we have by now changed for the better. They used previously to be lowly, insignificant and unfit for anything that was required of them; but after we raised their status they became altogether more powerful, and their grip on affairs has been such that everything has improved. For instance, we have devised the positions of proconsul, *praetor* and *moderator*, with their august ancient

¹ In this measure, Justinian reforms the administration of the Roman province of Arabia along broadly the same lines as his other provincial reforms of the same period (535–536). The authority of the governor or *moderator* is enhanced and it is clearly established that the military commander or *dux* is not to overshadow him (although here, as in other frontier provinces, military and civil commands are not to be united: see Jones (1964), p. 282). The emperor complains of tax evasion, civic disorder, the lawlessness of the local aristocracy, and also of the administrators of imperial estates. Many of the problems faced thus mirror those encountered elsewhere, associated in part with the intensification of aristocratic power at the grass roots of East Roman Society (on which see Sarris (2006), pp. 149–99). There are also, however, certain peculiarities to this law. Firstly, the *dux* receives especially sharp criticism, and it is noteworthy that the *moderator* is provided with a separate military retinue so as to ensure that he is not totally reliant on ducal support. Secondly, the *dux* is accorded equal status (whilst still being rendered subordinate to the governor) with the ‘phylarch’ – the title accorded to the dominant ruler amongst the Arab tribes of the region, on whose assistance the empire was highly dependent for the security of its eastern frontier. Since the reign of Anastasius, but especially in the reign of Justinian, a concerted effort had been made to build up a stable client chieftaincy in the region under the leadership of the Arab Jafnid clan, whose leader, al-Harith (Arethas) held the phylarchy at this point – a title which Justinian had granted him in 529 (see Procopius, *Wars* 1.17.46–8). The Persians relied for the security of their desert frontier on a similarly consolidated client chieftaincy led by the Nasrid princes of al-Hira, and Anastasius, Justin I and Justinian may have been emulating Persian policy in choosing to favour the Jafnids. As a result of the Persian war of 502–503, the Constantinopolitan authorities had come to realise how vulnerable their eastern frontier in general, and their desert frontier in particular, was to Persian attack. Accordingly, the emperors of the period attempted to secure their hold on the provinces of Syria, Palestine and Arabia by building up such Arab clients whilst also investing in the military and defensive infrastructure of the region (see Sarris (2011a), pp. 127–45 and Fisher (2011)). A third interesting peculiarity is that the arrangements made to pay the *dux* (the direct hypothecation of tax revenues) pre-figure fiscal arrangements of the Middle Byzantine period (see also *J. Edict* 13 c. 13–15). The best discussion of this constitution (which should be read along with *J. Nov.* 103 and *J. Edict* 4) is to be found in Shahid (1995) 1, pp. 196–8.

titles; we have raised their stipends; we have given them full authority; and, above all, we have forbidden mistreatment of our subjects, and the use of unclean* hands on them: that is something we have reinforced by a most formidable oath, and by not conferring offices except on those qualified for their warrants by having taken the oath.²

* Reading φαύλαις or φαύλοις ('sordid') for πολλαῖς 'many' [S/K, p. 493, line 8], as it is the 'cleanness' of hands on which these laws regularly insist. Some support for this conjecture is that the oldest MS has πολλοῖς, and that there seems to have been confusion between π and φ also in *J. Nov.* 145, where see the note on page 946.

We have, therefore, looked also at the province of Arabia, and enquired into the reason for its low yield to the public treasury, despite its highly fertile soil;³ and also for our being besieged by a mass of petitioners, all of them lamenting robberies, injustices or other depredations. What we have found to blame as being the cause of the trouble is the weakness in the governorship. The holder of the civil post was of such insignificance that he was in bondage to the commander of the armed forces; it was on that person's wishes that his survival, or the total non-existence of this office, depended. Hence, it has actually fallen into desuetude, for a long time now: it is the military command that is conducting the business of the civil office as well, although it is entirely inadequate for both that and its own, because it has been busy with profiteering from them both, instead of doing anything for the good of the subjects.

1

That is what has motivated us to our present purpose; by means of the present law, we are reforming the office into a more satisfactory shape. We are honouring it, too, with the title of *moderator* or 'harmost',⁴ as we have done in Pontus; and we are giving it the right to rank with *spectabilis*

² A reference to the oath contained in *J. Nov.* 8 and Justinian's provincial reforms of the years 535–536: see *J. Novs.* 17, 20, 24, 25, 26, 27, 28, 29, 30, 31, 50, and Bonini (1976).

³ The sixth century was a period of greater precipitation across Europe and the Near and Middle East, which facilitated the expansion of agriculture in drier areas such as the eastern provinces of the Roman empire. Accordingly, territories in and neighbouring Roman Syria and Arabia witnessed a considerable expansion of the agrarian economy, which also served to enrich and entrench local elites (see discussion in Decker (2009), pp. 7–27 and 228–57).

⁴ 'Harmost' (Greek ἀρμοστής) was a Spartan term for a military governor. Justinian is here referring to *J. Nov.* 28.

posts,⁵ so that its holder's standing will be in no way inferior to that of the *duces*, taking in hand the tax-collections with full vigour, and taking in hand also the interests of the civilian population. He will not allow either the Admirable *dux*,⁶ or the phylarch or any of the powerful houses,⁷ or even the divine *patrimonium*, our divine *privata* or our divine household itself,⁸ to inflict any detriment on our taxpayers; undaunted, and making no easy concessions, he will be a courageous ruler of our subjects. Above all, he will keep his hands clean before God, ourselves and the law; we wish this post, too, to be under the same oath⁹ as the other governorships. With his codicils, he is to receive also the letters of instruction¹⁰ from the Sovereign, which were well known to our predecessors in legislation and to the ancient constitution of the realm, and which we have revived from disuse and brought back into currency; office-holders are to study these constantly, and to observe our commands. Should they in fact follow these, it can only be that all will go well with the office, and that it will achieve contentment and a just tranquillity in conformity with the laws.

⁵ 'Spectabilis posts' = he will be of senatorial status of the second grade, with appellate jurisdiction over governors bearing the rank of *clarissimus*, and with appeals against his own decisions having to go before the highest officers of state of *illustris* rank: see *J. Novs.* 24–31 and Van Der Wal (1998), p. 180 (entry 1169). The *duces* were commanders of military districts and frontier zones. In the case of the latter, they were increasingly based in heavily fortified cities (see discussion in Greatrex (2007) and Treadgold (1995), pp. 91–2 and 149–51).

⁶ The *dux* referred to in this sentence is the chief military commander in the region, who is seemingly given equal standing with the 'phylarch' who was the leader of the autonomous but allied Arab tribes on whose assistance and co-operation Byzantium was ultimately dependent for the security of its desert frontier in the sixth century. The phylarch referred to was al-Harith (or Arethas) of the Jafnids – the dominant Christian Arab force in and along Rome's eastern territories (see *PLREIII*A, pp. 111–13 (Arethas)). For detailed elucidation, see Shahid (1995) 1, pp. 196–8. For the Jafnids and Byzantine–Arab relations, see also Fisher (2011) and Edwell (2015).

⁷ 'Powerful houses' (δυνατοὶ οἴκοι) = the households of the local aristocracy, the acts of violence and peculation of tax revenues associated with which are a common complaint of Justinian's provincial legislation (see Sarris (2006), pp. 200–27).

⁸ '*Patrimonium*' and '*privata*' = the *sacrum patrimonium* and *res privata*, i.e. the crown estates and the imperial estates in the province, whose administrators were themselves often members of the local aristocracy (see *J. Nov.* 30, note 36). The resources of these two different groups of estates were increasingly brought under the direct control of the imperial household from early on in Justinian's reign: see Sarris (2006), p. 215 and Delmaire (1989), pp. 696–8 (discussing this law) and 708–9 (for the tendency of the *domus divina* to sap the *res privata* of its wealth). For the differences between the estates of the eastern *sanctum patrimonium* (the term had different connotations in Italy and the West) and the *res privata*, see *J. Nov.* 69, note 11. For the western *patrimonium*, see *J. Nov.* 75, note 2.

⁹ See *J. Nov.* 8.

¹⁰ 'Letters of instruction' = *mandata principis*: see *J. Nov.* 17.

2

The first object of the office, as we have already said, is to be the collection of the taxes, with a humane, paternal attitude towards those who are compliant, but a vigorous and unyielding one towards those who are less co-operative. Its next concern will be for the populace, and for public order: neither in Bostra nor anywhere else are people to abandon themselves to rioting and civil disorder, or to turn what in ancient times were occasions for relaxation and entertainment into bouts of murderous insanity.¹¹ It will also have the military under its authority, in accordance with our divine letters of instruction (that being another point ascertainable from them); and it will let no necessary task at all escape its attention. We are putting him on exactly the same footing for this post as we have created for the *moderator* in Pontus;¹² he too will be *spectabilis*, and, similarly, appeals, like other cases, will be under his management. Nor shall we be limiting his remuneration merely to its previous level: for stipends and the rest of his remuneration we intend him to be paid fifteen pounds of gold, with two pounds for his assessor, and two pounds of gold also for his staff. And although, under the letters of instruction from the Sovereign, he is now in command of the troops, we shall nevertheless be careful to put under the holder of this office a member of the forces stationed there, answerable to him alone, and compliantly obedient to his orders.¹³ The Admirable *dux* will have no involvement at all either with any soldiers whom we specifically assign to the *moderator*, or with any civilians, or with any lawsuits that they have against each other, or any prosecution of a civilian; he will have nothing whatever to do with any civil cases. This is because there is a wide gulf between the military sphere and the civil administration, and there must be a division between them, as in the organisation established by the fathers of our realm.¹⁴ The Admirable *dux* is to be aware that should he intrude in civil affairs, military affairs as well will be taken out of his hands; he will be stripped even of them, and become a civilian under the *moderator*.

¹¹ The city of Bostra was the provincial capital. Riots, often associated with the circus factions, were a problem for Justinian across the empire, and not just in Constantinople, where the emperor had almost been brought down by the 'Nika' riots of 532. On provincial circus factions and riots, see Bell (2013), pp. 142–59 and Cameron (1976), pp. 314–17.

¹² See *J. Nov.* 28.

¹³ I.e. he is to have his own guard or army separate from that under the command of the *dux*.

¹⁴ A spurious antiquarian claim to justify reform: praetors and proconsuls had involved themselves in both arms of government.

3

That, then, is to be our legislation for the governorship of the province of Arabia, as well; we are convinced that, God willing, it will improve the situation there. Rather than making financial economies, we have raised his stipends; but anyhow, we know that the holder of this office, too, will take pains to give such a good account of himself over the honest collection of taxes as to bring to the public treasury, not a loss, but a rightful profit.

A reform that we wish to introduce, and to be in force, is that the Admirable *dux* will be paid his stipends from whatever source the provincial governor may assign; doubtless his attention to business will not be so lax that he cannot even claim his own stipend. He is to know that any contravention on his part will incur a fine of five pounds of gold.¹⁵

Given at Constantinople, May 27th, after consulship of the Most Distinguished Belisarius

536

¹⁵ The criticism of the *dux* is pretty scathing, and is repeated practically verbatim in *J. Edict* 4 c.3. This suggests that at this time Justinian had an extraordinarily low opinion of *duces* as a body in this region, however vital their military role for the defence of the empire's frontiers as a whole (on which see Greatrex (2007)). The implication is that the tax revenues of specific localities were assigned to the *dux* which he was to collect by way of his stipend. Such forms of assignment would become an increasingly pronounced feature of Byzantine fiscal arrangements and thus, to some extent, these Justinianic regulations once again foreshadow important aspects of Middle Byzantine taxation (see Bartusis (2012), pp. 75–8 and Lemerle (1979), pp. 83–4).

Addressed to John, for the second time Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

It has occurred to us that the metropolis of Caesarea, chief city of the First Palestine,² ought also to have enjoyed a greater honour, ahead of those other provincial governorships, formerly lowly and incapable of taking any strong action at all, which we have now made higher, partly by ranking

¹ The provincial reforms introduced in Palestine by this constitution need to be placed alongside those for Arabia and Syria contained in *J. Nov.* 102 and *J. Edict* 4. Roman rule in Palestine was comparatively precarious due to the region's large Jewish and Samaritan populations. The latter had risen in revolt in 528–529, eliciting a brutal crackdown on the part of the imperial authorities (on which see Noethlichs (2007)). At the same time, the security of the region was threatened by the revival of warfare with Persia and the ability of Arab tribes allied with the Persians to raid the Palestinian territories. As this constitution makes clear, however, Palestine was of particular significance to the empire for three reasons: first its symbolic significance as the Biblical Holy Land; second for the role it played in Roman history in the context of the rise of the Flavian dynasty; and third the tax revenues that could be collected from its buoyant agricultural economy, which specialised in the production of wine and olive oil (see Shahid (1995) 1, pp. 200–6 and Hirschfeld (1997)). In this constitution, Justinian gives appellate precedence to the governor or Proconsul of the First Palestine (*Palestina Prima*) over those of the neighbouring provinces of the Second and Third Palestines (*Palestina Secunda* and *Palestina Tertia*). The proconsul was also granted enhanced authority over military personnel and was accorded a personal guard (mirroring the arrangements for Arabia in *J. Nov.* 102). The law gives the impression that Roman control was at its tightest in the First Palestine, which was governed from the city of maritime Caesarea, and which encompassed the major part of Palestine from Gaza to the River Jordan, including Jerusalem. The Second Palestine, which centred on Lake Tiberias, is the region that appears to have suffered most in the Samaritan uprising, and the impression given by this constitution is that whilst the territory had been re-pacified, the situation there remained tense. The absence from this law of any detailed mention of the Third Palestine (which stretched across the southern desert to Petra, Ayla and the Red Sea) would suggest that Roman control here may have been largely nominal, thereby confirming the impression that Rome's desert frontier constituted its chief military and strategic point of weakness (see Sarris (2011a), pp. 272–5). For the history of Palestine in Late Antiquity, see especially Sivan (2008). For further discussion of this law, see also Mayerson (1988).

² 'The First Palestine': Palestine was divided into three provinces: *Palestina Prima*, *Palestina Secunda*, and *Palestina Tertia* (= First, Second, and Third). The capital of *Palestina Prima* was the coastal city of Caesarea, whence both the fourth-century Bishop Eusebius and sixth-century historian Procopius originated.

them as *spectabiles*,³ partly by increasing the stipends for them and for assessors⁴ and staff, and also by giving them the right to hear appeals, as well as by all our other grants of honour to them: to some we have given the distinction of being proconsuls, to some of being *comites*, as they are called, and to others of being *praetores* or *moderatores*,⁵ and by constantly devising some further distinction for the realm in our day, we have given it a new flowering.

Palestine was in the past governed by a proconsul; with that level of governorship, it had previously constituted a single province, but it was reduced in importance by being split into three parts, losing its proconsulship and having its governorship lowered to the level called *ordinaria*.⁶ Yet it is ancient, and has always been important, ever since it was established by Strato,⁷ who emigrated from Greece to become its founder, and since Vespasian⁸ of divine memory, most famous of emperors and father of Titus of pious memory – a fully sufficient claim to fame for him, on its own –, changed its name from the original *Turris Stratonis*⁹ to that of the Caesars. He granted it that honour because it was there that he was given imperial rank, for his victories in Judaea.¹⁰

1. We also observe that it is the capital of a large and estimable province, which brings the highest possible regard to our contemporary realm for the size of its taxes and its outstanding loyalty;¹¹ it has impressive cities to

³ *'Spectabiles'*, i.e. the second senatorial grade, with precedence over governors ranked *clarissimi*.

⁴ 'Assessors' = legal secretaries and advisers. See *J. Novs.* 60.

⁵ See *J. Novs.* 24–31 and the preceding *J. Nov* 102 issued the previous month. Those governors accorded the second senatorial grade of *spectabilis* were appointed to hear appeals from those lower-ranking governors holding the title of *clarissimus*, whilst their own judgments could only be appealed to the highest-ranking officers of state, such as the *quaestor* or Praetorian Prefect, who held the highest senatorial rank of *illustris*: see Van Der Wal (1998), p. 180 (entry 1169).

⁶ *'Ordinaria'* = ordinary (i.e. ranked as *clarissimi*: see Van Der Wal (1998), p. 22).

⁷ 'Strato's Tower' was the original designation given to the Phoenician city which Herod the Great, client-king of Judaea, enlarged in 20–10 BC, and renamed 'Caesarea' in honour of his patron Caesar Augustus. Justinian here attempts to provide it with a spurious Graeco-Roman pedigree. For Caesarea and other Palestinian cities in this period, see Sivan (2007), pp. 302–47 and especially di Segni (1996) and Holum (1996).

⁸ Vespasian Augustus (69–79 AD) was founder of the Flavian dynasty. He was responsible for crushing the Jewish revolt of 66 AD and destroying the Temple in Jerusalem in 70 AD. ⁹ = 'Strato's Tower'.

¹⁰ A slight misrepresentation: Vespasian owed his ascendancy to the throne to military support built upon his success as a commander, which had been demonstrated not only in Judaea but also in Britain.

¹¹ In 529 there had in fact occurred a large-scale uprising of the Samaritan peasantry of Palestine, which was crushed with extraordinary brutality: see Malalas 18.35. Procopius

show, it breeds good citizens full of learning and distinguished in the priesthood, and, most important of all, it was in that province, of course, that the Creator of the Universe, our Lord Jesus Christ, Word of God and Saviour of all mankind, was seen on earth, and deigned to make what is ours his own.

1

How then should we not honour this province, by restoring it to its proconsular status, and granting the holder of the office the position and title of proconsul? And that is what we are doing, by means of this divine pragmatic directive, which we wish to be known as the Special Caesarean law. We are making its governor a proconsul, granting him inclusion in the ranks of the Admirable,¹² and conferring on him all that is proper to such a post, including the right to hear appeals referred to him from both the Palestines, up to ten pounds of gold in value.¹³ He is to have full powers, so as the better and more firmly to be able to carry out our directions, and he will use the formal ancient toga (the purple-bordered robe) as his dress on ceremonial occasions; such is the honour in which he is to take a pride.¹⁴ He is to have authority over all those cities and soldiers, and is to act in whatever way is expedient for both the public treasury and our taxpayers. For stipends, we are giving him twenty-two pounds of gold for division between himself, his assessor and the staff under him, in whatever way he himself may decide, imparting that information to us so that we may confirm the division, on those terms, by means of a divine pragmatic directive; we cannot bear to see him and his assessor still earning the old low level of stipends, and his staff being entirely unsupported, despite its work on such large contributions to the revenue, and its liability for them. We thus wish the staff to be his willing assistants, bringing in the taxes and accepting no unlawful forms of payment.¹⁵

was highly critical of Justinian's harsh treatment of the Samaritans of his native Caesarea (see *Anecdota* 18.34).

¹² 'The ranks of the Admirable' = *spectabiles*. The Proconsul of the First Palestine is thus appointed the appellate judge of the governors of the Second and Third Palestines, as a means of limiting the flow of cases to Constantinople.

¹³ 'Ten pounds of gold' = 720 *solidi*: see *J. Nov.* 24, note 14 and Van Der Wal (1998), p.180, note 95.

¹⁴ The law here provides an interesting insight into sixth-century sartorial antiquarianism.

¹⁵ Here, as in *J. Novs.* 8 and 102, the idea was clearly that if officials were properly remunerated they would be less prone to peculation and corruption.

2

The Admirable *dux* of the region at the time will have no involvement whatever with civil cases or with the exaction of the public taxes; it is the governor himself who will decide every private and public case, as has been said.¹⁶ Above all he will see to the unfailing collection of the taxes, and to keeping his hands clean; it is for upholding that hitherto that the Admirable Stephanos, now becoming the first holder of this post, has gained a high reputation, and we are confident that he will continue to do so, by means of the above provisions.¹⁷

Above all, he will see to the good order of the cities, and to their being free of communal disturbance.¹⁸ That has been another characteristic of his tenure of office; because of religious dissension, among other reasons, the province was in turmoil when he took it over, but he rendered it peaceful and freed it of all unrest.¹⁹ We charge him to do so again, should anything of the kind ever recur; and also to tour the Second Palestine and settle the cause of unrest, permitting no disagreeable occurrence there whatever – there, in particular, because we observe that it has been the location of numerous disturbances, which have had no slight consequences.²⁰

3

Should he have need of soldiers from those stationed in the province, we shall also let him have them, from whichever right honourable military regiment we decide is the most fit for the purposes of both good order in the cities and good behaviour among the country-dwellers, and also of exaction of the taxes. The divine pragmatic directive previously issued to him for those purposes, with intention that neither the Admirable *dux* nor the Most Illustrious general²¹ is to have licence to withdraw the proconsul's

¹⁶ This may be a reference to the identical provision in *J. Nov.* 102, issued the previous month. The *dux* was the senior military commander in the region, answerable to the *magister militum* of the East (on whom see note 21 and Lee (2005), p. 117).

¹⁷ On Stephanus, see *PLREIIIB*, pp. 1184–5 (Stephanus 7). He was the subject of a panegyric by the rhetorician Choricus, who reveals that he was a native of the Palestinian city of Gaza (*Or.* 3.53–4).

¹⁸ 'Communal disturbance': probably a reference to the activities of circus factions, as well as religious disputes and rural unrest (on all of which see Bell (2013)).

¹⁹ A reference to the Samaritan revolt of 529, on which see Malalas 18:35.

²⁰ The Samaritans were primarily peasants: the tours referred to here were presumably to police the countryside and maintain order there.

²¹ 'General' (Greek στρατηγός) = *magister militum* (see Lee (2005), p. 117). Here, as in *J. Nov.* 102, the governor has appointed to him a personal guard or detachment of troops answerable only to him. The tripartite distinction between *moderator*, *dux* and Arab

military guard, is to remain in force still, so as to avoid any consequent civil unrest; that is something that will never occur as long as he has charge of the civil government, with responsibility for good order among the taxpayers, while having the support of his guard, and disciplining any disorder among the soldiers themselves, and, through them, among others.

1. The Admirable *dux* of the region and the holder of the proconsulship will be separate in all respects. The one will be in command of the soldiers, *limitanei*, *foederati*²² and, in general, any armed force there is in the province apart from the proconsul's detachment, while the other will be responsible for watching over civilians and their affairs, and for his guard of soldiers. However, if it is a matter of public taxes or of a popular rising, absolutely no-one will be exempted from the Admirable proconsul's jurisdiction: he will be in command of all and give orders to all, and no-one will oppose his directives, or have any occasion for causing loss to the public treasury, or for offending against his fellow-citizens by leading a popular rising. Nor will anyone use privilege, from office, rank, priesthood, or any other cause; his sole means of extricating himself from punitive measures will be innocence.

2. Those, then, as we have said before, are the grants which we are making to this post too, and which we wish to preserve in perpetuity by means of this divine pragmatic law. We also decree that your excellency is to observe them in perpetuity; and that they are to be included, in these terms, in the individual written directives from your high office. All

'phylarch' encountered in *J. Nov.* 102 is conceivably mirrored here in a tripartite division between proconsul, *dux*, and general. If so, then the general referred to may again have been a commander of Arab identity leading his own troops whom the emperor would have been keen to keep on side, thus the decision to accord him the high rank of *illustris* (see Shahid (1995) 1, pp. 201–2, where he postulates that the general at this time may have been a figure known as Qays, leader of the Kinda of south-central Arabia, on whom see Fisher (2011), pp. 88–9). More plausibly, this may simply be a reference to the *Magister Militum Per Orientem*, who held supreme command of the army in the East as a whole (and bore *illustris* rank).

²² The distinction here is between regular soldiers, a category of frontier farmer soldiers (*limitanei*) and units that were originally made up of non-Roman troops enrolled in Roman service (*foederati*) (on whom see Southern and Dixon (1996), pp. 35–9 and 48–50). In the case of the Eastern Empire in the fifth century, such *foederati* had primarily consisted of Goths, and mercenaries of western barbarian origin certainly continued to fight on the empire's eastern frontier in the sixth century, and appear throughout Books 1 and 2 of Procopius' *Wars* detailing Justinian's struggles with the Persians. Over the course of the 530s, however, the uniquely foreign character of such detachments of *foederati* appears to have been progressively breaking down, such that even native Romans are recorded to have signed up to their units. For extensive discussion, see Laniado (2015), pp. 34–127. It has been suggested, however, that in this novel Justinian may have been primarily referring to Arab federate troops under the command of an Arab general (see Shahid (1995) 1, pp. 200–6, *J. Nov.* 102 and *J. Edict* 4). Note, however, the convincing arguments to the contrary of Laniado (2015), p. 62, including note 125.

Palestinians are to know in future that the right to proconsular status has been restored to them, and that the governor of the First Palestine is their proconsul, as before; freed from the former disesteem, he will now enjoy the greater honour that is due to their city.²³

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this pragmatic and special law, into practical effect.

Given at Constantinople, July 1st, after consulship of the Most Distinguished Belisarius 536

²³ It is perhaps significant that there is no explicit mention of the administration of the southernmost region of Third Palestine (*Palestina Tertia*), possibly indicating that it was effectively under autonomous Arab rule (see Shahid (1995) 1, p. 201). The constitution may, therefore, convey a sense of the way in which direct Roman authority varied and faded away across the Palestinian territories.

[Latin only] Except for title, identical with *J. Nov.* 75

PROOF

¹ The consul had been the highest-ranking republican magistrate in Rome, with two consuls being elected each year. They had traditionally carried both supreme military and civil authority and presided over the Senate. Under the imperial republic, however, the role of the consuls became essentially honorary, as all real power passed to the emperor. Increasingly elected by the Senate rather than the people, and ultimately appointed by the emperor, it nevertheless remained an office of supreme prestige, with the consul obliged to throw a banquet, issue diptychs and largesse in coin and precious treasures, and organise public games and spectacles to celebrate his appointment. These celebrations could be highly costly (for the levels of expenditure involved in late antique Rome, see Jones (1964), pp. 537–8). After the foundation of Constantinople, it had become normal for one consul to be appointed for Rome, and the other to be appointed for the new capital in the East. With the demise of the last western emperor in 476, the nomination of the western consul passed to the Senate of Rome, with the eastern emperor effectively rubber-stamping their nomination. The cost of the office may have acted as a disincentive to seek appointment, however, and as a result, in the East, the imperial government appears to have shared the costs of office with each newly appointed eastern consul. Despite its having lost all of its actual power, the office of consul nevertheless remained one of the few ways in which a private citizen could reach out to the population of the capital at large, and the office thus became an important potential springboard to the imperial office. In 521, for example, Justinian appears to have used his own consulship to engage in an extraordinarily lavish distribution of gifts, which can be read as a sign of his determination to ensure his succession to the imperial throne, then held by his uncle Justin I. Accordingly, amid the heightened political tensions of the late fifth and early sixth centuries, it is perhaps significant that it became increasingly common for new consuls either not to be appointed at all, or for emperors to appoint themselves or members of their kin to the post. Between 480 and 534, for example, there were 21 years without an eastern consul, and of the 36 eastern consuls appointed, only 21 were private citizens who were not close relatives of the reigning emperor (see Cameron and Schauer (1982), p. 138). In this constitution, Justinian presents himself as attempting to revive the consulship. In practice, however, he was introducing a major reform of the institution. Consuls were henceforth only to provide seven sets of celebrations over the course of their year-long tenure of office. Moreover, they were only to distribute silver to the population, with gifts of gold reserved for the emperor. Justinian presents this as an act of generosity, driven by concern that consuls should not beggar themselves. Procopius, by contrast (*Anecdota* 26.12) regarded the measure as an act of penny-pinching on the part of the emperor designed to curtail imperial expenditure. Cameron and Schauer (1982) have plausibly suggested that it may also have been motivated by a desire to limit the ability of consuls to outshine the emperor in terms of generosity and thus divert loyalty away from him. This law makes it clear that Justinian regarded the office of emperor as a sort of perpetual consulship, and it was only perhaps natural, as a result, that he should eventually have sought to mothball the consulship as a free-standing institution. No western consul was appointed after 534, and Justinian would make no new nominations to the consulship after 541 (see Meier (2002)). In 538, the eastern consulship would be held by Justinian's right-hand man in the programme of reform, John the Cappadocian, and in 539 by Apion, the son of the *Comes Sacrarum Largitionum*, Strategius Apion, to whom the present constitution is addressed. The Flavii Apiones were a great landowning family of Egyptian origin closely associated with

Addressed to Strategius, Most Illustrious comes of the divine *largitiones*,² *ex-consul, patrician*

Preamble

The name, and function, of the consulship was conceived by the ancient Romans as for use in warfare: immediately on their election, which the republican constitution allowed them to conduct by voting, they at once drew lots for the provinces in which Rome was at war, and received their rods for those.³ Later, time transferred the power of war and peace to the authority of the most pious emperors, thus transforming the consuls' role

Justinian's regime (see Sarris (2006), pp. 17–24). In 540, Justinian would appoint as consul his nephew, the general Justin, whilst in 541 he would go on to appoint a western aristocrat by the name of Basilius (on whom see Cameron and Schauer (1982) and *J. Nov.* 107, note 15). None of these individuals were regarded as posing a threat to the regime, but as, from the early 540s, the emperor and empire began to encounter a series of reversals of fortune, Justinian may have felt it was no longer worth the political risk of appointing to the consulship, for fear that doing so would simply serve to build up the popularity and prestige of a potential rival claimant to the throne. In 541, for example, John the Cappadocian was removed from power and sent into exile, indicating an increased sense of political insecurity on the part of Justinian and Theodora (Sarris (2011a), pp. 153–60, and Procopius, *Wars* 1.25). Although, after 541, Justinian would make no further appointments to the consulship, the office of consul nevertheless remained engrained in the political memory as a vestige of the old republican constitution. Thus, in 565, the Emperor Justin II revived it, appointing himself consul at his coronation (see Cameron (1975), p. 197 and Stichel and Stichel (2015)). Thereafter, Justin II's example appears to have been followed by his successors to the Constantinopolitan throne, at least down to the accession of Constans II in 641. It is also significant that when, in 608, the governor of Africa, Heraclius the Elder, along with son Heraclius the Younger (the future emperor) rose in revolt against the regime of the Emperor Phocas, they claimed to have been appointed consuls by members of the Senate and minted coins according themselves consular status (see Kaegi (2003), p. 41). The office of consul was only formally abolished by the Emperor Leo VI in the ninth century (*Nov. Leo.* 94). The present constitution casts interesting light on the fine details of the consular celebrations at the effective end of the institution's late antique history. For further discussion of this law in its sixth-century political and ideological context, see Kruse (2017), pp. 187–9.

² 'Comes of the divine *largitiones*' = *comes sacrarum largitionum*. This official was responsible for precious metal mines, mints, taxes in coin and the payment of cash stipends and donatives and served as a member of the imperial consistory (see Jones (1964), pp. 369–70). Flavius Strategius was a member of the Apion family whose estates around the Middle Egyptian city of Oxyrhynchus are amply recorded in the papyrological record. He was a close ally of the emperor and his son, Apion, would hold the consulship in 539 (see Sarris (2006), pp. 17–24 and *PLREII*, pp. 1034–6 (Strategius 9)). The office of the *comes* was responsible for any imperial contribution towards consular largesse (see Delmaire (1989), pp. 568–75, discussing this law at p. 573).

³ 'Rods' (Greek *ράβδοι*) = the *fascies* or bundle of rods enclosing an axe that symbolised authority and which were carried before high-ranking magistrates (for their late antique and early medieval history, see Schäffer (1989)).

into a solely honorific one, and a restrained and controlled one, at that, not exceeding a modest limit.⁴ Gradually, though, some became so lavish in their approach to the office as to make it into a display of their own magnificence, but without reflecting that they would have no-one else to follow their example: not many men combine exceedingly great wealth with a spirit of generosity that is a corollary of their own grandeur, not of the proper limitations of the role. We observe, consequently, that the title of consul, after a time so long that it has nearly reached its thousandth year of flourishing together with the Roman state, is now in danger of falling into disuse.⁵ Therefore, to ensure the consulship's survival in perpetuity for Romans,⁶ and its accessibility to all the good men whom we may adjudge worthy of such honour, we have thought it necessary to cut down its extravagance by reducing consular expenditure to a level easily compassable.

After taking everything into consideration, we have decided on an appropriate level of expenditure. There is, admittedly, a law laid down by Marcian, that best of emperors, with intent that holders of the consulate should not scatter money; it was in fact his first constitution.⁷ Well, since that constitution we have found that there have been some who have duly followed it, and have chosen not to scatter any money at all to the populace, while others have actually requested and received permission to over-ride the law – but have then, on a purely selfish calculation, been unboundedly prodigal over their scattering; while others, admirably, have chosen the mean, and been satisfied with moderate amounts, rather than large ones. As our predecessors, like ourselves, regarded the ideal as lying at the mean, while extremes either way were in danger of resulting in excess,⁸ we too

⁴ This passage, along with the preface to *J. Nov.* 62, casts interesting light on how the transition from republican rule to imperial monarchy was presented in the sixth century. Justinian's contemporary, the bureaucrat and scholar John Lydus, also understood the transition to the 'principate' in terms of a translation of authority from the consuls to the emperor: see *De Magistratibus* 1.30. For further discussion of Byzantine conceptions of the Roman Republic, see Kaldellis (2015). Note that to Justinian the form of the republic (τῆς πολιτείας σχῆμα, here translated as 'the republican constitution') had fundamentally changed (on which see esp. Kruse (2017), pp. 187–9).

⁵ The first consul was said to be Lucius Junius Brutus, who was appointed in 509 BC.

⁶ In a classic Justinianic formulation, the emperor here sets out his wish to reform an institution, but justifies his reform in antiquarian terms of restoring it to its pristine glory.

⁷ A reference to *Codex* 12.3.2. Marcian was eastern emperor from 450 to 457. Traditionally, upon accession to the consulship, the new consul would undertake ceremonial processions and games at which he would scatter gold and silver coins. Here, however, Justinian also seems concerned with consular largesse and expenditure in general.

⁸ In *J. Nov.* 60 c. 1 Justinian had referred to Homer as 'one of those before us'. Here, the 'predecessors' alluded to appear to be the philosopher Aristotle and his school, in that the

have decided to define an appropriate limit on this, such as neither to be excessive or out of order, nor unworthy of our times.

1

We have therefore compiled a schedule of the amounts appropriate to be spent by the person appointed by us as consul year by year, in the way of *sportulae*⁹ and all other distributions and expenditures, and we have ordered it to be subjoined as an appendix to this divine law of ours. We are putting it in legal form, in order for there to be a suitable penalty for the contravener.¹⁰

We wish their public appearances to be seven in all.¹¹ Given that the intention behind this is to put on spectacles for the gratification of the public, and that these are limited by us to racing, the display and killing of animals, and theatrical entertainments on stage, our public will not be deprived of any of these.

His first procession will be on the kalends of January, the day on which he enters on his consulship and obtains its badges of office.¹² After that, the second spectacle he will put on is that of chariot-racing, which they call *mappa*.¹³ The third is what they call the ‘theatre-hunt’,¹⁴ to be completed in

language of the sentence and the sentiment expressed arguably echo Aristotle’s declaration at *EN*1109^a 20–22: ‘Virtue is the mean between two vices, that of excess and that of shortcoming’ (. . . ἐστὶν ἡ ἀρετὴ . . . μεσότης δύο κακιῶν, τῆς μὲν καθ’ ὑπερβολὴν, τῆς δὲ καθ’ ἄλλειψιν). Critics of the regime may have found such allusions ironic given the hostility to philosophy on the part of the government suggested by the decision traditionally ascribed to it to close down the Neo-Platonic Academy in Athens in 529 (on which see the *Chronicle* of John Malalas 18.47 and Watts (2004) or, for an alternative interpretation, see Cameron (2016), pp. 205–45). For further discussion of philosophy in the age of Justinian, see Wildberg (2005).

⁹ ‘*Sportulae*’ = fees: see discussion in Kelly (2004), pp. 64–8. It was claimed that when holding the consulship in 531, Justinian had spent on it the remarkable sum of 4000 lbs weight of gold, presumably to buy up support for himself in Constantinople and protect his claim to the throne (see Jones (1964), p. 539 with note 42). Procopius suggests that the standard expenditure was 2000 lbs weight of gold (see *Anecdota* 26.13). See also Cameron and Schauer (1982), p. 139.

¹⁰ Justinian’s attempt to curb consular expenditure on spectacles is subject to bitter criticism by Procopius (see *Anecdota* 26.9–16).

¹¹ ‘Appearances’ = Greek πρόοδοι: this would normally imply processions, but the word is clearly being used here to encompass celebrations of all sorts.

¹² See Cameron and Schauer (1982), p. 141.

¹³ ‘μάππα’: so-named after the cloth or napkin that the consul would drop to start the race. The image of the consul holding the *mappa* in preparation to start the races is found depicted on their diptychs.

¹⁴ ‘Theatre-hunt’ (Greek θεατροκυνήγιον) = a wild beast hunt in the theatre (see Jones (1964), p. 539).

a single event, not twice over; after that there is the so-called 'one-day-only', at which he will delight the people greatly as they watch the one called 'all-in',¹⁵ and men fighting animals and winning renown for their courage; also the animals being killed. His fifth procession will be the one they call 'whores',¹⁶ which leads to the theatre, where there will be scope for the stage comedians, tragic actors and staged choruses, and the theatre is open for all sorts of events to see and hear. He will hold his sixth spectacle in the form of chariot-racing again, *mappa* as it is called; after which he will then lay down this year of honour with the customary festival called 'resignation'.¹⁷

Thus the course of seven nights and appearances will be completed without omitting a single feature of what has been customary from the beginning. To bring in one further *mappa*, and make the so-called 'theatre-hunts' up to two, instead of resting content with just the first of them, clearly has nothing new to add to what there was before; rather, it would probably be regarded as a glut. On the contrary, each show will be a splendid production, without going so far as actually to put the public off: it is what happens only occasionally that excites admiration.

That then is what we have laid down for the consular office . . .

2

. . . but should the consul at the time have a wife, we have also defined the limit for his expenditure on her, as wives must share the enjoyment of their husband's glory.¹⁸ Should he not in fact be married, the provisions on that are irrelevant, unless he should have a mother honoured with consular rank on a previous occasion as well, and wish her to be his partner in enjoyment of his position. This concession is for a mother alone: no woman at all will sit with him other than his consort or his mother, the former in any case – wives share in the radiance of their spouse's glory, because the law has granted them that – but his mother only if the consul at the time should so wish; not a daughter, not a sister (if he has one), not a son's wife, and still less a woman unrelated to him – that was in fact quite plainly unacceptable.

¹⁵ 'One-day-only' = Greek μονημέριον; 'all-in' = Greek παγκράτιον: a prize-fighting show in which no holds were barred (see Jones (1964), p. 539).

¹⁶ 'Whores' = Greek πόρνοι. The Empress Theodora was reputed to have worked on the stage and is attacked for it by Procopius: see *Anecdota* 9.13, where he describes the sort of spectacles that may have been put on at this event.

¹⁷ 'Resignation' = Greek ἀπόθεσις.

¹⁸ As the Empress Theodora evidently did, if one accepts Procopius' acerbic account.

1. For the consul in office to scatter money to the populace at these seven public appearances is, in our definition, more acceptable than the constitution of Marcian of pious destiny says.¹⁹ That constitution forbade largesse of any kind, but we are amending it by leaving the decision to the holder of the consular honour: should he decide to scatter none at all, we are not compelling him to do so; nor again are we forbidding him, should he decide to opt for that, and to do honour to the people with gifts of silver. We definitely do not permit scattering of gold – whether in smaller, certainly not larger, or medium coinage or weight –, but only, as we have just said, of silver. Scattering of gold as well is to be left to the Sovereignty, to which alone the dignity of its status permits disdain of even gold; silver, immediately below gold in high value, would be fitting largesse for the other consuls as well. We allow them to scatter that in what are called *miliaresia*,²⁰ ‘apples’, ‘cups’, ‘squares’ and suchlike, because the smaller the denomination thrown, the larger the number of recipients. What decides the amount is the donor’s capability, and his choice of whether to distribute to the people nothing whatever, a moderate amount or an exceedingly large one: we are making no rules over this for consulships, neither compelling those reluctant to scatter money, nor preventing those both willing and generous.

That, then, is to be our legislation on the scattering of silver; should he set out to do this at all, he is to have freedom to distribute largesse in silver at his public appearances as he has thought fit; all that is prohibited for him is any throwing gold, which is determined by us as an attribute of the Sovereignty alone.

2. As for the other provisions of ours that are recorded in the schedule contained in this law, we permit no breach of them at all by anyone, either by overstepping or by falling short. While we are putting what is not

¹⁹ See *Codex* 12.3.2. Here the constitution refers to scattering in the true sense of the word.

²⁰ ‘μιαρήσια’ were silver coins used for donatives; ‘cups’ (Greek *καυκία*) were presumably silver cups (see *P.Cair.Masp.* I 67010); ‘squares’ (Greek *τετραγώνια*) were either square coins (see *De Cerimoniis* 701) or hack silver, both of which are archaeologically attested. The meaning of ‘apples’ (Greek *μήλα*) is unclear: they may have been nuggets or balls of silver or actual silver apples. The sixth-century poet Corippus makes it clear that at the consular celebration of Justin II re-fashioned and re-shaped silver of all sorts was distributed (see edition by Cameron (1978), p. 197, note to Book 4, line 103). Because precious metals (including coin) were valued in the late Roman world by weight (see *J. Edict* 11, note 1), the distinction between bullion and currency was a highly blurred one, and an officially stamped gold or silver object could be regarded as much as a unit of currency as a minted coin. For the stamping of Byzantine silver, see Mundell Mango (1992). Procopius claims that during his inaugural consular procession, the general Belisarius had distributed silver plate and ‘golden girdles’ seized from the Vandals (*Wars* 4.9.15).

determined – that is to say, scattering – entirely at the donor’s discretion, and making it a matter for his own decision, this law forbids any excess over what has once been determined and decreed by us. Should anyone dare to overstep the amount determined, he will pay a fine of one hundred pounds of gold for having contravened our instructions, thus doing what he could to destroy the whole point of this law. The person exceeding the ordained limit would justly deserve punishment for transgressing our law, given that the sole purpose of its enactment is to prevent the consulship from falling into disuse through excessive bounty; that was our reason for putting restrictions on those excessive gifts and expenditures, and reducing public appearances and shows, which had reached an extravagant number, to an easily compassable level – also for our perhaps rather elegant idea on amounts, in leaving it to the consuls themselves whether to scatter silver, or to make no gifts whatever –, so as to have more consuls to adorn our age by their title. We shall then have consuls in perpetuity; they will have no dread of the excessive cost of the office, nor be trying to escape and evade it as a very obvious peril. That is our reason for decreeing that this law is to be firmly observed.²¹

3. Accordingly, no-one is to have the temerity to go beyond it, whether he be extremely wealthy, or one of our office-holders, or a member of the great council,²² or not an office-holder at all. In making all these decisions, we have put everyone on an equal footing with regard to payments, by giving no-one at all licence to exceed the limit contained in this law. The sole exception is that, as we have often said, we have left it to the views of the consuls themselves whether to scatter silver at their public appearances or not to do so.

This law should also be a source of great gratitude even to those who have been accustomed to receive these gifts. Given that the danger was that they would be receiving nothing at all, owing to the dearth of holders of the consulship, whereas now they will receive a moderate amount, they would have good cause to be grateful to the law for giving them a sufficiency, instead of nothing. Even our refusal to allow our Most Illustrious consuls to scatter gold, or even any larger item, but legislating that they should make their gift in *miliaresia*, apples, cups, squares of moderate size, and suchlike, is something that we have devised as a humane measure, to look after the

²¹ Procopius claims that the policy was motivated by a desire to stop the state having to fund consular largesse, the costs of which it shared with the office-holder, but the implication here is that consuls had continued to shoulder the burden themselves (see Procopius, *Anecdota* 26.9–16). It is likely that, in the Eastern Empire, the costs of office were indeed split in the manner that Procopius suggests (see Cameron and Schauer (1982), p. 139).

²² ‘Great council’ = the Senate of Constantinople.

public; because, should those making their consular largesse do that, showering nothing but those things on the citizens, people will no longer be rioting in competition with each other for what they think will be big acquisitions, going so far as to come to blows with each other, as they often have, even with clubs, sticks and stones, something utterly repugnant to us. We used to see them inflicting unspeakable injuries all over each other in their riots over the coins being thrown and being grabbed by them as loot – and taking nothing home at all, but spending it all the same day on drunken potations; or else, had they by any chance actually spent money in advance in the hope of making more, but then got little or nothing, they were incurring a loss, as well as having to incur blows and injuries, and their attendant troubles. If only a moderate amount is being scattered, members of the public will not be so very contentious, or go to extremes in hitting and wounding each other in the expectation of making a fortune.

Thus, as a result of this law, we are setting up a policy that is in fact for the common good: for one thing, it is for the common usage of the realm, in order that the date in use among our Most Illustrious office-holders and members of the great council may continue to carry the mention of the consul's name as well, after that of the Sovereign,²³ because of its being possible to honour those among them who deserve it, without excessive expenditure on their part; and for another, we are giving due reward to our people, all of them, including those who had by now given up hope of it, by doing away with excess, so as to make the consulship an everlasting institution in our state.

4. To be subjoined to this law of ours, as we have said before, is our directive, of which the copy that is being sent over with this law to your excellency's court will be deposited there. We decree that it is solely from your court that the successive Most Illustrious consuls are to receive their copy of the schedule attached to this law,²⁴ by which to make all their payments. Our purpose in wishing the schedule to be issued by your high office is both so that consuls themselves may not contravene any of our instructions, and also so that so-called *breviatores*²⁵ do not corrupt any of them. On the liability of the members of your distinction's court who have custody of the schedule, the copy of it is to be issued over the signature of

²³ Justinian is here referring back to *J. Nov.* 47, which had decreed that in dating formulae the name of the reigning emperor should come first. Reliance upon consular dating had become highly unreliable given the number of years for which no consul had been appointed and the rapid turn-around of those consuls who were (see Cameron and Schauer (1982)).

²⁴ The schedule is, in fact, absent from this law.

²⁵ '*Breviatores*' = the writers of lists, registers or reports. In this instance the term may refer to officials who drafted summaries of imperial legislation, such as that found at *J. Nov.* 41.

the holder of the office that you yourself now hold, so that our instructions may remain permanently uncorrupted.

No-one entering on the honour of the consulship is to be displeased at having had his expenditure moderated in this way. The date will have his name, and we shall still be bestowing on them all that present holders of the honour of the consulship have hitherto been receiving, by our munificence, from your excellency's court, from our Most Illustrious prefects and from any other source; we are reducing their expenditure without diminishing our munificence.

Exempt from all the above provisions is to be the Sovereign's position, to which God, by sending it down to mankind as a living embodiment of law, has made even the laws subservient.²⁶ That is why the Sovereign has a permanent consulship²⁷, as being the one who daily imparts his decisions to all cities, peoples and provinces, and because it is at his personal behest that the robe is awarded. Thus the Sovereign's consulship will also be a permanent concomitant of his sceptre.

Conclusion

Accordingly your excellency will, on receipt of this law, ensure that it remains permanently in its own force, to the full effect therein contained.

To be read

Copy made for John, for the second time Most Illustrious prefect of the sacred *praetoria*, ex-consul, patrician

Copy made for Longinus, most learned and Illustrious prefect of this fortunate city²⁸

Given at Constantinople, December 28th <in the 11th year of the Lord Justinian Augustus>, <2nd year> after consulship of the Most Distinguished Belisarius

[Missing portions restored from Athanasius]

537

²⁶ 'A living embodiment of law', or 'law animate' (Greek νόμος ἔμψυχος): this phrase epitomises Justinian's view of the person of the emperor as the one and only legitimate source of law, the realisation and entrenchment of which had informed his entire programme of legal codification.

²⁷ This concept of the emperor as 'permanent consul' is a further act of self-aggrandisement on the part of the emperor (surpassing even the example of Augustus, who was consul thirteen times, ten of them consecutively). It foreshadows Justinian's decision of 541 to appoint no more consuls (see Procopius, *Anecdota* 26.15 and Cameron and Schauer (1982), p. 142).

²⁸ See *PLREIIIB*, pp. 795–6 (Longinus 2).

The same Sovereign to John, for the second time prefect of praetoria

Preamble

We have heard a report from your excellency, for which we ourselves had given the occasion. You had informed us of a supplication to our Majesty from Peter and Eulogetus;² in explaining their position, they had said that it is their practice to lend money to shipowners,³ or to traders, especially those whose business is maritime. These maritime loans, customarily

¹ In an empire that was bound together by the sea-lanes of the Mediterranean, the financing of commercial shipping was necessarily a major concern, and it was evidently possible to make a living largely on the basis of making such maritime loans. In this constitution, Justinian responds to a request from two named maritime financiers to give express legal form to the customary arrangements on which agreements between Constantinopolitan shipowners and financiers had hitherto been based. The constitution reveals that there were two types of loan: a straightforward loan to be repaid with 12.5 per cent interest; and an agreement whereby the creditors were allowed to transport goods of their own on the vessel, with the shipowner covering taxes and tallage, and then receiving repayment for the loan at a rate of 10 per cent interest. The latter is interesting, in that it casts light on the sophistication of ‘partnership agreements’ between merchants and the providers of capital current in sixth-century Constantinople, such as may well have been historically antecedent to later forms of medieval partnership contract such as the Italian *commenda* and its Arabic and Jewish analogues (on which see Pryor (1977), who highlights other important evidence for Roman and Byzantine forms of legal instrument). Overall, the law once again reveals the emperor’s readiness to be highly responsive: to petitioners in general; to commercial interests in particular; and also to the claims of customary law (see *Institutes* 1.2.9, Humfress (2011) and Sarris (2011c)). Until Justinian’s reign, there had been no formal cap on the rate of interest that could be agreed on loans between shipowners and maritime financiers (Berger (1953), p. 469). The rate of 12 per cent on a maritime loan (Latin *fenus nauticum*) had been set by the emperor’s own legislation (see *Digest* 22.2 and *Codex* 4.33). The contents of this novel (which edges the rate up to 12.5 per cent, see Consentino (2015), p. 252), would suggest that the rate Justinian had set in fact reflected Constantinopolitan (and perhaps wider) practice, such as that of the Rhodian Sea Law (on which see Ashburner (1909) and Humphreys (2015), pp. 179–94). On the role of custom in Justinianic shipping law, see also Humphreys (2015), pp. 182–3. As a further sign of the responsive nature of imperial law-making, however, just the following year this constitution would be rescinded in obscure circumstances: see *J. Nov.* 110. Such legal vacillation on the part of the emperor in response to lobbying was severely criticised by Procopius (*Anecdota* 14.4–11).

² These individuals are otherwise unattested.

³ ‘Shipowners’ = (Greek) ναύκληροι (Latin) *navicularii*.

known to our law as *traiecticia*,⁴ are the way in which they make their living; but they are alarmed at disputes that have arisen against them over these loans, and are therefore requesting that the prevailing usage in these matters should be made public, as on other subjects, in such a way that a divine command of ours would also be issued on this, putting the usage into very clear form.

For that reason, we had instructed you to find out the nature of the dispute and put it before us, so that once it was clear to us we could include our decision in a permanent law. Acting on a command from us to summon a meeting of the shipowners concerned with such loans,⁵ your distinction had done so, and had asked them the precise nature of the long-standing practice.

The evidence they gave, with the extra backing of an oath, was that such loans were of various kinds. Should the lenders have so chosen, they would load one *modius*⁶ of wheat or barley aboard the ship for each coin of whatever sum they lent, without making any payment on it to the public tax-collectors; as far as they were concerned, the vessels would sail tax-free,⁷ and they would have that as profit on what they had lent. Additionally, they would receive interest at just one gold piece in ten, with the risk on the venture being the regard of the lenders themselves.⁸ However, should the lenders not choose that method, they would receive interest at one-eighth on each coin.⁹ This would not be counted as due on any definite date, but only on the ship's safe return; and under that arrangement, it might happen that the time extended up to even a year, should the ship have spent so long away that the year had actually come to an end, or even been exceeded – whereas, if she had returned sooner, and the time lasted only a month or two, they still had the benefit of the three

⁴ '*Traiecticia*' = (*pecunia*) *traiecticia* ('money lent for the transportation of merchandise overseas' – Berger (1953), p. 469). See *Digest* 22.2 and *Codex* 4.33. The petitioners are asking for customary arrangements to be set down in an imperial constitution and given the status of law.

⁵ The shipowners were organised into 'colleges' (*collegia*) which would have facilitated such discussions. See Berger (1953), pp. 592–3.

⁶ '*Modius*' = a unit of dry volume equivalent to 9 litres or one peck.

⁷ I.e. any taxes or tolls which the lenders' merchandise incurred would be paid by the shipowner. Merchants appear to have been liable for around 5 per cent of the value of the goods in transit. Such sums were assessed and collected by officials originally known as the *comites commerciorum* ('counts of commercial affairs') or *commercarii*, on whom see also *J. Nov. Appendix* 5, note 2. For further discussion, see Middleton (2005).

⁸ I.e. a rate of interest of 10 per cent, with the shipowner bearing no liability for the cargo in the event of loss or damage at sea.

⁹ I.e. a rate of interest of 12.5 per cent.

carats¹⁰ whether the elapsed time was as short as that, or whether the loan had remained with the borrower for longer. Just the same thing applied if the traders chose to make another consecutive voyage, so that the form of loan was fixed for one shipment at a time: it depended on the agreement reached between the parties whether it should stay the same, or be altered. However, if they should have come back, on the ship's safe return, when she could not sail again because of the season, a time-limit was given to the borrowers by the lenders of just twenty days, during which no demand for interest on what was owing could be made until sale of the shipment had taken place. Should the debt remain outstanding for longer than that, the nature of the loan changed at once and became a terrestrial one, as the lenders no longer had the worry over the perils of sea-going, and interest of two-thirds of 1 per cent was payable to the owners of the capital.¹¹

That is what they all said, giving their evidence on oath; and that is the information you gave us, for us to put our decision into legislation. As you said, it was for that purpose that you had reported the matter to our Majesty.

1

Accordingly, now that we have read the minutes and become informed on the matter, we decree that the practice, both now and for all time to come, should be as has been deposed before your excellency, because (for one thing) they are not in conflict with already-enacted laws. In such cases, then, that is what must be observed in future by a special law, in suits of this nature involving shipowners and traders: the disembarkments,¹² and all the other customary observances attested before your eminence, must be as in the said agreements. That is what is to be in force, as a special law for cases involving shipowners or traders; after all, how could it not be right for what has been in use and force, unaltered, over such long periods – as the testimonies given before your excellency have declared – to be in force also for all other cases that will arise hereafter?

¹⁰ 'Three carats': the gold *solidus* contained twenty-four carats (Latin *siliquae*). The law is here referring, therefore, to the rate of interest of one-eighth or 12.5 per cent.

¹¹ The rate of 12.5 per cent could only apply to maritime loans, with 8 per cent *per annum* (or two-thirds of 1 per cent per month) being the maximum a creditor could otherwise charge.

¹² 'Disembarkments': the loan was only repayable once both legs of the journey had been completed and all possible sales had been made.

That is to be the method of settling their affairs, in force under a special law and requiring no other directive, but in force on shipping and trading enterprises for all time. It will act as general legislation in force for transactions with shipowners or traders, and will play its due part among the laws we have laid down, so as to be the benchmark for judges in making their judgments.

Conclusion

Accordingly, your excellency is to take pains to observe our decisions in perpetuity.

*Given at Constantinople, September 7th in the 14th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Justin*¹³

540

¹³ Justin was a close relative of the Emperor Justinian and cousin to the future emperor Justin II, under whom, after a long career in imperial military and political service, he would be exiled and murdered: see *PLREIII*A, pp. 750–4 (Fl. Mar. Petrus Theodorus Valentinus Rusticius Boraidēs Germanus Iustinus 4).

The same Sovereign to Bassus,² Most Magnificent comes of the devoted domestici,³ occupying the place of John, for the second time Most Illustrious prefect of praetoria, ex-consul, patrician

Preamble

The aim of a law enacted by Constantine⁴ of divine destiny was pristine simplicity; but the variety of affairs, and nature's frequent alterations in them, have caused that law to need amendment from us.⁵

What the law says is that the wills of any decedents, when they are parents, must at all events be authoritative between children. It pays such deference to parents, as such, that it actually allows them the clarification of matters that are not lucid, saying that even when their dispositions are unclear, but are inferred from sundry clues and glimmerings, and from any piece of writing at all, they are, even so, to be valid; and it says that both for children who are *sui*, and who are *emancipati*.⁶ Again, the

¹ Late Roman legislators had become increasingly indulgent in testators whose wills did not conform to the technical demands of Roman law, prioritising the intent of the testator over questions of legal form. In this constitution, however, Justinian suggests that, to his mind, that development had gone too far. He stipulates that instead of leaving a formal will, a testator could share out his estate and leave legacies, trusts and instructions to emancipate, so long as the document concerned was clearly written in his own hand, was dated, had all numbers written out in full, and described the properties being bequeathed. Any trusts, legacies, or emancipations also had to be witnessed (see Van Der Wal (1998), p. 136 (entry 926)). For further discussion of Roman wills down to the Justinianic period, see Nowak (2015).

² Full name Flavius Comitas Theodorus Bassus; he would eventually serve as Praetorian Prefect in his own right in 548, only to be dismissed within the year. According to Procopius (*Anecdota* 21.6–7), he was removed from post for being too honest. See *PLREIIIA*, p. 178 (Bassus 4).

³ 'Comes of the devoted domestici' = *comes domesticorum*. Little is known of the actual responsibilities of this high-ranking official, other than that he commanded what Jones describes as 'the corps of palatine officer cadets' (the *domestici et protectores*): see Jones (1964), p. 372 and *J. Nov.* 30, note 33. Here he deputises for the Praetorian Prefect of the East, John the Cappadocian.

⁴ A reference to *Codex* 3.36.26.

⁵ The emperor's obligation to respond to the mutability of nature is a common justification for legislative reform in the novels: see Lanata (1984a), pp. 165–88.

⁶ '*Sui and emancipati*' = *heredes sui*, i.e. those *in patria potestate* at the time of the testator's death and those emancipated from it. On *patria potestas* in late antiquity, see Arjava (1988).

Theodosian⁷ adds a further ruling that this is not just applicable for fathers, but also for mothers, and for ascendants of either sex. Fastening on this licence, people have taken obscurity to such lengths that it is soothsayers who are required, not just interpreters: they name no persons in their appointments, and they specify no ways of identifying properties, nor maybe even an amount, but think, nevertheless, that they can leave such matters to guesswork, and inference from probability.

1

We wish to make everything clear and open; what, after all, is so proper to laws as clarity, particularly in decedents' dispositions? We accordingly wish anyone who is literate, and who wants to make a disposition between his children, to begin by heading it with the date; then to write the children's names, in his own hand, and also the number of *unciae*⁸ as to which he is appointing them as his heirs, not using numerals to indicate the numbers but showing them in fully written-out form, so as to be entirely clear and incontrovertible. Should he also want to make a distribution of property, or to confine some or all of his institutions as heir to certain items, he is also to include a description by which they can be identified, so that everything is made clear in his own handwriting, and leaves no subsequent quarrelling to his children.⁹ Suppose, moreover, that he wants to bequeath *legata* or *fideicommissa*¹⁰ to a wife or to any persons who are outsiders,¹¹ or manumissions: if these are written in their own hand by testators and stated in the witnesses' presence, to the effect that they have themselves written each item set down in the disposition from start to finish, and wish it to be in force, these too are to be valid, with no detraction from being regarded as written on papyrus lacking the rest of the procedure for wills; the sole difference being that it has his own hand and voice, which gives the papyrus complete validity.

2

Should that format last till his death, no-one shall offer testimonies afterwards that he wanted, maybe, to change his mind on this or make

⁷ 'The Theodosian' = 'the Theodosian constitution': a reference to *Nov. Theod.* 16.1.2–5 (= *Codex* 6.23.21).

⁸ '*Unciae*' = twelfths.

⁹ On the obligation to detail the items of property being bequeathed, see also *J. Nov.* 48.

¹⁰ '*Legata* or *fideicommissa*' = legacies or trusts.

¹¹ '*Outsiders*' = *extranei* (individuals external to the household or family: see *J. Nov.* 1, note 1).

a variation, or to do anything of the kind, considering that he could have rescinded what had been done and made another will showing his final intention, which would have had due force. That is something that we allow him to do, if he indicates expressly, in the presence of seven witnesses, the specific fact that, though he has actually made some such will, he definitely does not want it to be valid any longer, but wants to make another. He is to do this either in a proper testament with all the distinguishing marks of wills, or as a proper unwritten will, so that at his death he will be seen to have made a will, whether written or unwritten, and the earlier one will lose its validity as a result of his second disposition, made by proper testament or will.

3

As we know that some people, in making apportionments between their children, cause them to put their signatures to them, we also accept that form of proceeding; should he apportion his property and then call his children together and make them sign their apportionments, take them as authoritative, and agree that that is how matters stand, that is to be authoritative for such a distribution of property, in accordance with the constitution that we have laid down on that.¹² By means of this law also, we are decreeing that that constitution is to be in force, in respect of its entire contents. In the case of transfers of possession¹³ as well, as long as he himself will sign them and make everything clear by his own signed confirmation, that too is to be authoritative, as it is something already contained in our legislation.

It is to be understood that this law will be in force for all such cases as may come to be launched after it.¹⁴

Conclusion

Your excellency, in the knowledge of our decisions manifested by means of this divine law, is accordingly to make them public to all, so that no aspect of our correct and considerate legislation on our subjects' behalf goes unnoticed.

¹² A reference to *J. Nov.* 18 c. 7.

¹³ 'Possession' = Latin *possessio* (in contrast to full ownership or *dominium*).

¹⁴ I.e. the law is not to be applied retrospectively.

*Given at Constantinople, February 1st in the 14th year of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Basilius*¹⁵

541

¹⁵ Basilius was an aristocrat from the city of Rome, and would be the last private individual whom Justinian would appoint to the consulship (see *J. Nov.* 105, note 1). He was present in Rome in 546, when, in response to the recapture of the city by Totila and the Ostrogoths, he was obliged to flee, making his way to Constantinople. See *PLREIII*A, pp. 174–5 (Basilius 3).

The same Sovereign to Bassus,² Most Magnificent comes of the devoted domestici,³ occupying the place of John, Most Illustrious prefect of the sacred praetoria

Preamble

We have heard a case over a disputed will, which we have thought it right to elucidate and to cover in a precise law, it being our custom to take problems raised in cases as the basis for sound laws.⁴

1. A man had instituted his children as heirs. He then ordered them to make each other their substitute heirs in case of childlessness, in case it should turn out that one of his children and heirs was going to end

¹ There is a slight mismatch between the opening section of this constitution and its later stipulations, caused by an over-contraction of issues in the preamble and chapter 1. The emperor had been presented with a dispute between brothers, whose father had attempted to frame his will in such a way as to prevent his estate's fragmentation and alienation outside of the family, obliging them to name each other their respective heir in the event of childlessness. This conditional aspect to the will appears to have been achieved by means of a *fideicommissum*, on which see Berger (1953), pp. 470–1. The heirs were thus *fideicommissarii* both in terms of acting as executors for the trust established by the father and as beneficiaries of it. Upon the father's death, both sons were still alive. One of the two, however, was childless, and the other brother attempted to prevent his sibling from coming into his inheritance as he would diminish the estate that seemed set to revert to him or his children. In response, Justinian here issues a general law on estates placed under *fideicommissum* or in trust (for the equation between these two terms, see Johnston (1988) *passim*). A minimum of one-quarter of the estate concerned had to be preserved for the *fideicommissarius*, which Justinian erroneously refers to as the Falcidian share (see *J. Nov.* 1 and Urbanik (2008)). More than three-quarters of the estate could only be given away or alienated if it was for the purpose of a dowry, a pre-nuptial gift, to ransom prisoners, or some other pious, unavoidable or inescapable purpose. The executor of a trust had to give security to the beneficiaries that he would conform to the rules, unless such security was expressly forbidden by the original testator, and if he failed to do so he could be sued. *J. Nov.* 159 reports just such a case (see Van Der Wal (1998), p. 154 (entry 1020)). The use of such *fideicommissa* to seek to establish a form of perpetual entail was a marked feature of the Justinianic era, and is indicative of the highly dynastic ambitions of members of the Byzantine aristocracy (see Johnston (1988), pp. 112–16 and Sarris (2006), pp. 194–5).

² On Bassus, see *PLREIIIA*, p. 178 (Bassus 4) and *J. Nov.* 167, note 2.

³ For this post, see *J. Nov.* 107, note 3.

⁴ A further example of a general law issued in response to litigation.

his mortal life childless.⁵ After subtraction of his debts under the law, all other property and rights found to be with him at the time of death were to come as restitution to the surviving one of them, or, should he be deceased, to his children; and there was to be no use of any security or surety between them in connection with the said restitution.⁶ That was the position on the testator's death, at which one of his children and heirs had children, but the other remained childless; but the one with children barred the childless one from the use of the property, on the ground that he was depreciating it. The other, relying on the wording of the will and the fact that it ordered him to make restitution of whatever was in his possession at his death, wants, on those terms, to have freedom to make use of the property in whatever way he pleases, without any bar being brought against him with reference to his management of it.

2. Accordingly, taking occasion from this, we have thought it necessary both to define what had of old been undefined, and to store up the ensuing decision intact, as a resource for humanity, by enshrining it in a law; the aim being that people should understand the complete state of the law under which it is appropriate to judge matters of this kind, as well as to understand them.

We are aware that the most judicious Papinian,⁷ in Book 19 of his *Quaestiones*, made a statement⁸ by which he permits alienations in such a case, with the sole rider – as if in a deliberate conundrum – that a time at which alienations must be barred is when, in discharging a *fideicommissum*, the person burdened with it has deliberately resorted to alienation. When a case of the kind came up before Marcus,⁹ that philosopher among sovereigns, his pronouncement was that such statements seemed to involve the arbitration of a good man.¹⁰

⁵ The testator was thus attempting to oblige his two sons to agree to leave their share of the estate to each other in event of childlessness to prevent it passing outside the family (see Sarris (2006), pp. 194–5).

⁶ Restitution (Greek ἀποκατάστασις) = (Latin) *restitutio*.

⁷ Papinian was a Roman jurist of the second-to-third century AD who compiled an important collection of cases and accounts of the responses of other jurists, court decisions and imperial judgments (the *Quaestiones* in 37 books, and the *Responsa* in 19). See Berger (1953), p. 617.

⁸ See *Digest* 36.1.54. '*Fideicommissum*' = trust.

⁹ See *Digest* 36.1.54 and 22.1.3.2. 'Marcus' = Marcus Aurelius (reigned 161–180).

¹⁰ 'The arbitration of a good man' = *arbitrium boni viri*: the judgment of an honest man to whom a case has been submitted for judgment (see Berger (1953), p. 366).

1

To us, then, it seemed that the correct form of legislation is as follows.

Should someone talk about restitution of a *fideicommissum*, in general, the existing rule on such cases, as already legislated by us, should apply; but if the *fideicommissum* is of the kind under discussion, and the testator is including in the *fideicommissum* only what is found, or is left, at the time of death, then what has been left undefined by our predecessors' statements should be brought under an accepted system of distinction.

Should that, or something else of the kind, be what someone has said, we decree that there is obligation on the person charged with restitution of the *fideicommissum* only to keep not less than the Falcidian share¹¹ of his institution,¹² without being able to make any diminution from that at all; it is sufficient if three-quarters will be left for the heir, while the other has just the remaining quarter-amount. We are not going to allow the person so burdened to make use of gift-giving as well, perhaps deliberately – what Papinian called *invertendi fideicommissi causa*¹³ – so as to reduce the quarter-share of his institution. He must bequeath that in any case, as his *fideicommissum*; but everything else lies in his own authority, with licence to make whatever use of it he wishes, just as is proper for full owners.¹⁴

If, however, the person burdened does draw on the quarter itself, it is necessary to go into the reasons for his doing so. Should it be that he wanted to give a dowry or a pre-nuptial gift, one must, if he had no other resources, permit him to do so; that is quite in accordance with what is already contained in our law,¹⁵ it being a purpose for which we have absolutely not denied him such a diminution. Also if it is for the ransom of prisoners of war – that being an exception that we make, and one that we dedicate to God –, we give him licence to do that, too, and to reduce the quarter-share, because the religious consideration appears to us as outweighing anything else.

¹¹ 'The Falcidian share' = one-quarter. See *J. Nov.* 1. This was the minimum share of the estate before legacies reserved for the appointed heir (see Berger (1953), p. 552).

The application of the term here with respect to a *fideicommissarius* (i.e. somebody who receives or is charged with executing a trust) is thus erroneous: see Van Der Wal (1998), p. 154, note 126. The term is also misused in *J. Nov.* 18 and *J. Nov.* 66. For discussion of such terminological slippage, see Urbanik (2008).

¹² 'Institution' = bequest.

¹³ '*Invertendi fideicommissi causa*' = 'with the purpose of overturning the trust'.

¹⁴ 'Full owners' = those with *dominium*.

¹⁵ See *J. Nov.* 39 c. 1.

2

However, in the event that, for any reasons, he himself has no means of meeting expenses, we give him freedom to meet them out of the restitution, as well; that is what the testator allowed, by his wish that ‘all that was left’ should be drawn into the restitution: as one might put it, the restitution was to be made out of his surplus. If, though, no such ground exists, he is compelled to reserve, as a minimum, the quarter-share of his institution, and to give it by way of such restitution. Should he spend some of it, while having resources from which he can make up the amount, the quarter-share must duly be made up out of those; it must not be reduced, for any reason. If he draws on the quarter, but has no other property from which he can make it up again, we then, also, grant him, on the authorisation of this law, an *in rem*¹⁶ against those who have bought, or otherwise received, property and hypothecs, so that the *fidecommissarius*¹⁷ can make it up for himself by reclamation¹⁸ of the property. That is something we have also granted for legacies, under a constitution,¹⁹ by allowing an *in rem*, and also *persecutio fideicommissi*.²⁰ He will in that case also give a guarantee to reserve not less than the quarter, unless the testator, as in the *factum*²¹ reported to us, should in fact have remitted that. As the testator himself had remitted not merely surety but also any guarantee, it would not be in conformity with his intention for us to make any different disposition on it.

Conclusion

That, accordingly, is how suits are to be decided – both this actual one, which has caused the problem, and all others in which the cases prove to be pending –, if wills have been made in this way, and the testators, perhaps, be dead, but the person burdened with this kind of *fideicommissum* is still alive, so that it has not come into effect. We mean this not just for children, but also for other relatives and for those who are not members of the

¹⁶ ‘*In rem*’ = an *actio in rem*: an action in which a plaintiff asserts a right (in this case ownership) to something possessed by the defendant (see Berger (1953), p. 346).

¹⁷ ‘*Fidecommissarius*’: the person charged with executing a trust. The term is also used of a beneficiary.

¹⁸ ‘Reclamation’ (Greek ἐκδίκησις) = Latin *vindicatio*: the defence of one’s property by seeking its recovery in court (see Berger (1953), p. 766).

¹⁹ A reference to *Codex* 6.43.1. See also *Digest* 50.16.178.2.

²⁰ ‘*Persecutio fideicommissi*’ = an action by which one sues for the fulfilment of the trust.

²¹ ‘*Factum*’ = (in this instance) episode.

family – those, in general, in whose case it turns out that such a *fideicommissum* has been bequeathed.

Accordingly, your excellency will publish this to all our subjects, for them to know the proper way to live, to die, to make wills, to bequeath *fideicommissa* and to do all else that has become the norm in such matters.

Given at Constantinople, February 1st in the 14th year of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Basilius

The same Sovereign to John, Most Illustrious prefect of the sacred praetoria, ex-consul, patrician

Preamble

It is our faith that the sole source of help for the whole life of our realm and Sovereignty is our hope in God, and we know that that is what gives us both salvation to the soul and well-being to the Sovereignty. It is thus proper for our legislation to depend on that and have regard to it, and for that to be its beginning, its middle and its end.

Everyone knows that, among their constitutions, our predecessors as Sovereigns, especially Leo of pious memory and our father Justin of divine destiny,² prohibited all heretics from holding any position in the service, or taking any part whatever in public responsibilities. This was in order to avoid their proving to cause any harm with respect to God's holy catholic and apostolic church, in the course of their duties in the service and in public affairs; and we too have done exactly the same, ratifying these provisions by constitutions of our own.³ By heretics, they meant, and we too mean, the adherents of various heresies:⁴ the followers of Nestorius'

¹ In 536 Justinian had declared both hard-line duophysite and miaphysite dissidents to be heretics and barred them from public office (see *J. Nov.* 42). In this constitution, the emperor extends the legal penalties suffered by such dissidents to their womenfolk, excluding them from the privileges extended to wives with respect to the right of precedence above creditors that they had been granted when suing their ex-husbands' estates for the return of their dowries in *J. Nov.* 97.

² No such law of Leo survives, but the constitution referred to may be a law of Valentinian and Marcian found at *Codex* 1.5.8. The law of Justin I referred to is *Codex* 1.5.12.6.

³ See *Codex* 1.5.18 and *J. Nov.* 37.

⁴ Nestorius (Patriarch of Constantinople from 428 to 431) had been anathematised at the First Council of Ephesus in 431 for his extreme two-nature ('duophysite') Christology; 'Eutychnians' were followers of Nestorius' contemporary Eutyches, who expounded, in opposition to Nestorius, an extreme 'one nature' ('miaphysite') Christology condemned at the Council of Chalcedon in 451; the 'Acephali' (lit. 'the headless ones') referred to here were followers of the hard-line miaphysite Patriarch of Alexandria, Dioscorus, who presided over the Second Council of Ephesus in 449 and was condemned at Chalcedon in 451; Severus was the miaphysite Patriarch of Antioch, who was condemned for heresy in 536 in response to his resistance to imperial attempts to resolve the Christological dispute (see *J. Nov.* 42, Millar (2008) and Price (2009) 1, pp. 8–16). The emperor is thus referring to hard-line Christological dissidents on each side of the theological spectrum, whom he seeks rhetorically to associate with earlier non-Christian and heretical 'enemies' of the

Jewish insanity, Eutychianists, Acephali – infected with the false doctrine of Dioscorus and Severus, who have revived the irreligion of Manichaeans and Apollinaris – and also everyone who is not a member of God’s holy catholic and apostolic church, in which all the most holy patriarchs of the whole inhabited world (the Western Rome, this sovereign city, Alexandria, Theoupolis⁵ and Jerusalem), and all the most holy bishops under them, unanimously proclaim the apostolic faith and tradition. It is accordingly right for us to call ‘heretics’ those who do not share in taking the untainted communion of the catholic church from its most God-beloved bishops.⁶ Even if they cloak themselves in the name of ‘Christian’, they are recognised as putting themselves under God’s judgment, for dissociating themselves from the true faith and communion of Christians.

1

The laws that have been promulgated on heretics are public for all to see; but our wish is that those who embrace the orthodox faith, and hold to it, should have some greater privilege over those who estrange themselves from God’s flock. It is, in fact, not right for heretics to be regarded as deserving privileges equal to those of the orthodox, and it is for that reason that we have now come to look towards this law.

Whereas we have given wives privileges over their dowries, so that those are adjudged superior even to prior creditors, being given precedence despite being outranked in date (while the hypothecs that wives have over their gifts in respect of marriage are ranked by whatever date they came into existence), we are hereby publishing to all, by means of this divine law of ours, that it is only to those women who have at heart the triumph of our revered orthodox faith – that is, the faith of the catholic and apostolic church – and their part in its salvific communion, that we are granting not only this privilege, but also the implied hypothecs and everything else that has been granted to wives by our laws⁷ in the form of various privileges, of whose benefits they are to have the enjoyment and use.

Christian faith: Jews, Manichaeans (dualist followers of the third-century Persian prophet Mani) and the fourth-century heresiarch Apollinaris of Laodicea, who claimed that Christ had a human body but a divine mind, and who was condemned at the Council of Constantinople of 381.

⁵ ‘Theoupolis’ = Antioch. Justinian had renamed the city Theoupolis (‘the city of God’) after rebuilding it in the wake of an earthquake. See Procopius, *Wars* 2.14.

⁶ Miaphysite bishops were by this point beginning to ordain their own clergy, and reject communion with pro-Chalcedonians (see discussion in Frend (1972), pp. 255–95).

⁷ Justinian is here referring to *J. Nov.* 97 c. 3 and *Codex* 5.12.29.

We are totally unwilling for women who dissociate themselves from God's holy catholic and apostolic church, and cannot bring themselves to share in taking its holy and untainted communion from its most God-beloved priests, to enjoy such privileges. If they are dissociating themselves from God's gifts, and estranging themselves from its holy and untainted communion, much more would we, in turn, regard them as unworthy of privileges, and disallow them from enjoying the assistance of our laws. The benefits of the laws are to be entirely inaccessible to them, and they will be deprived of any privilege granted them as a result of our constitutions.

2

It is, however, open to them to enjoy such grants and privileges, if they come to a better frame of mind and embrace the true orthodox faith, holding permanently to it. This is to apply throughout our subject realm, and is to be observed, in the first place, by the most God-beloved priests; secondly, by our office-holders and judges, whether higher or lower; and also by your excellency, for whom we are making this present law. It is thus the duty of judges before whom cases are launched against women, or by women who want to claim some privileges for themselves, to pay regard to the force of our present law; and, should they find them not to be of the orthodox faith, sharing in taking the untainted and revered communion in the most holy catholic and apostolic church from its most venerable priests, to disallow them from enjoying the privileges arising from our constitutions.

Conclusion

Your excellency, in the knowledge of our decisions manifested by means of this divine law, is accordingly to take care to observe them in the suits launched before you, and to put them into practical effect; and also, by means of the customary edicts and orders of your own, to publish them to everyone both in this fortunate city and in all provinces, so that all may realise how deep is our concern both for the true faith concerning our Lord Jesus Christ, the true God, and for the salvation of our subjects.

Given at Constantinople, May 7th in the 15th year of the reign of the lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Basilius

The same Sovereign to John, for the second time prefect of praetoria, ex-consul, patrician

Preamble

We are aware of having previously, on information from you, made a law about money for *traiecticia*,² which has been notified to your excellency; . . .

1

. . . however, petitions were subsequently made to us, as a result of which we have instructed that that law is not to be in force; but having instructed it to be withdrawn from your court, we have discovered that it had already been made public in some provinces.³ For that reason, we are decreeing that such law should be altogether inoperative, and if it had already come to have been sent abroad, it is not to be in force there, either. The way in which we wish the matter to proceed is as if the said law had, in fact, not even been laid down: cases are to be tried, and to gain due judgment, in accordance with the laws previously enacted by us for such matters.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

Given at Constantinople, April 26th in the 15th year of the reign of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Basilius 541

¹ In this measure, Justinian abruptly revokes *J. Nov.* 106 concerning maritime loans.

The emperor claims that the law was revoked in response to petitions, thereby once more conveying a sense of the highly responsive nature of imperial legislation. On resultant legal vacillation, see Procopius, *Anecdota* 14.4–11.

² A reference to *J. Nov.* 106 of the previous year. ‘*Traiecticia*’ = (*pecunia*) *traiecticia*: meaning a loan given with respect to the transportation of merchandise by ship (Berger (1953), p. 469).

³ The constitution here provides evidence for the relatively rapid circulation of both legislation and legal knowledge. For a further discussion, see Kaiser (2010).

111 | Constitution abrogating the 100-year prescriptive period for houses of worship¹

<The same Sovereign to Theodorus,² prefect of praetoria> [Supplied from Auth.]

Preamble

Legal rulings provide for cases what medicines provide for illnesses.³ As a corollary of this, one comes to realise that, often, what one has thought fit to do has had a contrary outcome, and that what an individual had surmised would be beneficial has been found by experience to be useless. One proof of this is the necessity for the present legislation, by which we are conserving, with a necessary amendment, the privilege that was provided under a constitution of ours⁴ not long ago for most holy churches, monasteries and other venerable places, with a pious intention.

At that time in the past, we had commanded that for venerable places the length of the prescriptive period should be extended to a hundred years. By now, numerous cases have been launched under the licence of such legislation, and it is as if the concealed scars of ancient wounds have been re-opened; the process of healing them has not been able to go forward, evidently because it has been hindered by the difficulties of bringing proofs.⁵ At such a distance in time, or rather in epoch, neither flawless

¹ In Roman law, once one had enjoyed uncontested possession (*possessio*) of a property for forty years, treating it as if one had full ownership of it (*dominium*), one could no longer be sued for it by its original owner and acquired full ownership. This was known as *praescriptio longissimi temporis*. With respect to things belonging to the Church and charitable foundations, that period had been extended to one hundred years (see *Codex* 1.2.23 of 530 AD). In *J. Nov.* 9, Justinian had expressly extended that privilege to the Church of Rome as his armies prepared to advance into Sicily and the Italian peninsula. In this law (which is repeated as *J. Edict* 5) Justinian rescinds his earlier law with respect to ecclesiastical property on the grounds that it had been legally and socially disruptive (a claim supported by the testimony of Procopius: see *Anecdota* 28.6–15). Instead, the emperor reverts to according the Church a prescriptive period of forty years. On periods of prescription, see Berger (1953), pp. 645–6.

² Theodorus = Flavius Comitas Theodorus Bassus: see *J. Nov.* 167, note 2.

³ For medical metaphors in Roman and Byzantine political and legal thought, see Lanata (1984a), pp. 206–28 and Hillner (2015), p. 113.

⁴ A reference to *J. Nov.* 9.

⁵ For criticism of this policy, see Procopius, *Anecdota* 28.6.

proofs nor certainty over past events can support the witnesses – nor can their age.⁶

1

Hence, as the exigency of proceedings did not run parallel with our generous intention, we have retracted the said privilege to within the limit of what has been found practicable by actual experience, taking both reason and religion into our consideration. Our command is that for cases previously ruled out by a prescription of thirty years, there is now to be in force an extension to forty years applicable to venerated churches, monasteries and hospices, and also to orphanages, children's homes and almshouses, it being understood that for other persons and properties the force claimed by the thirty-year prescription remains sound: it is only, as has been stated, to venerable places, and to their right and their transactions, that we are giving this extra ten years. Our purpose is that when that period of time has come to an end, rights of action, *personaliae* for one thing and *hypothecariae* for another,⁷ will be permanently silenced. In other matters of prescription, we are making no reduction at all: the one-year prescriptive period, the three-year and the others extending over longer or shorter periods will retain their own effect and force, because, as we have said, it is only in cases concerning venerated places that we wish their divine transactions to have the enjoyment of the above-mentioned privilege of forty years, where our constitution used to give them a privilege of a hundred years. Agreed, though, that if any cases launched anywhere before this constitution of ours, by churches and the other sacred places, had been concluded by a court verdict or a contract of dispute-resolution, we do not wish there to be any change; it is for the time to come that we wish this legislation to be applicable, on cases that have before this been stopped from being launched by the silence of eight five-year periods, or were launched but have not yet reached a conclusion.

⁶ For the forging of documents in the context of such disputes, see Procopius, *Anecdota* 28. 7–15 (reporting an episode in the Syrian city of Emesa).

⁷ '*Personaliae*' = (Latin) *actiones personales* (or, in pre-Justinianic law, *actiones in personam*): legal actions against any person (see Berger (1953), p. 346). '*Hypothecariae*' = (Latin) *actiones hypothecariae*: legal actions to assert ownership over land leased out on which rent has failed to be paid, or a thing pledged which has remained in the hands of the debtor or a third party (see Berger (1953), p. 490).

Conclusion

Accordingly, your glorious and magnificent authority is to cause what our Serenity has determined by means of this general law to come to the knowledge of all, by the publication of edicts.

Given at Constantinople, June 1st in the 15th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Basilius

541

112 | ***Litigiosa*; security due to be given by plaintiffs before summons to defendants; when the *actor* cannot make use of the privilege of not taking action against his will¹**

The same Sovereign to Theodotus,² prefect of praetoria

Preamble

Whereas much has been said about *litigiosa*,³ both by judicious lawgivers in antiquity and by constitutions of sovereigns, at the present time some judges have requested our Serenity to make a decision on the dispute that is still being launched in courts over such issues, and to clarify more distinctly the laws and constitutions laid down on these questions, so that in future there will be no ambiguity over what kinds of things should be called *litigiosa*.

1

In response, we decree that what is to be called, and regarded as, *litigiosum* is property, movable, immovable and ambulant, on the ownership of which an enquiry has been launched between the plaintiff and the person in possession of it, either under summons from an office-holder, or by petitions put before the Sovereign, notified to the judge, and made known

¹ In this constitution Justinian addresses two unrelated issues concerning legal proceedings. Firstly, he responds to queries that had been directed to him by judges concerning property over which legal proceedings had been initiated but which were then bequeathed by legacy, addressing the question of whether they could be alienated. Secondly, the emperor takes additional measures against vexatious litigants. The law casts interesting light on the use of court criers and heralds by gubernatorial courts, and is peppered with Latin technical terms and loanwords. For the word '*litigiosa*' found in the heading, see note 3 below; '*actor*' = plaintiff.

² Theodotus was appointed praetorian prefect in succession to John the Cappadocian from 541 to c. 543 and would hold the post again from c. 546–548. He is reported to have died in office, although some years later his successor to the praetorian prefecture, the future Urban Prefect of Constantinople Flavius Marianus Addaeus, would admit to having had him killed by means of sorcery. See *PLREIIIA*, pp. 14–15 (Fl. Marianus Iacobus Marcellus Aninas Addaeus) and *PLREIIIB*, p. 1301 (Theodotus 3).

³ '*Litigiosa*' = *res litigiosa* = the matter in litigation (i.e. the object of a pending suit after joinder of issue): see *Digest* 44.6, *Codex* 8.36 and Berger (1953), p. 678.

through him to the plaintiff's adversary. In such cases, we wish our Clemency's previous constitution,⁴ in which we made a distinction between witting and unwitting purchasers, still to be valid henceforth; but we have also decided to make the following addition: in the event that the defendant dies while a case on *litigiosa* properties⁵ is pending, and his heirs want to divide the properties up, it is open to them to carry that through without hindrance, because when *litigiosa* properties come down to heirs by succession, division of the jointly inherited property between them ought not to be regarded as alienation.

A further point that we are decreeing by means of our present law is that, in the event that one of those engaged in litigation over such properties has, at his departing from the human condition, bequeathed to someone, as a *legatum*⁶ in a last will, some property over the ownership of which a controversy is in process, and should the heir be proved by a judicial verdict to be its owner, the *legatarius* is then by all means to receive what he has been left; but should the court's verdict go against the heir, the *legatarius* is not to have scope to demand a different item in place of that same *legatum*, because the testator left the property to the *legatarius* in the knowledge that the outcome of the trial was *litigiosum*. Hence, we give the *legatarius* licence to become party to the trial, should he deem that to be in his interest, so that he cannot put up any possible allegations of negligence or collusion against the heir.

Hypothecs, we decree, are to be excluded from this term *litigiosus*. On them, the distinction is to be applied that should particular items of property, movable, immovable or ambulant, be specifically included in hypothecs, the debtor may sell them to whomever, and whenever, he may wish, provided that out of their price he gives satisfactory security for the debt to the creditor; but should the debtor not do so, we give the creditor licence to claim against the holder of the hypothec on the property sold, up to the amount of the debt. That is what we order to be observed unless, perhaps, the same item of property has actually been put under hypothec – either a special one, by name, or general – to other creditors previously; in that case, we decree that for each individual creditor, the order of his precedence in time is to be observed, according to the force of our laws. That makes clear our intention that still less should general hypothecs be included in the term *litigiosus*; instead, we direct that proceedings on those

⁴ The law referred to is *Codex* 8.36.5.

⁵ '*Litigiosa* properties' = properties in dispute. The English here mirrors the clunkiness of the Greek.

⁶ '*Legatum*' = legacy; '*legatarius*' = the legatee or beneficiary of a legacy.

are to be tried according to the terms of the ancient laws, which are to retain their own force.

Those are our directions as to *litigiosa* and as to special, and of course also general, hypothecs.⁷ Thus no more disputation is to be engendered in the courts on this subject; such actions are to be brought to conclusion in accordance with the stated distinction.

2

To preclude the bringing of calumnious suits, and dishonest practice on the part of court clerks,⁸ there is a further remedy that our Providence has devised. We are decreeing that on any occasion when judges wish arrests to be made or summonses delivered, they are all to include, in the wording of their preliminary order,⁹ the condition that there is no way by which writs of summons are to be served on the defendants, or *sportulae*¹⁰ paid to the court clerks, unless the plaintiff has beforehand, either personally or through a *tabularius*,¹¹ both with his signature on the writ and with an entry made in the records, provided a trustworthy guarantor at the liability of the relevant staff, agreeing to attend for the duration of the case and to prosecute his own actions, either in person or through a legal representative. If he is subsequently proved to have launched the suit unjustly, he will make restitution of one-tenth of the amount named in the writ, on account of costs and expenses. Should he state that he is not well enough off to provide a guarantor, he is then to support that statement by an oath, with the gospels displayed, before the judge before whom the case is going to be tried; in that way he is to proffer a sworn pledge,¹² and by it to agree the terms stated above.

1. Should this not all be done in the manner stated, we permit the defendant to make no response to the court clerk. If any judge, his staff, or any one of his court clerks whatsoever, dares to summon anyone in contravention of the above-mentioned directives, the judge and his staff will be charged a fine of ten pounds of gold, and the court clerk in the case

⁷ 'Special, and . . . general hypothecs': the term 'general hypothec' (*hypotheca generalis*) is used by Justinian to signify the hypothecation of the entire property of a debtor, as opposed to a 'special hypothec' which only applied to part of his property.

⁸ 'Court clerks' = (Latin) *executores*: see *J. Nov.* 96

⁹ 'Preliminary order' (Greek διαλαλία) = (Latin) *interlocutio*.

¹⁰ '*Sportulae*' = fees.

¹¹ '*Tabularius*' = a state notary who was permitted to assist private citizens in drafting legal documents (see Berger (1953), p. 729).

¹² 'Sworn pledge' (Greek ἐνώμοτον ὁμολογίαν = (Latin) *cautio iuratoria*).

will himself be subjected to confiscation, and condemned to five years' exile. The exaction of the fine due under the law, and its payment to our *fiscus*,¹³ will be on the liability of the holder of the office of the Most Illustrious *comes* of the divine *privata*,¹⁴ at the time; and all loss that the accused had suffered, as a result of this duplicity in contravention of the force of the present law, will be made good out of the plaintiff's property, on the liability of the judge by whose clerk he was arrested, not forgetting also the staff under him. In this way, those entrusted to us by the Power above are to be kept free from harm.

We decree, however, that cases launched in court by mutual consent of each party are to be free of the penalty contained in the present constitution, and are to be decided according to the provisions contained in our other constitutions.¹⁵

3

In our desire that all cases should proceed expeditiously to their conclusion, we are also opposing the malpractices of those who simply issue summonses without any intention of prosecuting them through to the end of the case, and who allege that there is a law¹⁶ explicitly stating that no-one is compelled to pursue his own suits against his will. This is another malpractice that it is our aim to stamp out; and we command that those putting forward actions of their own against anyone – either by proceedings before an office-holder, or by petitions put before the Sovereign, notified to the judge, brought by him to the adversary's knowledge and begun as a trial at law under the judge – are not to have the benefit of the above-mentioned law at their disposal. It is unjust for someone who has summonsed his adversary to a court case, as if ready for it, to refuse to

¹³ '*Fiscus*' = fisc or treasury (see note 14).

¹⁴ '*Comes* of the divine *privata*' = the *comes sacrarum privatarum*: the head of the imperial estates known as the *res privata* (see *J. Nov.* 30, note 36). Since 529, the proceeds of all fines and confiscations had been assigned to the *res privata* (see *Codex* 1.5.18; 10.30.4.16 and Delmaire (1989), p. 414), within which they were conceived of as property of the public fisc (*res fiscales*) officially annexed by the imperial estates (*res privata*) but kept separate from the property of the emperor (*res dominicae*) and civic property which belong to the state (see Delmaire (1989), p. 638). It is possible to infer from *J. Nov.* 117 c. 13, however, that the *res privata* was under growing pressure to transmit the proceeds of such fines and confiscations to the estates of the imperial household (*domus divina*), which were under the ultimate control of the emperor and his entourage.

¹⁵ A reference to *Codex* 3.1.11–18.

¹⁶ The law referred to is *Codex* 3.7.1.

proceed with the action; such a refusal is more appropriate for a defendant than a plaintiff. Hence, we are decreeing that the plaintiff must pursue the action that has been begun, to the end of the suit. If he is dilatory in his prosecution of the case, we give the defendant licence to request the judge before whom the joinder of issue took place that the plaintiff should be served notice, through him, to appear in court, either in person or through a legal representative. If he does not do so at all, he is to be summonsed by the publication of three edicts, with the restriction that each individual summons is to be after an interval of not less than thirty days. We command judges of *ordinarius*¹⁷ rank not to use only the voices of criers for summoning to court whichever of the litigants is missing; they are to have edicts posted up as well, because the criers' voice can be heard only by a few people who are found to be there, but edicts posted up over several days can be brought to almost everyone's knowledge. Under this law we give permission to all other judges, those who try cases by command from the Sovereign, to use only publication of edicts to summon parties not in attendance at court, so as to prevent cases from lasting indefinitely.

1. The defendant will also be able to go to the judge concerned, and through him to summon his adversary in the like manner, if the case has not received its preliminaries before a judge, but all that has happened is that someone has been summonsed by the serving of a writ, or by an order of ours resulting from a petition lodged with our Serenity, issued for it either in writing or by *mandata*, notified to the judge, and brought to the knowledge of the adversary.¹⁸ Thus, should the plaintiff make his own appearance, the matter will be tried under due process of law and reach its lawful conclusion; . . .

2. . . . however, should he, after being summonsed by publication of the edicts, not choose to come and put his actions before the court, either in person or (as has been stated) through a legal representative, we then allow him a further time-limit of one year. Should he not follow through his action within that period, we give the judge licence, according to our laws, to hear the pleadings of the party in attendance, even in the absence of his adversary, and to hand down a lawful verdict after meticulous enquiry into the truth. But should the plaintiff choose to contest his actions, and if he does appear within the said period of one year, we command the judge by all means to exact from him, first of all, the costs or expenses arising from

¹⁷ An interesting insight into the use of court criers. 'Judges of *ordinarius* rank' = a standard provincial governor of *clarissimus* status sitting in his judicial capacity: see Berger (1953), p. 518 and Van Der Wal (1998), pp. 22–3.

¹⁸ '*Mandata*' = instructions (see Berger (1953), p. 574).

the case which have been borne by the defendant for his attendance at court, and pay them to the defendant. That done, the plaintiff is to attend until the matter reaches its conclusion according to the laws; should he merely put in an appearance, wishing to cut short the period of a year by paying the expenses or costs, and then withdraw from the court again without staying to the end of the case, our command is that, after the said edicts and year's interval have been observed, he is to forfeit any right of action against the defendant to which he supposed himself entitled. The dishonesty of one who has again abandoned an interrupted suit is recognised as worse than that of one who has absented himself once from a case after its joinder of issue.

It is only to those who do not launch any actions at all against their opponents, in the said ways, that we allow use of the privilege of the law imposing no obligation on those not wishing to launch their actions.

Conclusion

We decree that this is all to be in force for cases not yet having received a decision, either by judicial verdict, or by amicable agreement, or by another way recognised by law.

[Latin only]

Therefore, Theodotus, my most dear and loving relative,¹⁹ your glorious and magnificent authority is to make public our Divinity's present law, which is to be valid in perpetuity, by posting edicts in this fortunate city and by addressing instructions to all the provinces placed under your jurisdiction.

<Given at Constantinople, September 10th in the 15th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Basilius>

[Supplied from Athanasius and other sources]

541

¹⁹ This was deemed the appropriate form of address for a praetorian prefect: see also *J. Nov.* 114 and *J. Nov.* 150.

- 113 | **1. Constitution that divine directives or divine commands are not to be made in the course of a lawsuit, but cases are to be decided under general laws**
- 2. Also that the present constitution is to be incorporated in the proceedings, before the confirmation of persons¹**

<The same Sovereign to Theodotus, *praefect of praetoria*> [Supplied from Auth.]

Preamble

In our desire that everything should be transacted in accordance with our laws, and our endeavour that their force should be upheld, we have decided to enact the present law for the observance of the laws themselves. It has come to our knowledge that some judges, wishing to put off people with cases to plead, and aiming to cover up their own procrastinations, often make excuses by saying that they have been notified of divine directives, divine commands, or depositions from our Admirable *referendarii*,² which, they allege, give a ruling as to how they must try or judge the cases.

¹ The present constitution casts further light on the velocity of legal knowledge in the sixth century, the desire of litigants to make full use of their rights under the law in its most up-to-date form, and anxiety on the part of judges that their judgments should be in accordance with current legislation. In it, Justinian decrees that the course of legal proceedings should not be interrupted by attempts to introduce laws, judgments or rescripts that were not current when the case was initiated. Rather, only laws which were deemed to be of general effect at the moment the case was initiated were to be cited or relied upon, and judges were not allowed to delay proceedings to take into account decisions or judgments that were deemed pending. The fast-changing nature of the legal landscape that was an inevitable result of Justinian's on-going programme of legal reform in the 530s could be legally disorientating for both judges and litigants, and Justinian was evidently sensitive to the resultant criticism, as revealed by the preface to *J. Nov. 60*.

² *Referendarii* (referendaries) were high-ranking officials of the imperial court charged with acting as interlocutors with respect to petitions (see *J. Nov. 10*, Jones (1964), p. 575 and Procopius, *Anecdota* 14.11).

1

For this reason, we decree that when a case is in process of trial before judges either here or in the provinces, whether arising out of financial, criminal or any other actions, neither a pragmatic directive nor any other rescript, nor any divine command of ours, written or unwritten, nor deposition in this sovereign city from our Admirable *referendarii* or anyone else, giving instructions as to how he must try or judge the case that has begun, is to be communicated to the judges; nor, if communicated, is it to be in force: the cases are to be tried and decided under our general laws, because what is being judged on the basis of the laws' authority would need no extraneous ruling. Should a case come to us either when it is already being pleaded before a judge, or before it has received its preliminary stage, and we decide to give a ruling and decide it by a judgment of our own, that no longer needs judgment from another judge. Matters on which a ruling or decision has been given by us under a divine judgment, as stated, need no additional trial, judgment or re-trial from anyone. God's gifts to us include the authority to legislate; and if we hand down a judgment on a case, we do not refer it to another judge, either by directive or by depositions from our Admirable *referendarii*, or anyone else, as to how such a case must be tried or judged. Once judged by us, it cannot be re-tried by anyone. That, it is to be clear, applies whenever such judgment of ours is issued in writing. However, should a judge find a point of law debatable, he is to inform our Majesty, await our written clarification or interpretation of the issue, and decide the suit in accordance with that.

1. Should either a pragmatic directive of ours, or a deposition from our Admirable *referendarii* or anyone else, or any of all the other things mentioned, be notified to the judge while a case is being pleaded, directing his trial or judgment, we command the judge to pay no attention to them at all; they are to be inoperative, having no force at all, and he is to try the case in accordance with our general laws, and bring it to a lawful conclusion. If the judge does not observe this, he is to be subject to a fine of ten pounds of gold, and further, to experience our more serious displeasure. The person daring to dictate any such directive is to be subject to the same penalty, as are those serving under him, and our Admirable *referendarii* who make any such deposition. We mean this whether it is by divine decree of ours that someone has been appointed as judge, or whether he is hearing the case by order from an office-holder,³ or in the role of one of the chosen,

³ 'By order from an office-holder', i.e. as a delegated judge (*iudex delegatus* or *iudex pedaneus*).

or *compromissarius*, arbitrators,⁴ and whether it is under written procedure, or unwritten.⁵ Should any judge, in disregard of his own safety, dare to hand down a verdict based on anything of the kind, we intend it to be so void as not even to require any appeal, nor yet to incur the penalty *ex compromissis*;⁶ our intention is that all judges should hold their trials, and make their judgments, in accordance with our general laws. It goes without saying that no order from office-holders will be valid, either, against what has been directed by this law of ours.

2

Something else that judges must know is that it is also their duty to decide under our general laws cases that are still being launched, even if, before that time, someone has already procured a divine decree directing the judge's trial or judgment; we do not wish the recipient of any such thing who has not yet obtained a conclusive judgment to derive any benefit from what he has procured. Once a conclusive judgment has already been given, we are certainly not commanding, by this law, that there should be any interference with it, even if an appeal has ensued against the judgment, or there is any prospect of a re-trial.

We are not, however, prohibiting the issuing or validity of the kind of command, both written and unwritten,⁷ that does not direct the person acting as judge, or about to act as judge, as to how he is to conduct the enquiry or to pass judgment on it, but merely desires the suit to be given the attention required by law, urges publication of the proceedings, obliges the judge to hand down a lawful verdict, or provides for an associate judge, in accordance with our laws.

⁴ 'Chosen, or *compromissarius* arbitrators' = an *arbiter ex compromisso*; on this Latin term see Berger (1953), pp. 366 and 518, and *J. Nov.* 82. It is significant that arbitration still had to be on the basis of the written law (see discussion with respect to the papyrological evidence in Gagos and Van Minnen (1994), esp. pp. 30–5). The growing use of arbitration in late antiquity thus should not be read as evidence for the side-lining of law or imperial legislation *per se* (as argued by Schiller (1969)). Rather, given Justinian's wish to limit the flow of cases to court, partly by encouraging such dispute resolution, the tendency could even be argued to provide further evidence for the actual application of imperial law at a provincial level and for its capacity to inform the choices made by conflicting parties. For further discussion of arbitration in Byzantine law (including this novel), see Papadatou (2000).

⁵ 'Written . . . or unwritten', i.e. whether the case is handled on the basis of written or oral submissions: see *J. Nov.* 17 c. 3, *J. Nov.* 28 c. 3, Van Der Wal (1998), p. 183 (entry 1183 including note 108) and Steinwenter (1959), pp. 306–20.

⁶ 'The penalty *ex compromissis*' = they will not be liable for the penalty for rejecting an arbitrated settlement: see *J. Nov.* 82.

⁷ For unwritten commands, see *Codex* 1.15.1.

3

So that all our subjects, particularly those afflicted with lawsuits, know of our concern for them, and so that no-one pretends that this divine law of ours does not exist, or pleads ignorance of it, we decree that, at the outset of every case that receives its inception before a judge, it should be written in, right at the preliminary stage, even before the confirmation of persons, and form part of the record. Thus, by being conspicuous at the head of the proceedings, it would prevent any attempted moves in contravention of its force, in particular (as may well be) as to the actual confirmation of persons; by its threats of penalties, it would restrain those attempting to contravene it from any such acts of recklessness, and it will allow no occasion to arise for the penalties it carries. Our purpose in having enacted the present law is to do away entirely with illegality and injustice together, by keeping both it and, through it, the rest of the laws, secure and inexpugnable for our realm in all respects; it is in accordance with them that we ourselves have received our sovereignty, by the gift of God, and we pray that our realm may be preserved and protected by them for ever.

Conclusion

Accordingly, your excellency is to take pains to observe our decisions manifested by means of this divine law, and to make them manifest to all, by publishing it in this fortunate city and, as usual, by making use of orders to provincial governors so that all people may know of it and, through it, of the concern that we have for them.

Given at Constantinople, November 22nd in the 15th year of the reign of the Lord Justinian, pius princeps, Augustus, consulship of the Most Distinguished Basilius

114 | Divine commands to have the glorious *quaestor*'s signature appended¹

[Latin only]

The same Augustus to Theodotus, praetorian prefect

Preamble

Our Serenity's solicitude is alert for remedies for our subjects; we do not cease to seek out anything in our state that must be corrected, and the labours that we choose to take on are designed to provide ease for others. Hence, we have discerned that it would contribute to the benefit of all if we were to order that sacred commands, as well, should be issued with a suitable safeguard, so that no-one is enabled to compose them on his own initiative.

1

Accordingly, we decree by the present law that no divine command, whether composed by the assistants² of the Magnificent *quaestor*, or by any other person of whatever position in the service, rank or office, for whatever office-holder, is to be accepted by any judge unless it carries at its foot an annotation by the magnificent *quaestor*, containing the names of those whom it concerns, the office-holder to whom it is addressed or the person through whom it is being transmitted. This is to ensure that henceforth all uncertainty will be eliminated, and no-one whatever will have any ground left for excuse. All office-holders or administrators are to be aware that, should they accept any sacred command, on any matter, that lacks the appendage of this annotation from the magnificent *quaestor*,

¹ This law is concerned with the authentication of laws and rescripts sent out from the palace in Constantinople. Henceforth, all were to be signed by the *quaestor* of the palace in person, and not by his assistants or deputies. For general concern with forgery, see *J. Nov.* 47 and Feissel (2010), pp. 504–7. Procopius accuses Justinian of side-lining the office of *quaestor* (*Anecdota* 14.3), although that accusation is not necessarily supported by the present constitution. It is perhaps significant that this law was only issued in Latin, as the language of state in which the *quaestor* was meant to be primarily operative: see Procopius, *Anecdota* 20.17 and *J. Nov.* 66. For the role of *quaestor* in the reign of Justinian, see Honoré (1978), esp. pp. 8–9 and 223–42.

² 'Assistants' = *adiutores*.

<they will be subjected>* to a fine of twenty pounds of gold, the like penalty being also inflicted on their staff. Should any such command reach them, we command them to refer it forthwith to the Magnificent quaestor, or send it back with the person who delivered it, for him to be subjected to the punitive measures that our laws direct for forgers.

* Lacuna filled as required by the context. [S/K, p. 533, line 15].

Conclusion

Theodotus, my dearest and most loving relative,³ your excellency is to see to it that this law, to be valid in perpetuity, comes to everyone's knowledge.

Given at Constantinople, Nov. 1st in the 15th year of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Basilius 541

³ See *J. Nov.* 112, note 19.

1. In trial of appeals, retrials and referrals from judges, cases are to be decided under the laws in force at the time of the verdict or notification, not those laid down subsequently

2. If one party to litigation rests satisfied with the pleadings while the other postpones, as not being satisfied, the judge is to give a period of one month, a second and a third; but when those have elapsed, he is to wait no longer, but give his verdict

3. Grounds of ingratitude justifiable for progenitors against their descendants

4. Grounds of ingratitude justifiable for descendants against their progenitors

5. Those in mourning, and their relatives, on no account to be arrested or summonsed within their 9 days

6. Promises to pay and agreements: whether one makes a promise to pay or agreement as 'I give you the requisite sum', 'you will receive the requisite sum from me, from so-and-so and from so-and-so' or 'you will receive the requisite sum from me, from so-and-so or from so-and-so'¹

¹ In this constitution, the emperor addresses a number of largely unrelated legal issues. Firstly, he returns to a problem that had also been identified in the recent *J. Nov.* 113, and which had been the subject of criticism alluded to in the preface of *J. Nov.* 60: namely, how were judges and litigants to be sure that cases were being decided on the basis of the current law, when the legal landscape was changing so rapidly? In *J. Nov.* 113, the emperor had decreed that litigants could only make use of laws that were current at the start of a trial, and that new laws or rescripts were not to interrupt proceedings. Nor could judges delay judgment to wait for a new law to be issued. Here Justinian appears to modify that position somewhat: when issuing judgment, judges were entitled to rely upon laws current at the moment of judgment (as opposed to at the joinder of issues). This would not have been to the advantage of either litigants or advocates, and one should note Procopius' criticism of the legal confusion caused by Justinian's legislative activity (see *Anecdota* 14. 7–11). Moreover (and the main focus of the emperor's statements here), judges hearing an appeal against a judicial decision were to decide upon its soundness on the basis of the law as it stood at the moment when judgment was given. In the second section of the constitution, the emperor legislates to prevent legal proceedings from being drawn out unnecessarily by litigants with a weak case procrastinating with respect to their pleadings. In the more substantial third and fourth sections of the law, the emperor simplifies and tidies up the legal regulations with respect to the procedures and grounds for the disinheritance of legitimate heirs (although it is disputed to what extent Justinian here actually reforms such grounds and procedures). The emperor decrees that disinherited parties must be expressly named as such in the will, and the grounds for their disinheritance explained. The emperor then proceeds to define and list the legitimate grounds for disinheritance, thereby casting interesting light on sixth-century social perceptions. Lastly

The same Sovereign to Theodotus, prefect of sacred Eastern praetoria

Preamble

It has come to our Serenity's knowledge that in a case launched between Eustathius, most God-beloved bishop of the city of Tlos, and Pistus, deacon of the church of Telmessus,² a conclusive judgment was handed down by the provincial governor, against which an appeal was granted. Accordingly, the judges before whom the appeal was being tried, being in doubt, referred to our Clemency the question of whether in fact they ought to judge the said case under the laws in force at the time when the conclusive judgment was handed down, or according to the force of the law promulgated by us after the conclusive judgment. We decided that it was right for the issue under appeal, pleaded previously, to be tried under the laws in force at the time the verdict had been given, and to receive its conclusion under them. We also decided that whenever such a doubt arises hereafter, it is to reach a conclusion on the corresponding basis.³

1

For this reason, we decree that if ever an appeal should ensue after the handing down of a conclusive judgment on any case, those trying the appeal are to give the matter its conclusion in accordance with the laws that were in force at the time of the conclusive judgment. It is to be understood that just the same is to be observed also on re-trial of verdicts by Most Illustrious prefects, and on referrals from judges, when both parties have rested their case on all their pleadings and the judges enquire, by means of referrals on their part, what in fact ought to be the ruling. It is our decree that the laws to be observed by arbitrators⁴ in all the said cases are those that were in force at the time of the judgment, or, of course, at the

the emperor reiterates an extant prohibition to the effect that those in mourning were not to be harassed for the debts of the deceased until the nine-day period set aside for mourning had expired, and clarifies the differing legal obligations resultant from the various verbal formulae employed by those agreeing to pay a debt or discharge an obligation through what were known in civil law as *sponsiones* (on which see Berger (1953), p. 713). A number of the issues dealt with in this constitution are described as having arisen in the course of actual legal proceedings, to which the emperor refers.

² Tlos (in the Xanthus Valley) and Telmessus (Fethiye) were located in Lycia on the southern coast of Asia Minor (on which see Harrison and Young (2001), Foss (1994) and Hellenkemper and Hild (2004), esp. 2, pp. 885–9 on Tlos and 704–9 on Telmessus).

³ For similar concerns, see also *J. Nov.* 113.

⁴ For arbitrators, see also *J. Nov.* 82 and *J. Nov.* 113.

referral, even in the event that a law has been promulgated subsequently making some new directive and applying its effect retrospectively to past proceedings as well.

2

Another point that we are adding to the present law is as follows. Between litigants it sometimes occurs that one of the parties rests on its pleadings, whereas the other, realising after the counter-arguments at the examination,⁵ and the periods allowed by the laws for giving evidence, that it has a bad case, is unwilling to agree that it is satisfied with the pleadings, in order to avoid rapid detection of the quality of its case. We therefore command that when one of the parties rests on its pleadings, should the other say it has something that it ought to put forward, the judge of the case must, without fail, compel the party making use of the postponement to put forward whatever it wants to say within thirty days after the other party has rested its case, without any postponement. Should it not do so, it is then, in order to defeat its dishonesty, to be generously given another month by the judge; and if, even so, it still postpones, a period of one other month is to be made available to it, but on condition that if it does not put forward its pleadings within the said three months that we have permitted to the postponing *litigatores*,⁶ the judge is then to wait no longer, but is without fail to issue a judgment in accord with the laws – or else, should he so wish, to make a referral⁷ – in order to prevent the litigants from dragging on the outcomes of suits any further with unsatisfactory quarrels.

3

Additionally, there is another chapter that we have decided to add to the present law. In it, we decree that a father, mother, grandfather, grandmother, great-grandfather or great-grandmother is absolutely not allowed to leave a son, daughter or other descendants as *praeteriti*,⁸ or as disinherited, in their will, even should they have provided them with the share

⁵ ‘Examination’ = Latin *cognitio* (see Berger (1953), p. 393).

⁶ ‘*Litigatores*’ = litigants.

⁷ ‘Referral’, i.e. referring the case up to a higher court for adjudication (under the procedure for *consulatio ante sententiam*: see *J. Nov.* 28, note 19).

⁸ ‘*Praeteriti*’ = those passed over (i.e. not mentioned at all) in a will. See *Codex* 6.28 and Berger (1953), p. 647.

due to them by law in the form of a gift of any kind, a *legatum* or a *fideicommissum*,⁹ or in any other way, unless they are possibly proved to be ungrateful¹⁰ and the progenitors have named the actual grounds of ingratitude in the wording of their will.

We have found that the grounds on which children ought to be judged ungrateful were scattered among various laws, and not clearly stated; and some of them in our view do not deserve to be grounds of ingratitude at all, and others, which do so deserve, are omitted. For that reason, we have decided that it is necessary to include them by name in the present law, so that apart from these no-one is to be allowed to put up a ground of ingratitude from any other law, if it is not included in the present constitution's list. Here are the grounds of ingratitude that we adjudge as justified:

1. should anyone have laid hands on his parents;
2. should he have subjected them to grave, unseemly affront;
3. should he have prosecuted them for crimes, other than those against Sovereign or realm;
4. if he associates with miscreants, as one of them;
5. if he has made an attempt on his parents' lives by poisoning, or otherwise;
6. if their son has had sexual intercourse with his stepmother, or with his father's concubine;
7. if their son has become an informer against his parents, and by his information has caused them to suffer grave loss;
8. in the event of any of the said progenitors being held in custody, if the descendants able to come into that person's succession in intestacy, or at least one of them, should refuse to take on surety for him at his request, either for his person or for his debt, insofar as the person requested is shown to be qualified – with the proviso that we intend what we have decreed on surety to apply only to male descendants;

⁹ *'Legatum'* = legacy; *'fideicommissum'* = trust.

¹⁰ 'Ungrateful' (Greek ἀχαριστος) = Latin *ingratus*: this signified an emancipated son or daughter or freedman who failed to perform his or her duties towards or brought dishonour upon or was contumacious towards the head of the family or former master (see Berger (1953), pp. 500–1). In this section of the constitution, Justinian may have been reforming and simplifying the Roman law on disinheritance, requiring that the disinherited party be expressly mentioned by name in the will and the grounds for disinheritance explained. The fact or extent of reform, however, would be a long-standing matter of debate amongst legal scholars (see Van Der Wal (1998), p. 140, note 60, Kaser (1980), p. 358, Buckland (1963), pp. 294–6 and 305–6 and, for general discussion, Evans Grubbs (2011a)).

9. if any of the children should be convicted of preventing their parents from making a will. Thus, should they subsequently be able to make one, they are to have licence to disinherit the descendant on that ground; but should a parent die without a will while still being prevented from making one, and there be others called in intestacy to the deceased's inheritance, whether along with the actual child who prevented the will from being made, or after him, or whom the testator wished to have as his heirs or *legatarii*,¹¹ or who have suffered some harm from the prevention of the will, and prove that fact, such cases are to be concluded according to the other laws laid down on this;¹²

10. if, against his parents' will, a son joins a troupe of huntsmen or mimes,¹³ and persists in that occupation – unless perhaps that has also been the occupation of his parents;

11. if, when any of the said progenitors wishes to give a daughter or grand-daughter a husband, and a dowry for her in proportion to the donor's means, she does not accept, but chooses a life of shame. However, if the daughter has reached twenty-five years of age while the parents have put off giving her in marriage, and this has perhaps resulted in her sinning against her own body, or forming a union with someone without her parents' approval, provided that he is free, we do not wish that to be counted against the daughter as ingratitude, as this wrongdoing¹⁴ on her part is recognisably not due to her own fault, but that of her parents;

12. if any of the said progenitors becomes insane, and should his descendants or some of them – or, if he lacks surviving descendants, any of his other kin called to inherit from him in intestacy – not provide him with proper assistance and care, he will have licence, should he recover from such malady, as to whether he wishes to declare in his will that the descendant, descendants or relatives who have failed in their duty of care are ungrateful individually or collectively. But if, while he is suffering from the malady of insanity, an outsider¹⁵ should see that he is being neglected by his descendants, relatives or others who have been appointed as heirs in his will, and is prepared, out of compassion, to look after him, we give him licence to serve formal notice in writing on those called to inherit from the insane person, whether in intestacy or under a will already drawn up, that

¹¹ '*Legatarii*' = beneficiaries of a legacy.

¹² See *Codex* 3.28.23.

¹³ 'Troupe of huntsmen or mimes', i.e. in the hippodrome or circus.

¹⁴ In an interesting aside, the law here suggests that it was felt to be unreasonable for a young woman to remain chaste beyond the age of twenty-five.

¹⁵ 'Outsider' = (Latin) *extraneus*: somebody from outside the family or household (see *J. Nov.* 1, note 1).

they should make the effort to look after him. Now, should they be neglectful even after such formal notice, and should the outsider receive the insane person in his own household and be shown to have looked after him till death, at his own expense, we decree that never mind how much of an outsider he may be, the person who provided assistance and care for the one who was insane is to come into succession from him: the heirs' institution is to be overturned, on the ground that those who, as we have said, have neglected to provide care for the insane person do not deserve it. Notwithstanding this, the other heads of the will are to remain in their own force;

13. if one of the aforesaid progenitors should come to be held in captivity, and should his descendants, or some, or one of them not make efforts to rescue him. Thus, should he succeed in escaping from his unfortunate state of captivity, it is to be at his own discretion whether he wishes to put this down as a ground of ingratitude in his will; but should he, by reason of his descendants' negligence or disregard, not gain his freedom, but die in captivity, we do not tolerate that those who have made no efforts to see to his rescue should come into his succession; instead, all the property bequeathed by him to all the descendants who have been negligent over this is to accrue to the church of his place of origin. Be it understood that an *inventarium*¹⁶ must be compiled, under public attestation, so that none of his property goes missing; and that this is conditional on everything that comes to the church in this way being used for the ransom of prisoners of war.

The above statements concern only persons whom it is not allowed to disinherit except in the event that the grounds of ingratitude are written down, and proved; but the present case has given us occasion to make a general law. For that reason, we command, in general, that should the person taken into captivity have no descendants, and die in captivity because the others called to his inheritance in intestacy do not make efforts to ransom him, none of those who have been negligent are to come into his inheritance, even if a will had perhaps been made by him, before his captivity, in which he appointed the above-mentioned persons as his heirs. Here, too, it is the institution of heirs that is to be annulled, while the other sections of the will remain in their own force; and the properties of such persons are, likewise, to accrue to the churches of their cities of origin, to be spent on no other purpose whatever but that of ransoming prisoners of war. Thus out of these people's funds, which were not used to ransom them by their own kin, provision will be made for the ransom of others, and,

¹⁶ *'Inventarium'* = inventory; see note on *J. Nov. 1*, note 17.

similarly, their souls will take comfort from this pious action. Exactly the same is to be observed if, before his capture, he has appointed some other outside person as an heir and that person, knowing that he has been appointed as an heir, neglects to ransom him from his captivity.

This penalty, we decree, is to be in force against those who have completed the eighteenth year of their age.¹⁷ For such purposes, whenever money has to be paid for ransoming prisoners of war, anyone with no money of his own, if of the said age, is to have licence to borrow money, and to put movable or immovable property under hypothec, whether it is his own or belongs to the person held in captivity. We order that for all the said gifts or expenditures that are shown to have been made for the ransoming of prisoners of war, such transactions are to be valid, as being made by persons who are independent¹⁸ and of mature age.¹⁹ Those entering into contracts with such persons for the said reason, as stated, are not to encounter any pre-judgment.²⁰ It is obligatory, of course, for the person returning from captivity to regard such transactions as valid, and to be liable for them, as being debts of his own.²¹

14. If any of the above-mentioned progenitors, being orthodox, discovers a descendant or descendants of his not to be of the catholic faith and not in communion with the most holy church, in which all the most blessed patriarchs, with one concordant breath, proclaim the most orthodox faith, and are known to embrace and acknowledge the four holy councils – those of Nicaea, Constantinople, the first of Ephesus, and Chalcedon²² –, and such descendants persist in their infidelity, we grant their progenitors licence, for this reason in particular, to put them down in their will as ungrateful and disinherited.

As a ground for ingratitude, that is what we have decreed; but by way of making a general provision for orthodox descendants, we command that, while leaving intact the laws already promulgated on heretics, in particular Nestorians and Acephali,²³ a principle to be observed is that should

¹⁷ This was the age by which it was agreed one could most safely assume that puberty (and thus adulthood) had been reached (see Gardner (1998), p. 142).

¹⁸ 'Independent' (Greek ἀντεξούσιος) = (Latin) *sui iuris*.

¹⁹ 'Of mature age': having reached the age of full legal majority of twenty-five.

²⁰ 'Pre-judgment' (Greek πρόκριμα) = Latin *praeiudicium* (i.e. effectively, 'is not to suffer any damage'): see Berger (1953), p. 644.

²¹ See *Codex* 8.50.

²² I.e. the Ecumenical Councils of Nicaea (325), Constantinople (381), Ephesus (431) and Chalcedon (451) which collectively defined Trinitarian and Christological Orthodoxy.

²³ Nestorius was the hard-line duophysite Patriarch of Constantinople whose theology was condemned at Ephesus in 431; the 'Acephali' (lit. 'headless ones') referred to are hard-line miaphysites. See discussion with respect to *J. Nov.* 109.

progenitors ever be found to be given up to the Jewish madness of Nestorius, or to be embracing the folly of the Acephali, and for that reason separated from the communion of the catholic church, they are not allowed to institute as their heirs anyone other than orthodox descendants in communion with the catholic church, or, if there are no surviving descendants, relatives on the male and female sides, these, of course, being orthodox.²⁴ If, as may be, some of the descendants are orthodox and in communion with the catholic church, while others are separated from it, we decree that the progenitors' entire estate is to come down solely to the orthodox ones, even should such persons have made wills with dispositions contrary to the force of this constitution of ours. If the siblings separated from the church subsequently return to it, the appropriate share is to be assigned to them, in whatever state it is found at the time at which it is being paid; thus, the catholic ones who have previously had control of the above-mentioned property are to suffer no vexation or trouble over the profits, or over their management of it in the interim. Just as we forbid alienation of such properties as the orthodox ones have acquired from the share of their siblings not in communion, so too we command that there shall be no demand at all, on those under whose control it has been, for the past profits on it, nor any review of their management. Should those out of communion persist in the same error to the end of their life, we decree that the orthodox siblings, or their heirs, are then to possess the said properties in fullest right of ownership. Should all the descendants be found to be perverted, and estranged from the communion of the catholic church, while other very close relatives on the male or female side are proved to respect the orthodox faith and be in communion, these are to be given preference over the heretics' descendants, and to receive their inheritance. Should both the closest *agnati* or *cognati*²⁵ be in fact alienated from the communion of the orthodox faith, then, should their progenitors have been in clerical orders, we wish to transfer their property to the church of the city in which they were domiciled, with the proviso that should the church authorities neglect to pursue a claim for such persons' property within the period of a year, ownership of it is to be claimed for our *fiscus*;²⁶ whereas if they were laymen, their estates are, similarly, to fall to our divine *privata*,²⁷ with no dividing up. We decree that these provisions are also to

²⁴ This provision is alluded to by Procopius (*Secret History* 11.15).

²⁵ '*Agnati* or *cognati*' = kin on the male and female sides.

²⁶ '*Fiscus*' = fisc or treasury – here meaning confiscation by the *res privata* which oversaw imperial estates: see *J. Nov.* 112, note 14 and Delmaire (1989), p. 638.

²⁷ '*Privata*' = the *res privata*: see *J. Nov.* 30, note 36.

apply should such persons die intestate. Everything that has been decreed in other constitutions against other heretics, especially Nestorians, Acephali and all others not in communion with the catholic church in which the aforesaid patriarchs and four holy councils are acknowledged, and against their heirs, is to be observed in the same manner. Given our anxious concern over worldly affairs, how much more must we contribute the most conscientious care to the salvation of souls!

15. Should parents have included all the said grounds of ingratitude, or certain of them, or one (whichever it is) in their will, and those appointed as heirs have shown the named ground or grounds, or one of them, to be true, we order that the will is to retain its force. Should that not have been observed, however, there is to be no pre-judgment against children put down as disinherited, but insofar as concerns the institution of heirs the will is to be invalidated, and the children are to come into their parents' inheritance in equal shares, as in intestacy. This is so that children are not condemned on fictitious accusations, or subjected to any fraud over their parents' estates. However, in the event that in any such wills there are bequests of any *legata*, *fideicommissa*,²⁸ manumissions, appointments of guardians, or any other heads whatever are named that are recognised by the laws, we command all those to be implemented and given to those to whom they have been bequeathed, as if the will were in this respect not overturned, but validated.

That is what we have decreed on wills of progenitors . . .

4

. . . but we have decided that it is also right to make a similar ruling on the other side, albeit with some distinction, over wills of children. Accordingly, we decree that children are not allowed to leave their parents as *praeteriti*,²⁹ or in any way whatsoever to dissociate them completely from any property of theirs over which they have the power of disposal, unless they specifically include in their testaments the grounds that we are enumerating. These, by our command, are:

1. if the parents have handed over their children to be put to death, otherwise, that is, than on a charge pertaining to treason;
2. if the parents should be proved to have plotted against their children's life by poisoning, witchcraft or otherwise;

²⁸ '*Legata*' = legacies; '*fideicommissa*' = trusts.

²⁹ 'Parents' here signifies ascendants (as opposed to descendants). The Latin technical word *praeteriti* is used for those who are omitted from the will.

3. if the father should have had sexual intercourse with his son's bride or concubine;

4. if the parents should have prevented their children from making wills concerning property of which they have licence to dispose. Be it noted that over prevention of such wills, all the distinctions are to be observed that we made with respect to the person of the parents.

5. In the event that a husband has given his wife, or a wife her husband, a drug with intent to kill or to cause mental derangement, or one has plotted against the other's life in any other way, we decree that such a charge, as being *publicum*,³⁰ is to be tried according to law and to be granted legal retribution; and the children are to have licence to leave nothing from their estate in their will to the person discovered to have committed such an abomination.

6. Should descendants, or one of them, be insane, and the progenitors neglect to look after them, we order that here too, everything is to be observed that we decreed above on insane progenitors.

7. To those cases we also add the misfortune of captivity; if descendants should be held in this, in the event of their dying without having been ransomed, owing to their progenitors' disregard or negligence, their progenitors are on no account to come into estates over which their descendants had power of disposal. Instead, everything that we have ruled above under that head is to be observed also for progenitors, *cognati* and *agnati* called in intestacy to the descendants' rights, or for outsiders appointed as heirs.³¹

8. If any of the above-mentioned descendants, being orthodox, discovers a progenitor, or progenitors, not to be catholic, the same is to apply for those persons as we ruled above for progenitors.

9. Accordingly, if descendants should put down such grounds, certain of them, or one, in their wills, and if those appointed by them as heirs should prove all, some or one of the grounds, we order that the will should remain in its own force. Should this not have been observed, we decree that such a will should have no force as to the institution of heirs; we rule that it should be overturned, and the deceased's property be given to those called to his inheritance in intestacy, of course with *legata* or *fideicommissa*, manumissions, appointments of guardians and the other heads retaining their own force, as stated above.³² Should there be anything found in other

³⁰ '*Publicum*' = public, i.e. a matter of public concern, indicating that the offence is a criminal rather than civil one, to be prosecuted by the state.

³¹ 'Outsider' = *extraneus*. See *J. Nov.* 1, note 1.

³² A reference to c. 3.

laws on *legata*, *fideicommissa*, manumissions, or any other heads whatsoever, which is contrary to this constitution, we intend it to be in no way valid.

Those are the penalties decreed against the said persons, as far as cases of *exheredatio* and *praeteritio*³³ on grounds of ingratitude are concerned; if some of them also pertain to criminal charges, the perpetrators are also to be subjected to the other penalties laid down by the laws.

5

It is to free both progenitors and descendants from injurious treatment in wills that we have made these rulings. Should some have been named as heirs despite being directed to content themselves with only specific items of property, our order is that the will is not to be overturned in that respect, but that whatever amount has been left them below their lawful share is to be brought up to that for them by the heirs, in accordance with our other laws.³⁴ Our Serenity's sole concern is to abolish arrant injustice over *praeteritio* and *exheredatio* by parents and children:³⁵ parents ought to consider they too have been children, and have received the same things from their own parents, and equally those who are now sons ought to make efforts to attend to their parents' points of view, because they themselves want to be parents too, and aspire to be respected by their own children. That makes it clear that the present law has the benefit and security of both sides in view. Our decision to promulgate it was not without cause: the reason for it was that we found that Pulcheria³⁶ had been called a grateful daughter by her mother, but had been named as disinherited in the will, both as to paternal and as to maternal property. To such a papyrus we wholly refused any validity, as we detected that it was a cunningly fraudulent composition.³⁷ As our written judgment issued on the said affair

³³ '*Exheredatio*' = disinheritance; '*praeteritio*' = omission from a will.

³⁴ I.e. a legitimate heir who is appointed to inherit a particular piece of property may not take advantage of the *querela inofficiosi testamenti* (a complaint on the part of an heir 'who would be legitimate in intestacy but who was omitted or unjustly disinherited in the testator's will', Berger (1953), p. 665). Rather, if the property left him falls below the value of the *legitima portio*, he is to sue for restitution of the difference. The will as a whole is therefore to remain valid (see Van Der Wal (1998), p. 138 (entry 939)).

³⁵ 'Parents and children' = ascendants and descendants.

³⁶ The identity of Pulcheria is unknown. Justinian here reveals that this section of the law was inspired by an actual case.

³⁷ For imperial concern at such forgeries, see also Feissel (2010), pp. 504–7, *J. Nov.* 44 and *J. Nov.* 47.

shows, our order was that the daughter should inherit from her father and her mother.

1. We recall, in addition, that a law has been promulgated by us,³⁸ by means of which we ordered that no-one at all is allowed to detain the bodies of decedents on account of a debt, or to put any hindrance in the way of their funeral. At the present time, however, it has come to our knowledge that when the father of a recently deceased son was on his way back from his son's funeral, some people detained him, on account of a debt. For that reason, we have decided that it is pious and humane to prevent such cruelty, by the present most pious law.

Accordingly, we decree that no-one at all is allowed to bring an accusation, to harass in any way, to serve with a summons or to call into court a decedent's parents, children, wife, *agnati*, *cognati* or other relatives, or guarantors within the limit of nine days³⁹ during which they are regarded as in mourning, either for a debt originating from the deceased, or for any other cause whatever specifically regarding the above-mentioned persons. Should anyone dare, within the nine days, to detain or to prosecute any of the said persons, or to obtain any agreement, undertaking or contract of surety from him, we decree that it is all to be invalid. After the nine days have run their course, should anyone think he has grounds of action against such persons, he is to contest them according to law; of course, absolutely no prejudice⁴⁰ is to arise over an objection with respect to time limitation,⁴¹ or on any other lawful plea, as a result of this period of grace.

6

There is in addition a further chapter that we have decided to lay down in the present law, with regard to promises to pay, or undertakings. Our decree is that should anyone promise to discharge an obligation for himself or for another person, perhaps in the words 'I give you the requisite sum', he is liable, without fail, to fulfil his promise up to whatever amount he may have stated, and is obliged to discharge the debt. However, if someone were to say 'the requisite sum will be given you', he is to be immune from any

³⁸ A reference to *J. Nov.* 60 c. 1.

³⁹ The nine-day period of mourning culminating in a memorial feast (known in Latin as the *novendialis*) was traditional amongst pagans in Rome but also rapidly became a part of Christian practice (Salzman (2007), p. 115).

⁴⁰ 'Prejudice' or 'pre-judgment' (Greek πρόκριμα) = Latin *praeiudicium* (i.e., effectively, 'is not to suffer any damage'): see Berger (1953), p. 644.

⁴¹ 'An objection with respect to time limitation' = Latin *temporis praescriptio* (see Berger (1953), p. 645).

demand, as if he had not said anything, because the wording has been phrased impersonally. If someone were to say ‘you will be given the requisite sum by me, and by so-and-so and so-and-so’, no prejudice is to result from that expression against any persons named unless they agree, nor is the actual person who said that to be subject to any demand on behalf of any persons whom he named; he is to discharge, on his own behalf, only the proportion that falls to him out of the debt that he is proved by law to owe. Should he say ‘you will be given the requisite sum by me, or by so-and-so or so-and-so’, no prejudice at all will then result against the named persons if they do not agree in the same way, but the actual person who made this promise is obliged to discharge the debt in its entirety. Should he think himself entitled to an action against the persons named, he is to bring it forward against them as the laws direct, and enjoy the laws’ assistance.

Conclusion

We decree that all these provisions are to be in force for all cases that have not yet obtained a judicial verdict, or a conclusion by amicable agreement.

Accordingly, your excellency is to cause our present general legislation to come to the knowledge of all, by publishing proclamations in the usual way in this sovereign city, and by sending instructions to the governors of provinces.

Given at Constantinople, February 1st in the 15th year of the reign of the Lord Justinian, pius princeps, Augustus, after consulship of the Most Distinguished Basilius, indiction 5⁴² 542

⁴² ‘Indiction 5’ = the fifth year of the then current fifteen-year fiscal cycle known as the ‘indiction’, on which see Chouquer (2014), p. 311.

The same Sovereign to Theodotus, prefect of praetoria

Preamble

Next after the favour of the Lord God, the security of our subjects consists in command and discipline in military matters: when, by God's providence, those are in a sound state, the barbarians' contumaciousness is bridled, and the realm's affairs will prosper.

Some people, utterly heedless of their own safety, dare to divert soldiers and *foederati*,² and employ them for private purposes, when they ought to be fighting enemies for the freedom of the realm. We have therefore decided to proclaim to everyone, by means of the present law, that in future no-one is to dare to divert a soldier, in whatsoever unit he is posted, or a *foederatus*, or to keep him for his own household, or keep him on his properties.³ The numerous labours that we undertake over enlisting and

¹ In the early 540s, the East Roman Empire found itself under severe military pressure. In particular, in the west, the Goths in Italy had initiated a spirited fightback against the imperial armies of reconquest, whilst, on the eastern frontier, the Persians had launched a major offensive against the Romans in Mesopotamia and the western Caucasus: see Sarris (2011a), pp. 153–8. As a result, military manpower was bound to be at a premium, and any shortage of troops would soon be exacerbated by the advent of the bubonic plague, on which see Sarris (2002), Meier (2016) and Teall (1965). In the present law, Justinian responds to this situation by legislating against the private employment of imperial troops by landowners, ordering that such troops be returned to their units. The private employment of imperial troops and the maintenance of private armed retinues on estates had long been illegal, although this law would suggest that the imperial authorities had tended to cast a blind eye to such practices. Imperial soldiers were often billeted on provincial estates, and in such circumstances it was only natural for landowners to attempt to make use of such troops to intimidate their neighbours and discipline and bully their tenants and employees. Such practices are amply attested, for example, in the Egyptian papyri. The illegal employment of troops and the mobilisation of private armed retinues by members of the provincial aristocracy appears to have had increasingly destabilising social consequences, and is a major theme of Justinian's provincial legislation (see, for example, c. 5 of *J. Nov.* 30 on Cappadocia). In this constitution, therefore, the emperor can be seen to be confronting and responding to both external and internal challenges. See Sarris (2006), pp. 162–75.

² '*Foederati*' were originally troops of barbarian origin employed in the imperial army under their own leaders and fighting in their own formations. Over the course of the 530s, however, such units appear to have progressively lost their specific ethnic character (see *J. Nov.* 103, note 22).

³ 'Properties' = estates.

training these men are for them to be serviceable on duties for the common good.

1

Accordingly, all those who have aimed to keep any soldiers or *foederati* in attendance⁴ of whatever kind on their households or properties, fulfilling any private functions for them, are to be aware that unless they dismiss them within a time-limit of thirty days, reckoned from the notification of our present constitution in their locality, the properties of those keeping or detaining them will be subject to confiscation, and will accrue to the public treasury, while they themselves will be ejected from whatever ranks and positions in imperial service they hold. Soldiers and *foederati* who are still with them after that period will not just be discharged from their service, but will also suffer extreme punishments.⁵ Further, the governors of every province are to know that should any of these men be found, in the areas under their governance, to be still serving under any managers, persons, households, masters or holdings, or undertaking any private duties, and should they not energetically arrest them, subject them to punishment, and send the soldiers back to the units in which they serve, and the *foederati* to their *optiones*,⁶ they themselves will be charged a fine of ten pounds of gold, and will, in addition, be consigned to exile, for having dared to neglect our commands.

Accordingly, no-one is to make use of any divine directive or orders of any officers of state that may have been made on this, nor is any of our officers of state to accept any such directives or official orders; but, with all speed, soldiers are to return to their units and *foederati* to their *optiones*, and fight on behalf of the common good. In future, we are in no way permitting our soldiers or *foederati* to be employed for any private purposes at all.⁷

⁴ 'Attendance' = the soldiers were employed by contracts of personal attendance known as 'paramonar' contracts: see Samuel (1965). Precisely such arrangements are recorded with respect to the estates of the Apion family around Oxyrhynchus in the sixth century, for which the papyri refer to 'soldiers in attendance upon the distinguished household' (στρατιῶται παραμένοντες τῷ ἐνδόξῳ οἴκῳ): see *P.Oxy.* XVI 2013 and 2014 and Sarris (2006), p. 167. The current constitution thus responds to a situation recorded as existing in the provinces at this time.

⁵ 'Extreme punishments' = capital punishment: see Van Der Wal (1998), p. 47 (entry 352).

⁶ 'Optiones' = quartermasters in the Roman army (Treadgold (1995), pp. 88 and 95).

⁷ The law here gives the impression that such private employment of troops had been legal. In fact, it never had been, although the evidence of the Egyptian papyri would suggest that landowners were entitled to request assistance from units of the imperial army stationed on or near their estates when discharging official duties or responsibilities, such as tax-collection. See Sarris (2006), pp. 162–75.

Conclusion

Accordingly your excellency, in the knowledge of our decisions manifested by means of the present law, is to take pains to make them manifest to all, by publishing edicts in the customary manner in this fortunate city, and by sending instructions to the provinces.

Given at Constantinople, April 9th in the 16th year of the reign of the Lord Justinian, pius princeps, Augustus, after consulship of the Most Distinguished Basilius

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117 | Various heads, including dissolution of marriage¹

<The same Sovereign to Theodotus, prefect of praetoria>[Supplied from Auth.]

Preamble

We have had referrals under various heads, and have decided that it is necessary to rule on these in a general law.²

¹ In *J. Nov. 22* Justinian had effectively Christianised and codified Roman marriage law. In this constitution, he further tightens up his marriage legislation. Amongst the most striking features of the constitution are the ways in which it seeks to protect the interests of children in divorce, limits the grounds for legitimate unilateral divorce, penalises those who dissolve their marriage by mutual consent, and limits the ability of a military wife to dissolve her marriage to a missing husband. The reformed law thus aims to make divorce much harder, at times to the detriment of women (of whose interests Justinian is normally highly solicitous). The emperor even goes so far as to impose life imprisonment in a monastery on a wife who attempts to obtain a divorce without just grounds (this penalty would be extended to husbands in parallel circumstances in *J. Nov. 127*). The emphasis on such imprisonment (conceived of as a legal penalty of educative or morally improving confinement) was a novel feature of Justinianic law (on which see Hillner (2015), esp. pp. 314–41), drawing upon the emperor's conception of monasteries as representing communities of 'purified sinners' (ibid., p. 329), and would go on to influence early medieval western practice well beyond the confines of the empire (ibid., p. 332). Amongst other reforms, this novel also dilutes the concept of *patria potestas* by enabling a mother or anybody else to leave property to a child subject to paternal power in such a way as to exclude the father from the use of such property, reverses earlier legislation that had attempted to make written proof of marriage increasingly mandatory, and facilitates the marriage of concubines of freed status and the legitimisation of their children irrespective of the social rank of the father. In a typically Justinianic manner, therefore, the effects of the law are at once both liberal and restrictive and combine philanthropy with severity. In passing, the law may also reveal a significant reform of the procedures for the handling of confiscated and escheated property. Since 529, fines and confiscations had accrued to the imperial estates of the *res privata* (see *J. Nov. 30*, note 36 and *J. Nov. 112*, note 14). C. 13 of the present novel contains a hint that such fines and confiscations were now being transmitted via the *res privata* to the imperial household (*domus divina*) and thus were directly benefiting the emperor. For further discussion of this law, see Bonini (1972b), Goria (1975), pp. 105–15 and 140–3, and Feenstra (1983), pp. 39–44.

² This law provides a further example of the responsive nature of imperial legislation, with the emperor issuing a general law addressing matters that had been referred to him for decision (under the procedures discussed at *J. Nov. 28*, note 19).

1

Accordingly, we decree that both a mother and grandmother, and other progenitors, after leaving to their children the share due to them by law, have licence to make a gift of the residue of their estate, whether they should wish it to be in whole or in part, to their son, daughter, grandson, granddaughter or further descendants, or to leave it to them by a last will, with the condition, should they so wish, that their father, or, in general, the person who has them under authority,³ shall have neither *ususfructus*⁴ of these holdings nor any share in them at all. They could, as a matter of fact, have left them even to outsiders⁵ without there being any benefit therefrom to parents. This is something that we permit any person to do, not only progenitors.

1. Persons under authority are to have licence to administer as they wish the holdings thus left or given to them, despite their being under authority, provided they are of mature age;⁶ but if they are of immature age, the holdings are to be administered by whomever the testator or giver of them may have decided, until those given or bequeathed them come to mature age. The testator or giver has licence, if desired, to entrust the administration of the said holdings actually to the mother, and to the grandmother, of those on whom the holdings have been conferred, even should the said women have husbands living with them, provided, though, that these women have themselves expressed their willingness to accept such administration. Should it be, as it may, that the bequeather or giver has not specified anyone as administrator for them, or that the person given such administration is either unwilling or unable to accept it, or has died before the persons come to mature age, we then command the relevant officeholder to appoint a trustworthy *curator*⁷ for such holdings, under lawful contract of surety, who has to administer and safeguard the property bequeathed to such persons until, as stated, they come to mature age.

In those cases in which no such condition is specifically included, what we wish to be observed is the law that passes the use of the property to the parents.⁸

³ 'Under authority' = *in potestate*.

⁴ '*Ususfructus*' = right of use.

⁵ 'Outsiders' = *extranei*: those outside of the family or household (see *J. Nov.* 1, note 1).

⁶ 'Mature age' = over twenty-five (see *J. Nov.* 72).

⁷ '*Curator*' = a form of guardian (see *J. Nov.* 18 c. 9, note 21).

⁸ The regulations referred to are to be found in *J. Nov.* 22, i.e. that otherwise the *pater familias* has a right of use over any property earned by a son *in potestate* from his own

2

Another piece of legislation that we have decided to add is that should anyone with a son or daughter by a free woman with whom he can establish a marriage, state in a deed, either officially executed or written in his own hand and with the signatures of three trustworthy witnesses, either by will or by entry in the records, that this male or this female is his son or daughter, without putting in ‘natural’⁹ son or daughter, such children are to be legitimate, and no further proof is to be required of them; they are to enjoy all the rights that our laws confer on legitimate children, on the ground that, as stated, their father has himself called them his children. From that, he is also shown to have had a lawful marriage with their mother; thus no other proof to corroborate the marriage is to be required of her, either.¹⁰ Should the father have more than one child by the same wife, and have provided attestation for one of them, in whichever of the stated ways, the father’s attestation given for one of them is also to suffice, as to rights at law, for the others born from the same wife.

3

Another point that we have decided to add to the present constitution is this: in the event that someone’s marriage has been dissolved after he took a wife by intention, without written documentation, and had children by her, no

labours or given him by a third party (the *peculium adventicium*) or bequeathed to a child under his authority (*in potestate*). This section of the constitution introduces a major reform of Roman law with respect to maternal property (*bona materna*), in that it allows a mother or, indeed, anybody else, to make a bequest or gift to those under paternal authority, expressly excluding the father from any right of use with respect to it, and even allowing the child to control or alienate it if they are of age. In the case of a child who is under age, administration of the property could be entrusted to a mother or grandmother. Justinian can thus be seen to curtail paternal power to the advantage of both women and children (see Arjava (1996), p. 104 and Krumpholz (1992), pp. 117–204).

⁹ ‘Natural’ = illegitimate (Berger (1953), p. 473).

¹⁰ In this section of the law, Justinian establishes three important points. First, anybody of any social standing (it is to be inferred) may take a freedwoman (*liberta*) as a concubine and may marry her (whereas such marriages across the social divide would traditionally have been deemed unacceptable). Second, that the children of a freedwoman concubine were to enjoy the same legal privileges as those of a free-born concubine (consequently, nobody could be prevented from marrying his concubine and retrospectively legitimising his children). Third, in a reversal of *J. Nov. 74*, no written documentation was to be required to establish a lawful marriage (save with respect to *illustres*: see c. 4 below): see Arjava (1996), pp. 205–6 and 217.

prejudice¹¹ is to result for the children born from the undowried marriage in respect of their father's inheritance, should he have gone to take another wife with dowry-contracts and likewise have had children by her; as marriage can be constituted by intention alone, they too are to be called to their father's inheritance, along with the other children, born of the second wife, whose marriage was with dowry-contracts. We also wish that to apply, similarly, if someone should first have allied himself with a wife under dowry-contracts, and after her has taken another wife by matrimonial intention alone.

4

Whereas we previously promulgated a law commanding that either dowry-contracts were to be made, or other forms of proof were to be issued by which marriages should be confirmed, before the defenders of the church,¹² or at least that oaths should be taken, we have at this point decided to improve the terms of previous legislation on this. For that reason, we command that those distinguished with the great ranks, down to *illustres*,¹³ should not embark on marriage otherwise than by making dowry-contracts, unless one had taken a wife by intention alone before obtaining such ranks – our command being that such marriages made before attainment of the rank are also to remain lawful after it, and that children born from it are to be legitimate, although after being honoured with such ranks, no-one is to take a wife otherwise than with dowry-contracts. However, we are relaxing the strictness of this law for barbarians¹⁴ subject to our realm, so that they can marry by mere intention if they wish, even should they have been distinguished with such ranks. As for all others of whatever rank, position in civil service, or occupation, apart from those distinguished with the great ranks, as stated, we are not preventing them from taking wives by dowry-contracts should they wish, and be able, to do so; but even if they do not use that procedure, we decree that marriages proven as being by intention alone are also to be valid, and we command that children born from them are to be legitimate.

¹¹ 'Prejudice' = Latin *praeiudicium*, meaning both pre-judgment and harm: see Berger (1953), p. 644. The children of an 'unwritten marriage' and a 'written marriage' were to be treated equally (Van Der Wal (1998), p. 129 (entry 888)).

¹² 'Defenders' (Greek ἐκδίκτοι) = (Latin) *defensores*. The law referred to is *J. Nov.* 74.

¹³ '*Illustres*' = the highest senatorial grade. The phrase 'down to' signifies that, as well as applying to such senators, the regulation was also to apply to the highest officers of state (such as consuls, the praetorian prefects, the *quaestor* et al: for the full list of magistrates bearing *illustris* rank, see Van Der Wal (1998), pp. 17–20).

¹⁴ 'Barbarians': presumably a reference to high-ranking Goths and Vandals in the reconquered territories, and others, such as the Persarmenian General Narses, who held high rank in the imperial army and government (see Teall (1965) and Gorla (1984), pp. 320–4).

5

We have already laid down a law¹⁵ ordaining that should anyone, after taking a wife without dowry but with matrimonial intention, ever eject her without cause recognised by law, she is to receive a quarter-share of his property; and we have subsequently made another law¹⁶ directing that should anyone take an indigent wife by intention alone, and predecease her after living with her till his death, she too is likewise to receive a quarter of his property, with the proviso that this is not to exceed the sum of one hundred pounds of gold. At present, however, we are improving the terms of each of those laws, by decreeing that in each case the children born of such marriages are legitimate and are called to their paternal inheritance, while the wife, in each of these cases, is to receive a quarter of her husband's property if her husband should have up to three children, either by her or by another marriage; but should there be more children, we command that, in each case alike, the wife is to receive the amount that devolves on one child. It is to be understood that the wife has only the use of such property, while the ownership is reserved to the children that she has had from that actual marriage; but should such wife have no children by him, we command that she is also to have right of ownership over the property that we have commanded is to come to her from her husband's estate, under the present law.¹⁷ However, an unjustifiably ejected wife is to take the share contained in this law at the actual time of the ejection, because we are absolutely forbidding the husband in such cases to receive the quarter share from his wife's estate, as under our previous law . . .¹⁸

6

. . . it being unambiguously observed that in all other cases not covered in the present law, the constitution of Leo¹⁹ of pious memory is to retain its own force. In no way, however, are we allowing any validity at all to the

¹⁵ A reference to *Codex* 5.17.11.

¹⁶ *J. Nov.* 22 c. 18.

¹⁷ See *J. Nov.* 53 c. 6.

¹⁸ The main effect of c. 5 of this constitution is that a poor husband no longer has claims to the property of his rich wife equivalent to the claims of a poor wife to the property of her rich husband. A poor widow has her rightful claim reduced, however, to the same share of an estate as a child would be entitled to. Moreover, if the deceased husband left children by a prior marriage, a poor widow is only entitled to a right of use with respect to that share (although it is possible that this position was later modified by *J. Nov.* 127): see Van Der Wal (1998), p. 144 (entry 971) and note 79.

¹⁹ A reference to *Codex* 6.18.1.

constitution of Constantine of pious destiny, addressed to Gregorius, and the interpretation of it made by Marcian of pious destiny, under which marriages with wives dubbed 'low' by Constantine's law are forbidden to any men given the distinction of high ranks.²⁰ Instead, we are providing licence to those who wish to link themselves with such women by matrimonial contracts, however great the distinction of their ranks. Apart from those distinguished by high ranks, others are to have licence to take such wives whether with written settlements or by intention alone, as they may wish, provided that the women are free and that full marriage with them is allowable.²¹

7

A further ruling that we have decided to make is that, in any event of dissolution of marriage between a husband and wife, the children born of such marriage are not to be injured in any way as a result of the break-up of the marriage: they are to be called to their parents' inheritance, and supported, indisputably, out of their father's estate. If it is the father who has been the cause of the break-up, and the mother has not gone on to a second marriage, they are to be brought up with their mother, but the father is to meet the costs; if it is shown that it is the mother's fault that the marriage has been dissolved, the children are then to live with their father, as well as being supported by him. In the event that the father is indigent, while the mother is well off, we command that the children, as being indigent, are to live with her and be supported by her; just as well-off children are obliged to keep their mother if she is needy, so we also judge it fair for children to be supported at the expense of a mother who is well off. We command, further, that what we have determined for the support of a mother and children who are indigent is also to apply for all ascendants and descendants, of either sex.²²

²⁰ Referring to *Codex* 5.27.1, *Nov. Marc.* 4, and *Codex* 5.5.7.

²¹ See c. 2 above: Justinian permits marriage between men and women irrespective of social rank and allows marriage to be unwritten save for with respect to *illustres*. The law of Constantine the Great, which had forbidden marriage between senators and women of low rank, had already been repealed by Justin I (see *Codex* 5.4.23,1–3) thereby enabling Justinian to marry Theodora. Procopius claims that this change to the law had been lobbied for by Justinian himself (see Procopius, *Anecdota* 9.51).

²² Traditionally, in Roman law, the children of a dissolved marriage remained with the father. Here, Justinian introduces some modification to that practice, in such a manner as to reflect his disapproval of those responsible for divorce, and to protect the interests of the children (see Arjava (1996), pp. 86–7).

8

There are numerous grounds that we have found, in ancient laws and our own, on which dissolution of marriages takes place too easily.²³ Because of that, we have decided to abolish some of them that have come to seem inadequate for dissolution of a marriage, and to include in the present law only those specifically named as being reasonable grounds on which either a husband or a wife can serve *repudium*.²⁴

Here, then, are what we determine as the grounds on which a husband is safely able to serve *repudium* and to profit from his wife's dowry, its ownership being reserved to the children of the marriage; or if there are no children, to enjoy the ownership as well:

1. if the wife is aware of a plot against the Sovereignty and does not reveal it to her husband. However, if it has been reported by his wife and the husband has said nothing about it, the wife is to be allowed to report it to the Sovereignty through any person, and the husband can find no occasion for *repudium* on that ground;

2. if the husband thinks that his wife can be convicted of adultery, it is the husband's duty to begin by indicting his wife, or the adulterer too. If such accusation has been proved true, on serving *repudium* the husband is then to have the dowry as well as his gift before marriage, and, in addition, should he not have children, is to receive from his wife's other property an amount found to equal one-third of the dowry. In that case both the penalty decreed by us and the dowry accrue to his ownership; while should he have children from the said marriage, we command that the wife's dowry, and her other estate as well, should be kept for the children, in accordance with the laws on that. Thus the legally convicted adulterer is punished together with the wife. Should the adulterer have a wife, she is to receive both her dowry and the gift in respect of marriage, on terms that, should they have children, his wife enjoys only the use of the gift, the ownership being reserved by law for the children. As for the rest of her husband's estate, we present it as a gift to his children. If there are no children, we decree that he is to transfer the ownership of the pre-nuptial

²³ In this and the following section of the law, Justinian's disapproval of divorce leads him to curtail the grounds for unilateral divorce deemed justifiable. Significantly, and contrary to his normal instinct to protect the welfare of women, he removes from the list of justifiable grounds contained in *J. Nov. 22 c. 15*, the justification that a husband had whipped or flogged his wife (see Van Der Wal (1998), p. 74 (entry 557) and note 31).

²⁴ '*Repudium*' = unilateral divorce.

gift to his wife, but all the rest of the husband's property is to accrue to the *fiscus*,²⁵ under ancient laws;

3. if the wife schemes against her husband's life in any way, or if she has knowledge of others who are doing so and does not reveal it to her husband;

4. if, against her husband's wishes, she goes to parties, or to the baths, with unrelated men;

5. if she stays out of the house against her husband's wishes, except perhaps with her parents;

6. if she goes to watch races, theatre shows or animal hunts without her husband's knowledge, or even when he refuses permission . . .

7. . . . always provided that in the event of his having ejected his wife from his house without one of the aforesaid grounds, with the result that, if she has no parents with whom she can stay, she necessarily spends the night outside the house, we command that the husband has no licence to serve *repudium* on his wife on that ground, because it is he himself who has been responsible for it.

9

Here are what we determine as the sole grounds on which a husband can reasonably be served *repudium* by his wife, and as a result of which she can both take her dowry and demand the gift in respect of marriage, the ownership of the gift being, similarly, kept for their children; or if there are no children, she can have ownership of that as well:

1. if either he himself forms some plot against the Sovereignty, or has knowledge of any such conspiracy and does not reveal it to the Sovereignty, either in person or through any other person . . .

2. . . . or if, in any way, the husband plots against his wife's life, or has knowledge of others with that purpose and does not reveal it to his wife and take pains to avenge it at law;

3. if the husband schemes against his wife's chastity by attempting to make her available to other men for adultery . . .

4. . . . or, if the husband indicts his wife for adultery and does not prove the adultery, the wife is allowed, if she wishes, to serve *repudium* on her husband on that ground also, to take back her dowry, and to obtain the pre-nuptial gift as well. Also on account of this calumnious accusation, should

²⁵ '*Fiscus*' = treasury, but here (as elsewhere in the novels) signifying that the property was to be confiscated and added to the imperial estates of the *res privata*: see *J. Nov.* 112, note 14. The regulations referred to are to be found in *J. Nov.* 98 c. 2.

she not have children from the said marriage, the wife is to receive, from her husband's other property, an amount found to equal one-third of the pre-nuptial gift, in ownership; whereas should she have children, we command that the husband's whole property is to be kept for the children, while what is contained on the pre-nuptial gift in other laws remains confirmed, with the proviso that because of the accusation of adultery, brought and unproved, the husband is also to be subject to the penalties that the wife would have been going to suffer, had such accusation been proven;

5. if the husband, in the same house as he lives in with her, is found to be treating his wife in contempt by living with another woman, or if he is proved to be staying constantly with another woman in a different house in the same city, and does not desist from such licentiousness even after being accused of this for a first and a second time, either by his own parents or his wife's, or by some other trustworthy persons, that is another ground on which the wife is allowed to dissolve the marriage, receive back the dowry that was given and the pre-nuptial gift, and also, for such aggravated insult, to receive from his other property one-third of the value constituted by the pre-nuptial gift. This is with the proviso that should she have children, it is only the use that the wife is to enjoy of the property she has received from the pre-nuptial gift and the penalty of one third of her husband's property, with the ownership being kept for the children they have in common; whereas should she not have children from the said marriage, we command that she is also to have the ownership of such property.

10

Whereas up to now there have also been some who have dissolved their marriage together by consent, we are in future not allowing that to take place at all, except in the possible case that they will be doing so out of a desire for chastity.²⁶ Should such persons have children, we rule that the dowry, on one side, and the pre-nuptial gift, on the other, are both to be reserved to their children. Should either of them, be it husband or wife, be found, after the consensual dissolution of the marriage for the sake of chastity, to be engaging in another marriage, or living unchastely, we

²⁶ Justinian's disapproval of divorce here leads him to instigate a fundamental reform of Roman law by imposing a penalty on those who divorce by mutual consent. This measure would be repealed by Justin II in 566 (see *J. Nov.* 140). For further discussion, see Arjava (1996), p.182 and Beaucamp (1990), pp. 174–7 and 222–6. 'A desire for chastity' = a desire to join a monastery or nunnery (although this is also dealt with separately in c. 12 below).

command that if, as stated, there are children of the said marriage, they are additionally to be given ownership of the remainder of the estate of the person convicted of this offence, as well as the dowry and the pre-nuptial gift. If the children are of immature age, we order that their upbringing, and the management of their affairs, are to be with the parent who has done nothing in contravention of the present law; but should both parents have fallen into such fault, then each parent's property is to accrue to the children, and the appointment of an administrator for them during their minority is to be under the care of the office-holder concerned, or the others to whom these matters are entrusted by our laws. If there are no children, each person's property is to accrue to the accounts of the public treasury, and those guilty of this offence are to be subjected to the penalties of the law. On no account do we permit the break-up of marriage by consent in any other way.

11

Next, we have decided to improve the terms of our legislation over those enrolled as members of the forces on active service, be they <regular> soldiers, *foederati*, *scholarii*²⁷ or others enrolled in any armed service whatever. We command that for however many years they remain on active service, their wives are to wait, even if they have received no letter or reply from their husbands.²⁸ If any such wife hears that her husband is dead, we do not let her enter into a second marriage even then, unless the wife first puts in an appearance (either in person or through her parents, or through any other person) before the *priores* and the *chartularii*²⁹ of the unit in which her husband was serving, and asks them or the tribune (if he is present) whether it is true that her consort has died. They are then to depose, with the gospels displayed, and with an entry in the records, as to

²⁷ '*Foederati*' = originally barbarian troops enrolled to serve the empire typically organised in their own units and under their own commanders. By the 540s, however, native Romans were seemingly permitted to join their units (see *J. Nov.* 103, note 22); '*scholarii*' = members of the *scholae* or palatine guard (see *J. Nov.* 30, note 33).

²⁸ This section of the law repeals *J. Nov.* 22 c. 14, which had permitted a military wife to sue for dissolution of the marriage and petition the emperor for the right to re-marry if she had not heard from her husband for ten years. Under a law of Constantine's (*Codex* 5.17.7) dissolution had been possible after four years. This provision provides a further example of a law injurious to women introduced by virtue of the emperor's hostility to divorce (see also c. 7 and 8 above).

²⁹ '*Priores*' = officers in command of a cohort; '*chartularii*' = record-keepers, military accountants, or secretaries who maintained the roster-list and payroll (see Treadgold (1995), pp. 100–5).

whether it is true that her husband is dead. After this entry has been included in the records and the wife has received a copy as her evidence, we still command her to wait for an interval of one year; after that has elapsed, she is allowed to contract a lawful marriage. If the wife dares to enter on another marriage in contravention of this procedure, both she and the man who has taken her in marriage are to be punished as adulterers. If those who have testified on oath, with an entry in the records, are subsequently convicted of having made a false deposition, they are to be stripped of their commission, and will be compelled to pay damages of ten pounds of gold to the man they falsely alleged to be dead; and he himself is to have licence, should he wish, to reclaim his wife. If the man whose death is in question should be a *scholarius*, his wife is to be given the said deposition by the *primi* of the *schola* and the *actuarius*, and if a *foederatus*, by his *optio*;³⁰ and this procedure is also to be followed for all others enlisted in armed service.

12

To the said grounds on which it is allowable to dissolve marriages with impunity, we have decided to specify the following, in addition: one is that men have been unable from the outset of their marriage to copulate with their wives and perform the function assigned by nature to the men; the next is that husbands or wives in an existing marriage have chosen a religious life, and residence in monasteries; and the third is that persons have been held in captivity for a certain length of time. In these three cases, we decree that what is contained in earlier laws is to be valid.³¹

Accordingly, we command that all the said grounds contained in the present law are to be the only ones sufficient for dissolution of marriage. We direct that all others are to be ineffective; no ground other than those specifically included in this law, whether contained in our own laws or in older ones, can dissolve a lawful marriage.

³⁰ '*Scholarius*' = a member of the palace guard (*schola*); '*primi*' = *primicerii* or chief officers of the *schola*; '*actuarius*' and '*optio*' = quartermaster (see Franks (1969), pp. 137 and p.178, Treadgold (1995), pp. 88–95 and, with respect to the *optiones* of the *foederati*, Laniado (2015), pp. 96–7). Latin remained the *lingua franca* of the Byzantine army at this time, its use facilitating communication between commanders and mercenaries or recruits of barbarian or western origin, who would have been more familiar with Latin than with Greek.

³¹ This section of the constitution clarifies the grounds for divorce that are deemed blameless (*divortium bona gratia*): see Berger (1953), p. 440. The legislation referred to is *J. Nov. 22 c. 5–7*, *Codex 1.3.52.13*, and *Codex 5.17.10*.

13

As some wives or husbands are eager to dissolve their marriages out of a desire to live in sin, we decree that should any wife ever form the wish to dissolve her marriage with her partner without any of our aforesaid grounds, she is not to have licence to do so. Should she persist in this impious attitude and serve *repudium* on her husband, we command that her dowry is to be given to her husband, to be kept for the children they have in common, according to law; although should they not have children, it is to become the husband's gain. The wife, on the liability of the judge who heard the case, is to be handed over to the bishop of the city in which they were jointly domiciled, so that under his supervision she may be enclosed in a monastery, and have to live out her life there.³² Should such a woman have children, a two-thirds share of her estate is to be given to the children, and the other third is to accrue to the monastery in which she is being enclosed, in right of ownership.³³ Should she not have children, but have parents, the two-thirds share of the estate she has is to be passed to the monastery in which she is being enclosed, and the other third given to her parents, unless she was under their authority³⁴ and they consented to her unjustifiable *repudium*; if they did consent to it, we do not permit them to keep anything at all out of their daughter's property, but we wish it all to accrue to the holy monastery. We wish her whole estate to accrue to the monastery, similarly, if she has neither children nor parents. If the judge who tried the case does not do this, and hand over the woman who has been condemned to this to the bishop of the city, for enclosure in a monastery, should he be an office-holder in this fortunate city he himself will be charged a fine of twenty pounds of gold, and his staff another ten. Should such office-holder be in a province and fail to carry out our decisions on this, he will pay a fine of ten pounds of gold, and his office five; also should he be a judge without holding an office, he will be charged a fine of ten pounds, and his staff five. The appropriate resulting fine is to be demanded from the said persons through the agency of the *comes* of the

³² Such monastic imprisonment was a novel feature of Justinianic law and marked the introduction of imprisonment as a punishment in itself (see Van Der Wal (1998), p. 47, note 18, Hillner (2015), pp. 314–41 and *J. Nov.* 127 c. 4, 134 c. 10.1 and c. 11.1, 3 and 12). It possibly makes its first appearance in *J. Nov.* 79 of 539.

³³ Under earlier legislation on those condemned to exile, such property would have gone to the imperial treasury or a city council (Hillner (2015), p. 334).

³⁴ 'Under their authority' = *in potestate*.

privata and of the *schola* of the *palatini*,³⁵ and to accrue to our crown treasury.³⁶

If it is the husband who takes steps to dissolve the marriage with his wife, and serves *repudium* unreasonably, we command him to repay the dowry he received, together with the gift before marriage, and to provide her with as much of his remaining estate as makes a third of the pre-nuptial gift. If she has children, the wife is to have only the use of the pre-nuptial gift and the third that we have added, with the ownership being kept for the children; if there are no children, the wife is also to have the ownership of the said property, in addition to the use.

The stated rulings on justifiably or unjustifiably dissolved marriages are what we have determined, and we direct that everything about the said cases is to be decided in accordance with this constitution.

14

If someone whips his wife or beats her with sticks, in the absence of any of the grounds that we have ordered to suffice against wives for dissolution of marriage, we do not wish there to be dissolution of marriage as a result; instead, the husband shown to have whipped or beaten his wife without such cause is to pay his wife, for such aggravated assault, as much from the remainder of his estate as makes a third of the pre-nuptial gift, although the marriage is to stand.³⁷

³⁵ ‘The *comes* of the *privata*’ = the *comes rerum privatarum* or head of the imperial estates, to whom confiscated properties were assigned (see *J. Nov.* 112, note 14); ‘the *schola* of the *palatini*’ = the palace or household guard, detachments of which we know to have been posted on the estates of the imperial household (*domus divina*) (see *J. Nov.* 30, note 33). Alternatively, the emperor may be referring to financial officials of the palatine bureaux (Delmaire (1989), p. 127), but the reference to the treasury of the *domus divina* in what follows (see note 36) makes the former more likely. The inference may be that rather than being kept separately from property of the emperor within the overall embrace of the *res privata*, as a distinct category of *res fiscales*, confiscated property was now being transmitted via the *res privata* to the imperial household (*domus divina*). If so, this process reveals an important stage of the process whereby the *domus divina* under Justinian progressively sapped the *res privata* of its wealth (see *J. Nov.* 30, note 36). This tendency had perhaps first become apparent with respect to ecclesiastical property acquired by the state *in lieu* of tax-debts (see *J. Nov.* 55, note 7).

³⁶ ‘Crown treasury’ = the treasury of the imperial household (*domus divina*): see Delmaire (1989), pp. 638–9.

³⁷ Such beating had hitherto been regarded as legitimate grounds for divorce: see c. 8 above and *J. Nov.* 22.

15

We add to this that if anyone possibly suspects someone of trying to dally with his wife's chastity, he is first to issue three written notices of legal proceedings, carrying attestations from trustworthy men. Then, should he, after these written witness-statements, find the man with his wife in his house, his wife's house or the adulterer's house, or in inns or suburban premises, the husband is to have licence to kill such a person with his own hands, without fear of any consequent peril.³⁸ Should he find such a man in conversation with his wife in any other place, he is to collect no fewer than three trustworthy witnesses through whom he can prove that he has found the man with his wife, and to hand him over to the office-holder trying criminal cases. He, on finding that after the three written witness-statements such man genuinely has been found with such wife, is to punish such man as having fallen under the charge of adultery on this evidence alone, without seeking any further proof; and the husband is to have licence to prosecute his wife as he may wish, and to pursue the charge according to law.³⁹

1. Since some people are found to be so impious that they actually dare to involve themselves in such uncleanness even in venerable houses, and plot sins in the very place where God-fearing people habitually pray for remission of sins, we command that if any such man should be found in holy places conversing with another man's wife against whom there is suspicion, her husband has licence, after three formal notices as stated, to hand both persons over to the defender of the church⁴⁰ or its other clerics. These are, on their own liability, to keep the persons, separately, until the governor of the region is apprised of the matter and sends to the bishop of the city for them to be handed over to him for subjection to due punishment, according to the laws that forbid retribution to be inflicted on adulterers at the hands of the most holy churches. Here too, the judge is to seek no other proof of adultery than the three witness-statements, as stated above; on

³⁸ This went considerably beyond what the Augustan law on adultery had permitted: see *Paul Sent.* 2.26.1 and *Digest* 48.5.21 (20), 23 (22 *pr.*). As a further sign of a hardening of attitudes, Justinian's law-commissioners had recently introduced the death penalty for adultery (see the discussion of the Justinianic editing of *Codex* 9.9.29.4 in Evans Grubbs (1995), pp. 216–18).

³⁹ I.e. he could push for the death penalty to be handed down.

⁴⁰ 'Defender of the church' (Greek ἐκδικος τῆς ἐκκλησίας) = Latin *defensor ecclesiae* (see *J. Nov.* 17, note 17). It is noteworthy that, in what was evidently a highly segregated society, church was one of the few places where unmarried or unrelated men or women could meet.

production of these three witness-statements, they are without fail to be punished as adulterers. Such persons ought not to have the protection of a venerable place⁴¹ which they have themselves held in contempt with their uncleanness. When the perpetrators of rapes of women and adulteries, anywhere else, have fled for sanctuary to houses of worship, our laws do not permit retribution to be inflicted on them by those houses; that being so, how shall we permit them to find any assistance from ecclesiastical precincts when their aim has been to commit such uncleanness actually in the church? No; without fail, they are to be handed over to the authorities, and to suffer the penalties that those who dare to defile most holy places deserve. After all, if someone has sinned there, where will he pray for salvation?

In general, we direct that should anyone find his wife, daughter, granddaughter or daughter-in-law conversing with someone in holy places, and suspect that it is for an improper reason that they are associating with each other, he is to hand them over to the defender or the other clerics of the said most holy church, for them to be responsible for keeping them, each person separately, until the governor of the region takes charge of them and considers the matter at law.

Conclusion

Accordingly, we wish that what our Serenity has determined, by means of the present law, shall be in force from now on in all the above-mentioned cases, except if they have by now been disposed of by either judicial verdict or amicable agreement; we decree that those cases are to remain valid. Your distinguished and lofty authority is accordingly to bring them to the knowledge of all in this glorious city, by publishing edicts; and is to take pains that they should become clear to all in the provinces, by sending instructions to the Most Distinguished provincial governors. Thus no-one at all is to be unaware of what has been determined by us for our subjects' advantage; provided, however, that your instructions to everyone are to include a prohibition to the effect that notification of the present law is to be done without any unlawful cost to our subjects.

Given at Constantinople, December 18th in the 16th year of the reign of the Lord Justinian, pius princeps, Augustus, after consulship of the Most Distinguished Basilius

542

⁴¹ I.e. they are denied any right of asylum.

118 | Constitution abolishing agnatic rights; and ruling on calls in intestacy¹

*The same Sovereign to Peter, Most Illustrious prefect of the sacred praetoria of the East*²

Preamble

Finding that numerous different laws have been promulgated in more distant times, through which differences over successions in intestacy have unjustly been introduced between relatives descended in the male line and those in the female line, we have decided that it is necessary to make comprehensive regulations for all successions of kin in intestacy, by means of the present law, with a clear, concise principle of distribution.

¹ ‘Agnatic’ = succession on the male line. In this major reform of inheritance law, Justinian abolishes any distinction between male or female and agnatic and cognatic kin in intestate succession. Instead, the kindred of the deceased are divided into four classes who succeed in order of proximity. First come the descendants (i.e. children) of the deceased, who each inherit equal shares if they are related to him by the same degree of kinship (e.g. if they are all children of the deceased or all grandchildren). If one of the deceased’s children has also died, their rights pass to their children who can claim that share. Second come brothers and sisters born of the same parents along with ascendants (i.e. parents and grandparents), with the latter inheriting in order of proximity (i.e. with parents excluding grandparents). Third come half-brothers and half-sisters, nephews and nieces of predeceased siblings who share the portion of the estate their parents would have received. Lastly come all other collateral relatives, in order of proximity (see Van Der Wal (1998), p. 130 (entry 895)). The law is primarily significant for its abolition of the agnatic principle on which Roman law had originally depended and its final replacement with the concept of blood relationship, and for the equal footing on which it places males and females (see Arjava (1996), p. 96 and Kaser (1980), p. 334). Both these tendencies were already evident in earlier legislation, but the pace of change may have been expedited by objective circumstances, for it is striking that so fundamental a change in the law on intestate succession should have occurred at the very moment when the empire found itself struck by the bubonic plague, which seems to have had a devastating demographic impact (see Sarris (2002), Meier (2016) and Teall (1965)). For a clear summary of the effects of this constitution as a whole, see also Buckland (1963), pp. 375–85. For further discussion, see Lambertini (1977).

² The praetorian prefect at this point was Peter Barsymes, who had previously held the posts of Augustal Prefect of Alexandria and *comes sacrarum largitionum*. In each of these posts, his determination to maximise revenues and curtail expenditure elicited sharp criticism from Procopius (see *PLREIIIB*, pp. 999–1002 (Petrus *qui et* Barsymes 9), Procopius, *Anecdota* 22.3–6, 17, 20–25, and 32–38 and Sarris (2006), pp. 218–19, where it is argued that his austerity drive as Praetorian Prefect in the 540s was probably primarily driven by the need to respond to the financial implications of the bubonic plague, which had just struck the empire).

Earlier laws laid down on this subject are thus to be inoperative in future, and the only rulings to be observed are those that we are making now.

Family succession in intestacy, as a whole, is recognised as falling into three categories, namely of ascendants, descendants and collaterals, which last is divided into *agnati* and *cognati*.³ The succession that we rule as coming first is that of descendants.

1

Any subsisting descendant of the deceased, of whichever sex or degree, whether in the male or the female line and whether independent or subject to authority,⁴ is to have precedence over all ascendants or collaterals. Even if the deceased was subject to authority under someone else, we order that his descendants, of whichever sex or degree, are nevertheless to have precedence even over the progenitors under whom the deceased was subject to authority – that being, of course, in respect of property not conferred on fathers by our other laws:⁵ the use of that property has to be conferred on, or kept for, parents, and we are retaining for them the laws on that, with the proviso that in the event of the decease of any of these descendants leaving children, his sons, daughters or other descendants are to succeed as substitutes in their parent's place, whether they should have been found to be subject to authority under the deceased, or independent. However many of them there are, they take the same amount of the deceased's inheritance as their parent would have received if surviving: the name given by antiquity to that form of succession was *in stirpes*.⁶

In this category, we do not wish degree to come into the question; instead, we decree that grandchildren through the predeceased son or daughter should be called together with the sons and daughters. No distinction is to be introduced as to whether they are male or female, or as to whether they are descended in the male or female line, or are subject to authority or independent.⁷

³ '*Agnati* and *cognati*' = relatives on the male and female lines.

⁴ 'Independent or subject to authority' (Greek ἀνεξούσιος εἴτε ὑπεξούσιος) = *sui iuris* or *in potestate*.

⁵ The laws referred to are *Codex* 6.61.6 and 6.61.8.

⁶ '*In stirpes*': in Latin, the *stirpes* were the descendants in a straight line from a common ancestor. In succession *in stirpes*, the inheritance was divided amongst the offspring of a common father in equal measure, with any descendants of a deceased child receiving the same as any other living child: see Berger (1953), p. 718.

⁷ The main significance of this section of the law (although not explicitly emphasised) is that henceforth when a son under paternal power (*in potestate*) died intestate, but left

That is what we have decreed on succession of descendants. We have decided that the next thing to determine is how ascendants, too, are to be called to succession from their descendants.

2

Accordingly, should the deceased leave no descendants as heirs, but have father, mother or other progenitors still alive, we decree that those are to have precedence over all collateral relatives, with the sole exception of siblings related to the deceased through each parent, as will be made clear in what follows. If there are several surviving ascendants, we command that those to have precedence are whichever are found to be nearer in degree, both males and females, whether on the mother's side or the father's. If they are in the same degree, the inheritance will be divided equally between them, in such a way that all ascendants on the father's side will take one-half, however many of them there may be, and the ascendants on the mother's side will take the other half, however many it may turn out that they are found to be. If, with the ascendants, there are found to be brothers or sisters related to the deceased through each parent, they will be called together with ascendants in the nearest degree, even should that be mother and father. It is to be understood that the inheritance is to be divided among them according to the number of persons, so that each of the ascendants and each of the siblings has an equal share. In this case the father can claim for himself no use at all of the sons' or daughters' share, because instead of this use, we have by the present law granted him a share of the inheritance, by right of ownership.⁸ No distinction is to be observed between these persons as to whether those called to the inheritance are female or male, whether they are related through a male or a female, or whether the person whom they are succeeding was subject to authority or independent.

descendants, those assets and funds under his control (known as the *peculium quasi castrense*) which he may have earned in imperial service, as a lawyer, in the service of the Church, or by imperial gift were to be inherited by his descendants and no longer reverted to the father, thereby further loosening the power of *patria potestas*: see Van Der Wal (1998), p. 60 (entry 459) and Arjava (1998). The father preserved a right of use, however, over everything else that the son had earned through his own labours or through gifts from third parties (known as the *peculium adventicium*) as recently asserted by the emperor in *J. Nov.* 117 c. 1. See Berger (1953), p. 624 for discussion of both the *peculium quasi castrense* and the *adventicium*.

⁸ I.e. the father can claim no right of use over property that has passed to the other siblings: see Van Der Wal (1998), p. 60 (entry 456).

It remains for us to consider also the third category, which is called collateral, and is divided into *agnati* and *cognati*; so that when this aspect too has been regulated, our law shall be found to be complete in all respects.

3

If, then, the deceased leaves neither descendants nor ascendants, the first people we call to the inheritance are his brothers and sisters, born of the same father and the same mother; these we have called to the inheritance together even with fathers.⁹ If none subsist, in second place we call to the inheritance the siblings related to the deceased by one parent, whether that be through the father alone, or through the mother. Should the deceased have siblings subsisting, and children of another brother or sister predeceased, these will be called to the inheritance together with their uncles and aunts on the father's and mother's side. However many of them there are, they will take from the inheritance a share of the same size as their parent would have been going to take if surviving. It follows from this that if the predeceased sibling whose children survive had in fact been related to the deceased through each parent, while the surviving siblings were actually related to him only through their father or their mother, that person's children, even though they are in the third degree, are to have precedence over their parent's siblings (whether those be on the father's side or the mother's, and whether uncles or aunts), just as their parent would have had precedence if surviving. And in the opposite situation, if a surviving sibling is related to the deceased through each parent, whereas the predeceased one was related through one parent only, we exclude the latter's children from the inheritance, just as he would himself have been excluded if still alive. In this category of relationship, we are conferring this privilege solely on sons or daughters of male or female siblings, in order that they should come into their parent's rights as substitutes for them; we do not concede this right to anyone else coming from this category at all. It is only when they are classed together with their uncles and aunts (be it on their father's side or their mother's) that we are conferring this favour even on the siblings' children themselves; if ascendants too are being called to the inheritance, as we have already described previously, with the deceased's siblings, there is no way that we permit a brother's or sister's children to be called together with them to succession in intestacy, even if their father or

⁹ Siblings thus inherit along with and in equal measure to the father, thereby further diminishing *patria potestas*.

mother was related to the deceased through each parent. As the purpose for which we have granted this privilege to a brother's or sister's children is that they shall take their parents' place, thus being the only ones in the third degree to be called to the inheritance together with those in the second degree, it is obvious that they have precedence over the deceased's uncles and aunts (whether on the father's side or the mother's), even though those are in the same third degree of kinship as well.

1. If, as we have stated, the deceased leaves neither siblings nor children, we call all the collateral relations to the inheritance, in order of preference according to each one's degree, so that those closer in degree are the ones to have precedence over the others. If there are found to be several of the same degree, the inheritance will be divided between them according to how many persons there are, a method our laws call *in capita*.¹⁰

4

We wish there to be no distinction, in any succession or inheritance whatsoever, between the males or females whom we have determined as to be called jointly to the inheritance, whether their relationship with the deceased was through a male or a female. Instead, we command that in all successions the distinction between *agnati* and *cognati* should be inoperative, whether it was treated, in earlier laws, as being on the ground of a person's being female, or of *emancipatio*,¹¹ or on any other basis. Our command is that all should come into succession from their relatives without any such difference, according to their degree of kinship.

5

From what we have said and determined on inheritance, another subject that has become clear is that of guardianship. We decree that everyone is also called to undertake the duty of guardianship, according to the degree and category of kinship of the individual's call to inheritance, whether alone or with others. In this respect, too, no distinction is introduced as a result of rights of *agnati* or *cognati*, but all who are related to the underage person, whether on the male side or the female, are likewise called to the guardianship; provided, that is to say, that they be male, of mature age

¹⁰ *In capita* (Latin: 'on heads') = per person in equal shares (Berger (1953), p. 718).

¹¹ *Emancipatio* = emancipation (Berger (1953), p. 451). The significant point here is that emancipated children (those freed from paternal power) were to inherit equally with those *in potestate*: see Van Der Wal (1998), p. 61 (entry 469).

and not barred under any law from undertaking guardianship, and that they have not used any *excusatio*¹² to which they are entitled. Women, however, are forbidden, even by us, to undertake the duties of guardianship, except for a mother or grandmother;¹³ those are the only women to whom, in their order of inheritance, we also give permission to undertake guardianship, provided that, on the record, they renounce remarriage and the recourse to the Velleianian judgment.¹⁴ Under that observance, they will have precedence over all collateral relations for the guardianship; only guardians *testamentarii*¹⁵ will precede them, as we wish the testator's will and choice to have the precedence.

If there are several people in the same degree of kinship called to the guardianship, we command them to meet jointly in the presence of the office-holder under whose care this matter comes, and to choose and nominate one or more of them, a sufficient number for the administration of the property. The minor's property is to be administered by him, or them, while the liability for the guardianship rests with all those called to it; and the property itself is under implied hypothec to the minor, under this administration.¹⁶

6

We wish all this that we have decreed on family successions to apply only to those of the catholic faith. On heretics, we command that the laws already

¹² *Excusatio* = exemption. In this instance that referred to is the *excusatio a tutela* which allowed somebody called to guardianship by law to escape it by virtue of circumstances which made it impossible for them to fulfil the duties that would be expected of them. Such circumstances included old age, the burdens of high office, poverty, already possessing a large number of children, and chronic illness (see Berger (1953), pp. 461–2). It is perhaps significant that the Greek text uses the Latin term, and not the Hellenised word ἐξκουσεία used elsewhere in the novels with respect to freedom from taxes and civic burdens (= *excusatio a muneribus*: see, for example, *J. Nov.* 59), suggesting that the latter had perhaps already acquired the technical fiscal connotations that it would maintain into the late Byzantine period (see Bartusis (2012), pp. 76–7).

¹³ For mothers as guardians, see *J. Nov.* 94.

¹⁴ 'The Velleianian judgment' = the *Senatusconsultum Velleianum* of c. 46 AD which forbade women from assuming liability for another's debts: see Berger (1953), p. 700 and *J. Nov.* 94 c. 2.

¹⁵ 'Guardians *testamentarii*' = *tutores testamentarii* or tutors appointed by testament.

¹⁶ According to this regulation, all kindred of equal degree are equally liable for the ward's property, even if only one of them is judicially appointed to its administration: see Van Der Wal (1998), p. 103 (entry 725).

enacted by us are to be confirmed, without undergoing any modification or derogation in consequence of the present law.¹⁷

We wish what our Serenity has decreed by means of this constitution to be observed in perpetuity, and to take effect for cases that have eventuated from the beginning of the month of July in the present sixth indiction, or will eventuate hereafter; previous cases that arose up to the above-mentioned date are to be concluded by the old laws.

Conclusion

Accordingly, your excellency is to take care that what has been decreed by means of the present law comes to everyone's knowledge, in this sovereign city by publication of edicts, as usual, and in the provinces by sending instructions to their Most Distinguished governors; thus no-one under our rule will be unaware of our Clemency's care for them. There is a proviso: notification of the present law is to be free of all cost to our city-dwellers and provincials everywhere.

Given at the seventh milestone,¹⁸ July 16th in the 17th year of the reign of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Basilius 543

¹⁷ The emperor excludes heretics from the provisions of this law on the grounds that they are unable to inherit: see *J. Nov.* 115 c. 3.14.

¹⁸ On the milestones of Constantinople, see *J. Nov.* 87, note 10.

119 | Gift in respect of marriage to be a special contract, and other heads¹

The same Sovereign to Peter, Most Illustrious prefect of praetoria

1

By means of the present law we are decreeing that the gift in respect of marriage² is, and is to be adjudged, a special transaction; it is not to be reckoned together with other gifts, because a counterpoise has been contributed for it, consisting of the dowry. Whether or not it is made publicly, with an entry in the records, we accordingly command that it is to retain its own force throughout, in relation to the wife on the one hand, and to the husband on the other. This is so whether it is endowed or conveyed to the wife by the husband himself, or by someone else; or if, alternatively, the gift is made to the husband personally, but on condition that the said property is contractually conveyed as a matrimonial gift. We command that this is to

¹ In this constitution, Justinian introduces various reforms beneficial to wives, children, slaves and landowners who risked being defrauded of their property. As such, it conforms to the general pattern of much of his more socially liberal legislation (on which see Krumpholz (1992) *passim*). But perhaps more significantly, he reverses or legislates against the general tide of several of his own laws, by loosening the regulations required with respect to the authentication of wills, permitting imperial officials to alienate church properties that had passed into the ownership of the imperial household, and by attempting to accommodate the dynastic ambitions of Byzantine testators. Each of these acts of re-positioning on the part of the emperor must be understood in the context of his response to the contemporary outbreak of bubonic plague. The high death rate associated with the plague is likely to have led to pressure to simplify procedures connected with the handling of bequests, and as the imperial government found the empire increasingly destabilised by the fiscal and psychological impact of the disease, he may have felt the need to reach out to members of landed society towards whom he had hitherto adopted a largely confrontational attitude: see Sarris (2002) and Meier (2016). For the reception of this law (as well as the provisions contained in *J. Nov.* 18) on the part of subsequent generations of Byzantine jurists, see Lokin (1992).

² 'Gift in respect of marriage' = *donatio propter nuptias*. This was the converse of the dowry – a gift from groom to wife traditionally given before the wedding which became her property, although the husband tended to administer it. By defining it as a contract, Justinian here exempts the gift from the requirement that it be publicly registered and notified if its worth exceeded a certain sum, even if it was supplied by a third party: see Van Der Wal (1998), pp. 78 (entry 577) and 115 (entry 809). Justinian had already dispensed with the need for a woman to register a gift that was bestowed on her so that she could acquire a dowry (see *Codex* 5.12.31, *Codex* 5.3.17, *Codex* 8.53.34 and *J. Nov.* 127 c. 2).

apply whatever the value of the gift, even should it not have been made publicly, as has been stated.

2

Another decree that we are making by means of the present constitution is that minors, at the same time as they are allowed to make dispositions over the rest of their property, are also to have licence to manumit their slaves by last will. No obstacle to that is to be constituted by their age; the law that previously prevented it is to be inoperative.³

3

In addition, we are also enjoining that if anyone has, in one contract, made mention of another contract, no demand for payment is to be made on the basis of that mention unless the other contract, of which mention has been made in the later one, is also produced; or unless another proof at law has been provided, demonstrating that the sum mentioned really is owed. That is a provision that we also find in ancient laws.⁴

4

We decree also that if ever, when an appeal has ensued, either each party, or only the appellant party, appears on the last day of the time allowed, but in time, and makes his presence known to the office-holder who is going to try the case on appeal, to his assessors, or to those who bring cases into court, and the judge puts off receiving him within the set days, no prejudice⁵ at all is to result against the parties, or one of them; such appeals are to be tried even after that, and to be concluded by legal verdict.

5

Our legislation is also required on another head that we have decided to amend. Whereas our laws declare that no appeal is to be granted against

³ Minors are thus able to manumit their slaves even if they have not yet reached the age of seventeen, thereby repealing the *lex Aelia Sentia* of 4 AD, which had forbidden manumission by those under the age of twenty, and which had already been modified by *Institutes* 1.6.7: see Van Der Wal (1998), p. 53 (entry 395) including note 10 and Berger (1953), p. 547. It was possible to make a will from the age of fourteen.

⁴ See *Digest* 22.3.

⁵ 'Prejudice' (Greek πρόκριμα) = Latin *praeiudicium*.

any verdicts handed down by Most Illustrious prefects of the sacred *praetoria*,⁶ we are decreeing that whenever a verdict has been handed down by Most Illustrious prefects, of whatever region, and, as may happen, one of the litigants considers that he has been unfairly treated, such person has licence, within a time-limit of ten days after the issuing of the verdict, to present a notice of claim to the Most Illustrious prefects who issue the verdict or to their assistants, or to those who bring cases into court. When that ensues, the verdict is not to be put into execution unless the victorious party first provides trustworthy sureties, equal to whatever is the amount of the judgment, that if subsequently a retrial takes place in legal form and the verdict is overturned, he will make restitution of the property to his opponent, with the increments prescribed by law.⁷ Should the person considering himself injuriously treated not put in his *libellus*⁸ within the above-mentioned time-limit after the verdict has been handed down, we command that the execution of the matter is to proceed without surety, although the right of re-trial is preserved for the person who has considered himself unfairly treated.

6

Additionally, we decree that in the event of minors wishing to renounce the inheritance that has come down to them and been accepted by them, should all the creditors be found present in the localities in which the reinstatement into the intact state⁹ is being requested, the creditors are to be summoned by the governor, and the minors are to renounce such inheritance in the presence of them all. Should all or some of the creditors be absent, we command that minors wishing to do this are to petition the governor of the region in which they live, and he is to summon the creditors by means of the customary proclamations. If the creditors do not make any appearance within the time-limit of three months, the minors are to be allowed to withdraw from such inheritance with impunity. The governor before whom the reinstatement into a former position is being transacted is to make provision for where the property in the

⁶ I.e. the praetorian prefects.

⁷ See *J. Nov.* 82 c. 11.

⁸ '*Libellus*' = statement of claim: see Berger (1953), p. 561. The Greek text uses the Latin word, although elsewhere the Greek διδασκάλιον is used.

⁹ 'Reinstatement into the intact state' (Greek εις ἀκέραιον ἀποκατάστασις) = *restitutio in integrum (propter aetatem)*: a reinstatement into a former legal position on the basis of the young age of the contracting part, i.e. an action granted to minors who had conducted a prejudicial transaction. See *Digest* 4.1 and Berger (1953), p. 682.

inheritance, movable and immovable,¹⁰ has to be safeguarded; its value is of course to be registered, by means of a publicly executed list, with an entry in the records.

7

We further decree that if anyone with property of which he has possession but in bad faith, alienates it, whether by sale, by gift or otherwise, and the person who believes that the said property belongs to him has knowledge of this, but does not, within ten years if both are present, or twenty years if they are not, serve notice according to law on the purchaser, on the recipient of the gift, or on whomever it is to whom the property has been transferred in any other way, the person in receipt of such property is to be confirmed in his possession; that is, of course, after the lapse of ten years in the case of local residents and twenty in the case of non-residents.¹¹ If the true owner of the alienated property does not have knowledge both that it belongs to him and that it has been alienated, we command that he can only be excluded by the special plea of thirty years;¹² the possessor of the property in this situation cannot aver that he is its possessor in good faith, when he obtained it from one with possession in bad faith.

8

As to the special plea of ten years, we have decided to rule as follows: if, during the said period of prescription,¹³ someone should be resident

¹⁰ The demand that a place needs to be prescribed for the *immovable* property to be deposited is evidently the result of sloppy draughtsmanship. See Van Der Wal (1998), p. 146, note 87.

¹¹ The ten-year period for *praescriptio longi temporis* applied to those who lived in the same locality or province (*inter praesentes*) whilst for others the twenty-year rule applied. For the possessor of the land to acquire ownership of it by virtue of holding it for that period of time, he had to hold it in good faith (*bona fides*). Justinian here makes it clear that, if the original owner was aware of the situation, the same periods of prescription applied to those who purchased or acquired land off an individual who had come to possess it, even if the vendor had held the land in bad faith (*mala fides*): see Berger (1953), p. 645.

¹² 'Special plea of thirty years' = *praescriptio triginta annorum*, i.e. the original owner had thirty years in which to sue for the return of his property on the grounds that it had effectively been stolen by the first possessor, who had then passed on what amounted to stolen goods to an unwitting third party. This brings the law with respect to immovable property into line with that for movable property: see Van Der Wal (1998), p. 95, note 17 and Berger (1953), p. 646.

¹³ 'Period of prescription' = *praescriptio temporis*: see Berger (1953), pp. 645–6 and Nicholas (1962), p. 128. Normally, a landowner occupying the same province as someone who held his property, believing it in good faith to be his own, only had ten years in which to bring

during some of the years and absent during some, the ten-year period is to be extended for him by the same number of years as those for which he has been absent during the ten years. We order that all we have determined as to the period of prescription is to be in force, not in past cases and issues, but only in future ones, after the present law.¹⁴

9

In the past, we promulgated a law¹⁵ that testators were to have the names of their heirs written in their wills either in their own hand or through the witnesses; but we have become aware that as a result of this strictness, a number of wills have been overturned, either because the testators were unable to observe this strict ruling, or, it may be, because they did not want certain people to find out about their will. Accordingly, we command that those who so wish are to have licence to observe this in their wills; but if they do not observe it, and make their dispositions in the old way, we decree that the will is still to be valid even so, whether someone has had the heir's name written by himself or by another person, as long as the testator at least observes all the rest of the legal procedure in his will.

10

As for the law by means of which we decreed that property that devolves on our own household from a holy church was not to be transferred to others, we decree that it is to be inoperative, both for what has already devolved by law on our household, and for what will devolve in future.¹⁶

an action for its return. This section of the law extends that period for landowners who were periodically absent from the province (due to imperial service or whatever other reason).

¹⁴ I.e. this change to the law is not to be applied retrospectively.

¹⁵ A reference to *Codex* 6.23.29 which is effectively hereby repealed.

¹⁶ This section of the law repeals *J. Nov.* 55 c. 1, thereby allowing state officials to alienate church property that had passed into the ownership of the imperial household (*domus divina*), and obviating the prohibition on the alienation of ecclesiastical property.

The operation of the state as effectively a 'clearing house' for landed property was central to the operation of the Roman and Byzantine government at every stage in its history (see Sarris (2012)). The readiness of Justinian to curtail his own harsh prohibitions on the alienation of formerly ecclesiastical land may have been informed by the increasingly cash-strapped state of the East Roman authorities as the bubonic plague began to take hold (see Sarris (2002)). The acquisition of Church lands by the state was probably akin to modern compulsory purchase: see Van Der Wal (1998), p. 113, note 30.

11

If anyone, in making a will, has included a bequest of an item of immovable property to his own *familia* or to any other person, in the form of a *legatum*,¹⁷ and has specifically stated that the said property is at no time to be alienated, but is to remain with the heirs or successors of the person to whom it has been bequeathed, we command that because the testator himself has forbidden its alienation, the Falcidian law is to have no applicability at all for such a *legatum*. We command that this is to apply for those cases that have not yet been decided by judicial verdict, amicable agreement or any other method.

Conclusion

Accordingly, your excellency will cause what our Serenity has decreed by means of the present law, which is to be in force in perpetuity, to come to everyone's knowledge, by publishing edicts in this sovereign city and by sending instructions to governors of all provinces.

Given at Constantinople, January 20th in the 17th year of the reign of the Lord Justinian, pius princeps, Augustus, 3rd year after consulship of the Most Distinguished Basilius 544

¹⁷ '*Familia*' = 'persons in the household of a single *paterfamilias*, including his children and slaves' (Arjava (1996), pp. 209–91); '*Legatum*' = legacy. On the *Lex Falcidia*, see J. Nov. 1 and Urbanik (2008). For an attempt on the part of appointed heirs to assert their Falcidian rights in such circumstances, see *Digest* 35.2.54. This law reveals the increasingly dynastic ambitions of Byzantine testators in an aristocratically dominated society, as they attempted to use legacies and trusts to effectively achieve a form of perpetual entail (see Sarris (2006), pp. 194–5). The emperor had hitherto attempted to contain such ambitions, which he regarded as contrary to the spirit of the civil law, which forbade the bequeathing of property to 'unknown persons' (*incertae personae*) such as one's descendants in perpetuity. But again, perhaps by virtue of the need to reach out to potential sources of support amongst the provincial elite as the plague had increasingly destabilising effects, he here adopts a much more emollient attitude. For further discussion, see Johnston (1988), pp. 250–4.

120 | Alienation and emphyteusis of ecclesiastical properties¹

The same Sovereign to Peter, prefect of praetoria

Preamble

As numerous different laws have been promulgated on alienations, emphyteuses, tenancies and the rest of the administration of ecclesiastical properties, we have decided to embrace the whole subject in the present law.²

¹ Hitherto the Emperor Justinian had been highly resistant to the alienation of ecclesiastical land, and had attempted to close down loopholes in the legislation concerned with Church property dating from the reign of Anastasius which had threatened to facilitate such alienation. In this constitution, however, the emperor confirms the extent to which imperial policy had recently been forced into reverse. Church land (especially in the provinces) could now be alienated or put out on permanent emphyteutic lease (which effectively amounted to alienation) in certain circumstances. Such circumstances primarily consisted of when the Church was unable to pay the taxes it owed to the imperial government, or was unable to repay creditors from whom it had borrowed money so as to pay such taxes or meet some other obligation. At the same time, Justinian wished to prohibit the managers of ecclesiastical estates from lowering their rents excessively, and exempted the Church from the compulsory assignment of fiscal responsibility for unproductive or deserted land (on which Justinian would soon legislate in *J. Nov.* 128). The emperor's emphasis on ensuring the continuous cultivation of land, permitting alienation so as to meet fiscal obligations, and attempting to prop up ecclesiastical rents in the face of downward pressure would suggest that this novel should probably be understood alongside *J. Nov.* 122 and *J. Nov.* 128 as a crisis-driven measure provoked by the bubonic plague, the demographic ravages of which were now having an increasingly destabilising effect on the empire's agrarian economy and fiscal system (see Sarris (2002) and Meier (2016)). Interestingly, the emperor requests that the law only be advertised in Constantinople whilst he ponders how to advertise it and manage its impact in the provinces. Such hesitancy would once more suggest a crisis-driven reform. The extension of permanent emphyteusis to ecclesiastical property would have important consequences for the future development of tenancy in the Byzantine countryside. Thus whereas the institution of emphyteusis is treated in the *Codex Iustinianus* as an issue of relatively recent interest, the legal problems arising from which appear in a mere four constitutions, the earliest of which dated from the late fifth century (see *Codex* 4.66), the authors of the eighth-century imperial law code known as the *Ekloga* (which supplemented Justinianic law) were obliged to give it much more extensive discussion (see Kaplan (1992), pp. 164–8, which requires revision in the light of Humphreys (2015) *passim* and esp. pp. 212–13)). Nevertheless, the direct management of ecclesiastical estates persisted both in the sixth century and beyond (on which see Sarris (2012)).

² On emphyteusis as a form of long-term lease, see Nicholas (1962), pp. 148, Berger (1953), p. 452 and Kaplan (1992), pp. 162–9.

1

Accordingly, we decree that the administrators of properties of the most holy great church in this sovereign city, or of an orphanage, a hospice, an almshouse, a hospital or other holy house in the sovereign city or its territory, with the sole exception of the holy monasteries, have no licence to sell, give, exchange, give as remuneration or alienate in any other way an immovable property, civic allowance or agricultural slave, except only if the exchange is with a sovereign household;³ nor do we permit anything to be given in right of *paroikoi*.⁴ We command that emphyteuses made by the most holy great church of the sovereign city and by the above-mentioned holy houses are to be for the person of the recipient himself, and for another two as successive heirs;⁵ and no more than one-sixth of the agreed rent is to be remitted to the person acquiring the emphyteusis.⁶ As for the various suburban estates belonging to the said most holy great church and

³ 'Sovereign household' = the imperial household or *domus divina*. On such transactions, see *J. Nov.* 119 c. 10, which had lifted the earlier imperial prohibition on such properties then being passed on to third parties, and *J. Nov.* 55, note 7. It is interesting that incomes assigned to a property by the government (the so-called 'civic allowance', on which see Jones (1964), p. 697) and rural slaves are treated as immobile property, presumably because they were effectively tied to the estate (rather like *coloni adscripticii*: see *J. Nov.* 7 pr.) and were thus effectively subsumed within it. In *J. Nov.* 131 c. 12, it is decreed that annuities that accrued to Church properties would be treated in the same way (see Van Der Wal (1998), p. 91, note 4).

⁴ 'In right of *paroikoi*' (Greek παροικικὸν δίκαιον): see *J. Nov.* 7 c. 1. As noted there, the Greek word πάροικος (like the word γεωργός) was used as a synonym for the Latin word *colonus*, meaning a farmer or agricultural worker (as in *colonus adscripticius*). The term 'right of the *paroikos*' used in the novel is thus a translation of the Latin term *colonorium ius*, meaning the law or rights concerning *coloni adscripticii*. The 'right of *paroikoi*' alluded to here refers back to a law of the Emperor Anastasius (*Codex* 11.48.19) whereby *coloni* and others who had worked on an estate continuously for thirty years became 'free *coloni*' (*coloni liberi*) acquiring ownership of their personal fund (*peculium*) which could comprise a piece of land assigned to them by the landowner (see Sirks (2008) and Sarris (2011b)). This was presumably partly meant as an incentive to prevent *coloni adscripticii* resorting to flight. By granting this right, however, Anastasius had unwittingly created a legal loophole which permitted *coloni* employed on ecclesiastical estates to claim land or property that belonged to the Church, thereby infringing the prohibition on alienation. As noted in the Introduction, some peasants appear to have known enough law to assert this right, to Justinian's great displeasure. The issue is also addressed in *Codex* 1.2.24.

⁵ I.e. a three-generational limit is set to prevent effective alienation through perpetual emphyteusis.

⁶ Justinian here stipulates that the level of rent agreed with each new tenant could not be less than five-sixths of that agreed with the previous tenant. The emperor was in principle opposed to any reduction of ecclesiastical income, but by virtue of the impact of the bubonic plague, the pressure on rents at this point would have been increasingly downward, as landowners of all sorts found themselves struggling and ultimately competing to attract tenants (see Sarris (2002)).

to the said holy houses in the sovereign city or its environs, our command is that if such suburban estates⁷ are producing income, those administering the said holy places are to give them on emphyteusis to the recipient and then two successions, in the said manner, at full rent; there is to be no remission at all, but even an increase. However, if the said outlying properties are not producing any income at all, we grant licence to the stewards of the holy places to give them on emphyteusis for a certain amount, as has been stated before.

1. In the event that any property that is given in emphyteutic right, from any of the said holy places, devolves on either a sovereign household or our divine crown treasury, a city, a city council or any other holy house, we grant licence to the stewards of the holy places by which the emphyteusis was originally made that, within two years after such emphyteusis has devolved on one of the said persons, they may publish their decision as to whether to leave the said property with those on whom it has devolved, and continue to receive the annual income mentioned in the *pactum*,⁸ or else to break off the emphyteusis and resume the property, should they consider that to be profitable to them.

2. If there are any sites belonging either to the said most holy great church, or to any of the said holy houses, on which there may be old buildings that have collapsed and yield no income, and the above-mentioned holy houses to which the sites belong cannot rebuild them, we give their stewards licence to alienate the said sites with permanent emphyteutic right,⁹ but only on condition that the emphyteusis is to be effected either on the basis of one-third of the rents collected from the

⁷ Such suburban estates (Greek προάστεια) are well recorded in both the documentary and literary sources, and were typically a central focus of investment and primary source of revenue (see Banaji (2007), p. 142, note 47 for literary references and discussion and *P.Oxy.* XVI 1913 for the προάστειον of the Apion family outside the Middle Egyptian city of Oxyrhynchus). These suburban territories were thus economically vital to the interests of both individual and institutional landowners, and it is for this reason that Justinian forbids their levels of rent to be reduced in any way whatsoever. A similar arrangement is found with respect to the estates of the Apion family around Oxyrhynchus: with respect to certain types of land, arrears were permitted. With respect to other landholdings, however, they were completely forbidden. Significantly, in the Apion papyri, the latter are described as 'outlying places' (ἐξωτικοὶ τόποι): in the light of this law, it might be suggested that they were 'outlying' with respect to the city of Oxyrhynchus, and were thus suburban estates or προάστεια (see Sarris (2006), pp. 52 and 55 and *P.Oxy.* I 136). Justinian's suggestion that the Church should increase rents with the accession of each new tenant, however, can be dismissed as a pious hope amid the mounting demographic cataclysm of the 540s.

⁸ *Pactum* = agreement.

⁹ This is the first occasion on which Justinian permits the perpetual emphyteusis of Church property under any circumstances, which, as the law makes clear, is regarded as a form of alienation. This reform is vivid testimony as to the urgent need to ensure the continuous

buildings when they were still standing, from the beginning of the term of the emphyteusis, or else, should the emphyteutic lessee prefer to take over the sites on the basis that he should first rebuild and then pay half the proceeds on them to the holy house from which he is receiving the said sites, on an assessed valuation of the rents, we permit that to be done also. We also permit the holder of such emphyteusis to make use of the materials found on site from the collapsed buildings.

2

Should anyone wish to receive, by way of use,¹⁰ any immovable property whatsoever from the most holy great church of the sovereign city or from one of the above-mentioned holy houses, he is not to receive it unless he forthwith provides the holy house, from which he is receiving the said property, with another property in right of ownership, which yields the same amount of income as the property being given him yields, and which is not burdened with any higher public taxes; and the terms are to be that after his death, or after the period agreed for the grant of use (not, of course, exceeding the recipient's lifetime), each property is to devolve in entirety, both as to use and as to ownership, on the said holy house.¹¹

3

We permit rentals to be made by the said holy houses for whatever number of years the contracting parties may agree, provided, that is, that the period does not exceed thirty years.¹²

4

In the event of any of the said holy houses being short of money for payment of public tax-contributions, or for any other necessary cause whatever that may eventuate for the holy house, its stewards are to be allowed to hypothecate immovable property and give it as specific security, so that the creditor may have possession of the said property, collect its

cultivation of land (and thus flow of rents and tax revenues) in the wake of the advent of the bubonic plague (see *J. Nov.* 122 and Sarris (2002)).

¹⁰ For the usufruct of ecclesiastical properties, see also *J. Nov.* 7 c. 4.

¹¹ A deal on such disadvantageous terms is unlikely to have been particularly attractive.

¹² Justinian was clearly anxious that long-term leases potentially opened the way to claims of ownership through long-term occupancy and possession (= *praescriptio longi temporis*, on which see Berger (1953), p. 645).

proceeds and account them to himself, partly against the actual money he has lent, and partly as interest, not to exceed one-quarter of 1 per cent.¹³ If the heads of the said holy house repay the debt, or if the creditor has been repaid in full out of the proceeds, the property is to return to the holy house from which it has been given.¹⁴

5

We wish emphyteuses, hypothecs, and tenancies of more than five years, to be made as follows.¹⁵ By the most holy great church of the sovereign city, they are to be made with the consent and approval of its most blessed archbishop and patriarch, with the most God-beloved managers and *chartularii*¹⁶ of the said most holy great church taking an oath, in his presence, that the contract is not being made with intent to defraud it of its rights. In the case of other holy houses, if they have *chartularii*, those are to take the corresponding oath before the head of the holy house; if they do not have *chartularii*, the heads of the holy houses themselves are to make the contract, with the holy gospels displayed, and to include in the wording of such contracts an oath that the contract is not being made with intent to injure or defraud the holy house.

1. We forbid stewards, those in charge of orphanages, stewards of other holy houses, as also all their *chartularii*, and their parents, children and other relatives both familial and in right of marriage, to receive emphyteuses, tenancies or hypothecations of properties belonging to the said holy houses, either in person or through an intermediary person. They are to be aware that if anything of the kind takes place, it is our command both that it will be invalid, and also that the recipients' entire estate, and those of the managers, *chartularii* and stewards to whom they are related, will devolve after their death on the holy house from which they receive the property.

¹³ 'One-quarter of 1 per cent' = per month, or at an annual rate of 3 per cent.

¹⁴ *J. Nov.* 7 c. 6 had permitted the Church to engage in a general hypothec with respect to such borrowing (i.e. the mortgaging of the 'whole property' without specifying a particular piece or parcel of land). The case described here is more akin to the Church identifying and using a specific property as security for an antichretic loan (i.e. a loan in return for which the creditor is granted the use of a property in lieu of interest: see Van Der Wal (1998), p. 101 (entry 712) including note 37 and c. 6 of this law below).

¹⁵ The mortgaging or holding of Church land as security on a long-term basis is thus treated as akin to emphyteusis.

¹⁶ '*Chartularii*' = secretaries (see Sarris (2006), pp. 52 and 57).

6

That, then, is what we have ruled for the most holy great church and for the said holy houses in the sovereign city and its environs. Now follow the arrangements that we have decided to make for other most holy churches, monasteries, hostels, hospitals and other holy houses situated in all the provinces of our realm, and moreover for monasteries in the sovereign city and its environs.

1. Accordingly, we give licence to the said holy houses not only to make a temporary emphyteusis on immovable properties belonging to them, but also to give them in emphyteutic right in perpetuity, to those who wish.¹⁷ If they are most holy churches or other holy houses whose administration is done by the most holy bishop of the area, either in person or through his most holy clergy, such contract is to be made with his consent and approval, and the stewards, administrators and *chartularii* of the said holy house are to take an oath in his presence that no loss will be incurred by the said holy house as a result of this emphyteusis. As for almshouses, hostels, hospitals or other holy houses under their own administration, in the event that they are holy houses of worship the contract is to be made by consent of the majority of the clerics serving in it, and also, of course, of the steward; should it be a hostel, almshouse, hospital or other holy house, it is their head who is to make the contract, with the administrators of the said holy houses taking an oath in the presence of the most God-beloved bishop by whom they are appointed or ordained, that nothing is being done in such transaction to harm or defraud the said holy houses.

2. As for holy monasteries, it is their hegumens, with the majority of the monks who serve in them, who are to make the transaction. In all the said cases, we command that the wording of the contract is to contain an oath that what is being done is not to harm or defraud the said holy houses.

That is how this procedure is to be conducted; and there is to be no remission of more than one-sixth of the income yielded by the property on which the emphyteusis is given.¹⁸ We also order that all we have determined above on collapsed buildings situated in the sovereign city is also to apply for these holy houses.

¹⁷ The extent of Justinian's concession by allowing the perpetual emphyteusis of Church land not belonging to the Great Church is remarkable given his resistance to alienation in his legislation of the 530s. Again, the demographic ravages of the plague and its economic and fiscal consequences provide the most likely explanation (see Sarris (2002)).

¹⁸ Here, once again, we see the emperor resisting downward pressure on rental incomes. See also *J. Nov.* 122.

Another ruling that we have decided to make for the said holy houses is that if any of them should become liable for debts, either for public tax-payments or because of any other necessary cause affecting the said house, and it is not possible for the said debts to be paid off out of movable property, in the first place an item of immovable property is to be given to the creditor as a special security, so that he can collect the rents from it and put them down to his own account, in part towards the principal of the loan and in part towards interest, at not more than one-quarter of 1 per cent. If they cannot pay off the debt in this way, we command that those appointed by the most holy patriarchs, whether they are metropolitans, other bishops or archimandrites, or heads of orphanages, almshouses, hospices or hospitals, or administrators of other holy houses, are to make official records before the most holy patriarchs themselves by whom they are ordained or appointed, under oath from the administrators and with the approval of the majority of those ministering in them, for the debt to be made public, and the fact that it cannot be paid off out of movable property. Those appointed by metropolitan bishops, whether they are bishops, archimandrites, heads of orphanages or almshouses, or administrators of other holy houses, are likewise to draw up such official records in the presence of their metropolitan bishops themselves.¹⁹ Official records are similarly to be made in the presence of the bishops who are appointed by patriarchs or by metropolitan bishops, and who have monasteries, almshouses, hostels, hospitals or other holy houses under their jurisdiction; always provided that whether it is before patriarchs, metropolitans or other bishops that such official records are being made, no cost or expense is to be incurred in connection with them by the holy houses: it is to avoid their incurring expense that we no longer wish such official records to be executed, by the above-mentioned persons or houses, before provincial governors or local defenders.²⁰

After that procedure has been followed by the above-mentioned most holy patriarchs, metropolitans or other bishops, the said administrators of the indebted holy house are then to post a written advertisement for twenty days in a public place in their city, in this way attracting the attention of intending purchasers of the immovable property, so that preference can be given to the person making the highest offer. When all that goes forward, the sale is to take place, but the price must without fail be put to meeting the debt, so that the purchaser is not to have security

¹⁹ 'Metropolitan bishop' = the senior bishop in the province, with his seat at the provincial capital.

²⁰ 'Defenders' (Greek ἑκδικῶν) = *defensores civitatum* (see *J. Nov.* 15).

without having paid down the price, for the debt itself; that is a condition to be specifically recorded under oath in the deed of sale, as is the statement that nothing is being done to injure or defraud the said holy house.²¹ Should no purchaser be found for such property by the said process, we command that the person to whom one of the said holy houses is indebted is to receive the said holding in right of what is called *pro soluto*.²² A fair and exact valuation is to be made; one-tenth of the total valuation is to be added to it; and provided that the administrators of the indebted holy house, and the majority of those ministering in it, approve such sales, the creditor is to receive the property at that price in valid ownership, in place of payment.²³ The immovable property provided for this is not to be given at the creditor's choice, but as the mean between the profitable and unprofitable possessions of the said holy house, with reference to its income from them, taxes and, apart from those, its condition.

3. If any bishop, steward or administrator of any holy house whatsoever, whether situated in the sovereign city or in the provinces, has borrowed, or shall hereafter borrow money, we command that they are not to account the loan as being on behalf of the holy house unless they first show that the proceeding was for the holy house's use. Neither the creditor himself nor his heirs are to have any action over it unless they show that the money has been used for purposes pertaining to the holy house; otherwise, they are to launch their action against the person who borrowed the money, or his heirs.

7

We further command that, with the exception of the most holy great church of the sovereign city and the holy orphanages, hostels and

²¹ In a further concession, the emperor permits the alienation of church land to private individuals. The emphasis placed on the need to pay taxes may once again indicate the emperor's determination that tax-revenues should continue to be forthcoming irrespective of the disruption of the agrarian economy caused by plague (see Sarris (2002)). For such alienation *in extremis*, see also *J. Nov.* 46 c. 1–2 and *J. Nov.* 67 c. 4.

²² '*Pro soluto*' ('instead of payment')= acquisition of ownership in repayment of a debt (see Berger (1953), pp. 752–3).

²³ For the repayment of monetary debts with land, suggestive of a lack of liquidity in the monetary economy at this time, see Lucks (1991). The latter regards this lack of liquidity as a result of state expenditure on warfare and other pressing concerns of the period, but, once more, the pressure on landowners to pay tax while their tenants, employees, and incomes were being reduced by the plague should not be overlooked as a likely cause (see Sarris (2002)). Procopius criticises Justinian for not remitting taxes at this time (*Anecdota* 23.19).

almshouses in the sovereign city and under its territory, all most holy churches and holy houses, and moreover monasteries sited in the sovereign city and in various provinces, are allowed to make exchanges among themselves, as long as each holy house is kept free from loss; and not only the administrators of each holy house, but also the majority of those ministering in it, must give consent to such transaction, in written form or by deposition. In no way, however, do we permit what has devolved, or will hereafter devolve, on any holy house from a sovereign household to be sold, hypothecated, exchanged or alienated at all, even should any such transaction be a mutual one between holy houses.

1. Whereas it has come to our knowledge that even monasteries have been alienated by certain people for conversion from priestly function into use as private dwellings, that too is something that we entirely forbid.²⁴ Should anything of the sort be found to have taken place, we give licence to the most holy bishop of the area to gain recovery of any such monastery, and to restore it to its original function. However, if any of the said holy houses both in the sovereign city and in the provinces, with the exception of the most holy great church of the sovereign city, should have a holding burdened with heavy public tax-contributions and bringing in no income to the holy house, we give the administrators of the said holy house licence to alienate such holding in whatever way it wishes, to the advantage of the said holy house.²⁵ For such an alienation, official records must, of course, also be executed before those from whom the appointment or ordination of the administrators of such places proceeds; and the heads of each holy house, and the majority of those ministering in it, must take an oath on the holy scriptures that the alienation is not taking place for any collusion, favour or fraud whatsoever, but that it is for the preservation of the said holy house from harm. We forbid stewards, administrators and *chartularii* of holy houses, wherever those are, and their parents, children or other relatives, either familial or in right of marriage, to enter into tenancies, emphyteuses, purchases or hypothecs of immovable properties belonging to the said holy houses, either in person or through an intermediary person, in just the same way as for those in the sovereign city, on pain of the same penalties.

²⁴ *J. Nov.* 7 c. 11 describes this as a particular problem within Egypt (on which see Steinwenter (1958)). It might be inferred that the abuse had now spread further afield, imperial prohibitions notwithstanding.

²⁵ Once more, Justinian permits alienation of ecclesiastical property so as to ensure the payment of tax-revenues.

8

Should any holder of a tenancy or emphyteusis of property belonging either to the most holy great church or to another holy house, situated in any region of our realm, either cause the property he has received, or may hereafter receive, to deteriorate, or else fail for two years to pay the rent agreed by him for his emphyteusis or tenancy, we give licence to the holy house from which the tenancy or emphyteusis has been made to demand from him both what he owes for the time that has elapsed, and the original condition of the property in his tenancy or emphyteusis; also to eject him from his emphyteusis or tenancy, without his being able to launch any action for improvements against the holy houses.²⁶ Should their administrators not wish to eject him, we order them to demand from him what is found to be outstanding from the tenancy or emphyteusis, while he stays in possession of the property given him until he completes the defined period, paying the agreed amounts. Should he abscond, we grant the heads of the said holy places licence to indemnify the holy houses against loss out of his property, without his being able to put forward a claim for improvements then, either.

9

We allow the most holy churches of the cities of Odessus and Tomis²⁷ to alienate immovable properties for the ransom of prisoners of war, except for any possessions that were given them on the condition that they were in no way to be alienated. Another concession we make is that the most holy church in Jerusalem has licence to sell houses belonging to it situated in the said holy city, at a price no lower than what is realised from their rents over fifty years, for the sale price to be invested in another, better source of income.²⁸ Should people present, sell, provide in any way whatsoever, or bequeath unprofitable possessions to any holy house whatsoever, whether

²⁶ I.e. the tenant may not claim compensation for any improvements he has made to the landholding (which, in the case of emphyteusis, were deemed to belong to him). For such compensation upon the termination of a lease, see also *J. Nov.* 64. The emphyteutic lease generally expired if the tenant failed to pay the rent for three years. Justinian may here be attempting to tighten up that provision with respect to ecclesiastical property by reducing the period of permissible default (see Kaplan (1992), p. 165).

²⁷ Odessus (modern Varna) and Tomis (Constantza) were Black Sea coastal cities and as such were highly vulnerable to the mounting challenges the empire's Balkan territories faced from Slav and Turkic raiders across the 540s (see Sarantis (2016), p. 34 and Sarris (2011a), pp. 170–7). The novel here repeats the provisions of *J. Nov.* 65.

²⁸ The novel here repeats the provisions contained in *J. Nov.* 40.

situated in the sovereign city or in the provinces, we command that the holy house on which such possession has devolved is not to suffer any harm as a result of such properties, or to be burdened on account of taxes or for any other cause whatsoever; instead, the whole of such burden is to revert to the donors and their heirs, who are obliged to take back such possessions that have been given, and to make restitution to the holy house, out of their own estate, for all loss to it that eventuates from this cause. Should there have been dishonesty accompanying this transaction, such that any money has been paid to the holy house over it, we also command that the holy house is to keep that as a profit of its own, while the unprofitable property is without fail to be returned to the donor and his heirs.

1. Additionally, we command that no compulsory obligation is to be imposed on most holy churches or other holy places, situated both in the sovereign city and in all the provinces of our realm, to buy any possessions, unprofitable or profitable, wheresoever situated, so that they should not for that reason be found to lose ones that they have, or to become liable for debts.²⁹ Also, should anyone wish to receive, by way of use, immovable property from any of the said holy houses (just as we also ruled above for holy houses situated in the sovereign city), he is not to receive it unless he forthwith provides the holy house from which he is receiving it another property, in right of ownership, which yields as much income as the property being given him yields, and is not burdened with higher tax-payments.³⁰ This is to be on condition that after his death, or after the time agreed for the giving of the use (but not, of course, exceeding the recipient's lifetime), each property devolves in entirety on the said holy house, in respect of both ownership and use.

That is what we have commanded for immovable properties; . . .

10

. . . but as for sacred vessels belonging to the said most holy great church of the sovereign city, or to other houses of worship situated in any region whatever of our realm, we lay down, as a general rule, that they are not to be sold or hypothecated for any other purpose than the ransoming of prisoners of war.³¹ However, should there be superfluous vessels, serving

²⁹ I.e. the estates of the Church are to be exempted from the compulsory assignment of sterile or deserted land (known as *adiectio steriliūm* or ἐπιβολή).

³⁰ The novel here repeats *J. Nov.* 7 c. 4.

³¹ This provision, which had hitherto applied only in the troubled Balkan provinces, is now extended to the empire at large. The period 540–544 had witnessed especially intensive

no necessary purpose, in one of the above-mentioned holy houses, in the event that such holy place is burdened by debts and there are no other movable properties out of which the debts ought to be paid off, we give them licence to execute official records, as has been stated above, and to sell the superfluous vessels to other holy houses, or to melt them down and put them up for sale similarly, putting their price toward the debt, so as to avoid alienating immovable property.

11

Should any transaction have been entered into that is in contravention of what we have directed in the present law over movable and immovable property belonging to one of the said holy houses, the property in respect of which this has ensued is to be returned to the said most holy church or holy house, along with the interim proceeds; and the price, return gift or what has been given in exchange or for any other cause whatever, is also to remain with it. Should an emphyteusis have been made in contravention of our directions, we command that the said property is to be given back to the most holy church or to the holy places, and its holder is to fulfil the *pactum*³² in accordance with the force of the contract of emphyteusis. Should a property of a church or other holy house have been given away, it too is to be given back to the most holy church or other holy places, together with the interim proceeds and a further amount equal to the value of the said property. Should a hypothec have been given in contravention of this, the creditor is to lose the sum owed, and is to give the said property back to the holy place; and the notaries public who have the temerity to serve on such a contract, in contravention of this law of ours, are to be condemned to perpetual exile. However, if, before this law, any transaction has taken place in accordance with old constitutions, we command that it is by all means to retain its own force; but we decree that everything that has taken place in contravention of old laws is to be overturned, and property that has been given against the force of those laws is to be given back to the holy houses. Our ruling is that in future everything should be done in accordance with the present law, all other constitutions promulgated on such cases in the past being hereafter annulled.

fighting in Syria and the Western Caucasus, by virtue of renewed Persian aggression (see Sarris (2011a), pp. 153–8).

³² '*Pactum*' = agreement.

Conclusion

Accordingly, your excellency is to observe unimpaired what our Serenity has decreed by means of the present law, to be valid in perpetuity, by posting edicts for ten days, in the usual places only; nothing is to be sent to the provinces for this purpose, as we ourselves are seeing to the manner in which our present general constitution is to become public without harm to our taxpayers.³³

Given at Constantinople, May 9th in the 18th year of the reign of the Lord Justinian, pius princeps, Augustus, 3rd year after consulship of the Most Distinguished Basilius

544

³³ The conclusion to this law is highly informative: unusually for a law addressed to a praetorian prefect, the law was not to be advertised in the provinces but only in Constantinople, while Justinian pondered how to advertise its measures in such a way as not to cause excessive disruption.

121 | Interest-payments by instalments to be reckoned up to the double¹

[Greek only]

*Emperor Justinian Augustus to Arsilius, governor of Tarsus*²

Preamble

Observing that there are city councillors petitioning us, we are showing proper consideration for them by refusing validity to schemes to contravene our laws, and to devious agreements.

1

Our Majesty has been informed by Eusebius³ and Aphthonius that they are grandsons of Demetrius, born to Demetrius' son Palladius; that Demetrius was indebted to Artemidorus for a loan of five hundred gold pieces, on which interest had been charged; and that they had recently procured a divine directive to the effect that once double the debt had been paid, there was by our laws to be no demand against them. Yet, they said, the creditor's successors Epimachus and Artemon say that they are lying in their petition, and should not gain from our assistance, because the full amount of the debt had not been paid, but only 949 gold pieces.

The petitioners say that their father Palladius, together with Paulus and with his father Demetrius, had paid 867 *solidi*, but that Artemidorus' children Artemon and Prisciana, forebears of Epimachus and Artemon,

¹ In this constitution Justinian responds to an appeal from named petitioners from Cilicia concerning the application of imperial law with respect to legitimate rates of interest on a debt. The emperor had decreed that, no matter what, the total repayable to the creditors should never be more than double the principal. When this case had initially come before the provincial court, however, both the defendants and provincial governor had failed to take Justinian's reform of the law into account. The emperor thus upheld the appeal (for such judicial error, see Harries (2007), pp. 38–40). To a certain extent, this constitution supports Procopius' criticism that due to the frequency of legislation issued by the emperor, it was often difficult to ascertain what the law on a given topic actually was (see Procopius, *Anecdota* 14.9–11). Justinian had responded to such criticism in *J. Nov.* 60. For discussion of this law, see also Cassimatis (1931), pp. 63–4.

² Tarsus was the capital of the province of the First Cilicia (*Cilicia Prima*) to the South East of Asia Minor.

³ None of these individuals are otherwise attested.

had said that they had told a lie in their petition, and should not receive assistance from us, because payment in part did not affect the principal; but rather, Epimachus and Artemon had wanted it all to be reckoned as interest, as stated by a judgment of the provincial governor, so it was for that reason that they had demanded from Palladius another loan-contract of six hundred gold pieces, in place of the original one for five hundred.

They themselves say that they have paid, variously, Palladius 72 gold pieces and Eusebius and Aphthonius ten, making up the combined total of 949 *solidi*. However, the judge who heard the case, not having considered that the whole ground of accusation constituted a single action, did not accept their plea, and had wished to give judgment against them in the capital sum of six hundred gold pieces. They have requested to be discharged from that obligation, and, on a calculation of the entire debt due from the five hundred *solidi*, to be released from that entire debt, and to recover the loan-contract of 600 gold pieces, if they repay the remaining fifty-one lacking from the total of one thousand gold pieces.⁴

2

Our laws intend there to be no payment in excess of double, and differ from previous ones in that those limited debts to double if there had been no payment, whereas ours have accepted payment by instalments as liquidating the debt once they had reached the double. We accordingly decree that that is how this should be calculated, and that by paying what is lacking from the one thousand *solidi*, they should also recover the loan-contract of 600 *solidi*, so that the debt is not found to have been demanded several times over as a result of this.⁵

⁴ Both sides in this dispute agreed that 949 *solidi* had been paid by the initial debtor and his heirs with respect to an initial loan of 500 *solidi*. The latter contested that the prohibition against having to pay more than double the principal of a loan meant that they could not be made to pay more than a further fifty-one *solidi* to discharge their debt, notwithstanding that a new due-bill had been issued for 600 *solidi*. The creditor's family, however, had contended that the limitation did not apply as payments had been made in instalments and were effectively servicing the interest on the initial loan. The governor had agreed with them.

⁵ The impression given by the emperor is that both the creditor's kin and the governor had been acting on the basis of an out-of-date knowledge of the law. Justinian would legislate on this matter again in *J. Novs.* 138 and 160. The legislation banning the payment of more than double the principal (Latin *ultra duplum*), including interest already paid, is also referred to in *J. Edict* 9 c. 5 but is not otherwise extant. The effect of Justinian's reform of the existing law was that no interest could be charged once the interest paid equalled the initial sum borrowed.

Conclusion

Your magnificence is accordingly to take pains to put our decisions, manifested by means of this divine pragmatic directive, into practical effect. The interpretation contrary to this made in the judgments mentioned by the petitioners is to be annulled, and all one-sided, rapacious transactions that have been, or shall be, made in contravention of the law are to be inoperative.

May the Divinity preserve you for many years, my most congenial brother.⁶

Given at Constantinople, April 15th, consulship of the Most Distinguished Belisarius 535

⁶ 'Congenial brother': this was the proper form of address for a provincial governor when addressed by the emperor (see *PLREIIIA*, p. 125 (Arsilius)).

122 | Edict: constitution on skilled workmen¹

[Greek only]

[No heading]

Preamble

The chastening that has been sent by God's goodness ought to have made those following occupations and trades, including various kinds of craftsmen, workers on the land, and seamen too, into better people; but it has come to our notice that instead, as a result of it, they have turned to avarice, and are demanding prices and wages double or triple what was formerly customary.²

¹ Due to the fact that this measure (which also appears as *J. Edict. 6*) does not record an initial addressee, but does mention the Urban Prefect of Constantinople in the Conclusion, it is often assumed that this law was only addressed to the Urban Prefect and only applied to Constantinople. It should be noted, however, that the Conclusion clearly refers to two officials: the main recipient (addressed as 'your excellency' (τῆς σῆς ὑπεροχῆς) and, secondly, the 'Most Illustrious' (ἐνδοξοτάτου) prefect of Constantinople. The former style of address was used with respect to the Praetorian Prefect of the East (see, for example, *J. Edict 13*), and he should thus be identified as the edict's primary recipient. This is important, for the law describes the impact on both urban and rural economies of the bubonic plague of this period. In particular, it records craftsmen, agricultural labourers and both skilled and unskilled workers of other sorts to have taken advantage of the shortages of labour and commodities caused by the plague to demand higher wages and prices, just as *J. Nov. 120* indicates that tenants on Church lands were demanding to pay lower rents. The fact that this measure appears to have been addressed to both the praetorian and urban prefects suggests that it was meant to be of empire-wide effect and was probably issued with a view to an empire-wide crisis, and did not simply concern Constantinople. It thus provides important evidence for the reach and scale of the plague and its impact at this time (see discussion in Sarris (2002)).

² The 'chastening' referred to is a reference to the bubonic plague, which had reached Constantinople in 542, having spread across the empire from Egypt. Procopius, who witnessed the ravages of the plague in the capital, claimed that Justinian contracted it, but managed to recover (*Wars 2.23*). As noted by Van Der Wal ((1998), p. 111, note 21), Procopius accuses Justinian of having previously permitted the guilds of Constantinople to set their own minimum prices, thereby tacitly repealing the anti-monopolistic legislation of the Emperor Leo and Zeno that had been ratified by Justinian at *Codex 4.59.1* and 2 (see *Anecdota 20.1–5* and 26.19; also discussed in Kaldellis (2004), pp. 223–4)). If so, this measure can be read as having been meant in part to reverse that move. Indeed, Kaldellis suggests that at *Anecdota 20.2* and 26.19, Procopius deliberately echoes the phraseology deployed in the final sentence of the preface of this edict with respect to the tripling of prices (i.e., Justinian's τριπλασίονας τιμᾶς is reflected in Procopius' τριπλάσια τιμήματα), thereby casting the emperor's criticisms of others back at himself. In Alexandria, Justinian is accused by Procopius of having ruined merchants by imposing state control of food-supplies and other

1

Accordingly we have decided to forbid such avarice on everyone's part, by means of a divine edict. In future, no tradesman, workman or craftsman in any trade, business or agricultural employment whatsoever is to dare to demand prices or wages higher than used to be customary. We command those surveying quantities for building, agricultural and other works³ not to inflate the estimates for those carrying out the work; they too are to keep to the original practice. We also command those commissioning works of any kind whatsoever, or purchasing any wares, to observe this; we do not allow them, either, any power to pay more than the customary amount laid down. Those demanding any more than the past custom are to be aware that if they are shown to have received or given an amount in contravention of what had been directed originally, they will be obliged to pay in three times that sum to the public treasury.

Conclusion

We command that these matters are to be investigated, and punitive measures taken, by your excellency and the Most Illustrious prefect of this fortunate city.⁴ It is our wish that those who contravene this decree are to be made, through you, to pay the set fine, and subjected to punishments, with a fine of five pounds of gold being imposed on the staff under you for any neglect of our directions.

Given at Constantinople, March 23rd in the 17th year of the Lord Justinian, pius princeps, Augustus, 3rd year after consulship of the Most Distinguished Basilius 544

forms of exchange. This too may have been in response to the administrative chaos caused by the arrival of the plague (see *Anecdota* 26.36–40). The description of the plague as a 'chastening' reflects Justinian's adoption of the early Christian view, that 'human hardship, in the form of disease, accidents, persecution or natural disasters, emanated from the love of God for all men, as the Old Testament taught. It was a form of divine teaching, to remind men of human sinfulness and of the necessity to mend their ways, and as such educative and inflicted with a paternal spirit' (Hillner (2015), pp. 67–8).

³ 'Those surveying . . . for agricultural . . . works': probably a reference to the surveyors of farmed plots in and around Constantinople (and probably found in other cities) discussed in *J. Nov.* 64.

⁴ 'By your excellency and the Most Illustrious prefect of this most fortunate city': as noted in the introductory note, the wording would suggest that this measure had two addressees, i.e. the Urban Prefect of Constantinople and the Praetorian Prefect of the East (*contra* Van Der Wal (1998), p. 111 (entry 784)).

*The same Sovereign to Peter, Most Illustrious magister of the divine officia*²

Preamble

We have already made certain dispositions on the administration and privileges of most holy churches and other holy houses, and on other heads concerning them; and at the present time we have decided to include in this law, with appropriate amendment, the previous provisions on most holy bishops, clerics and monks that have been made in various constitutions.³

1

Accordingly, we decree that whenever the need arises for the appointment of a bishop, the clergy and the leading men⁴ of the city of which the bishop is to be appointed are, with the holy gospels displayed and at the peril of their own souls, to make out nomination papers on three persons, and to declare, in the actual nomination papers that their choice of these men is not due to any payment, promise, friendship or any other motive whatsoever; but that they know them to be of orthodox catholic faith, of respectable life, and literate; also that none of them has either a wife or children, nor, to their knowledge, has had, or has, a concubine or natural children,

¹ In this lengthy constitution, Justinian codifies, clarifies and modifies a wide range of laws and regulations concerning the Church and its interactions with civil society. Topics addressed include the procedures for the election of bishops and abbots and the ordination of priests (including those of curial, adscript and servile status), the attempted introduction of a prohibition on clergy acting as estate administrators and tax farmers, the ability of ecclesiastical institutions to rent properties and interact with the land market, the representation of clergy and monks at legal proceedings, and issues of monastic discipline (on which see Konidaris (1990)). At the same time, the law casts light on less pious aspects of sixth-century Byzantine social realities, including priests and holy women engaged in illicit affairs, clergy engaged in gambling and attending shows, and the penalties to be imposed on those who mock and insult the clergy, disrupt religious ceremonies, or dress up as monks, nuns or priests for amusement or sexual titillation. This novel is referred to at the end of the sixth century in the correspondence of Pope Gregory the Great (see discussion in Kaiser (2008), Loschiavo (2015), p. 94 and Hillner (2015), p. 294).

² 'Magister of the divine officia' = master of offices or *magister officiorum*.

³ See, in particular, *J. Novs.* 5, 6, 16, 22, 46, 56, 57, 67, 79, 81 and 83.

⁴ 'The leading men' = the leading members of the city council and the representatives of any local senatorial household (see Sarris (2006), pp. 155–8).

but that even if one of them did previously have a wife, she was in fact the first and only one, not a widow or divorcee, nor one forbidden either by the laws or by the sacred canons; but further, that they also know him not to be a city councillor or a provincial official, or else, if he had been of the status of councillor or civil servant,⁵ they know that he has completed not less than fifteen years of monastic life.

1. Another point that must be included in the nomination papers is that they know the person chosen by them to be no less than thirty-five years of age.

From the three persons for whom such nomination papers have been made out, the one to be appointed is the one who is preferable in the appointer's choice, and on his liability.⁶ A city councillor or civil servant who, as stated, has been advanced to the episcopate after spending fifteen years in a monastery, is released from his status, but with the condition that on being released from the council he keeps only a quarter of his estate for himself, the rest of his property being claimed, under our law, for the city council and the public treasury.⁷

2. We give licence to those making out the nomination papers that if there is a layman, other than a city councillor or civil servant, whom they consider to be worthy of the aforesaid selection, they are to select such person together with two others who are clerics or monks, but with the condition that the layman thus selected for the episcopate is not to be appointed immediately, but is first to spend not less than three months in the ranks of the clergy, and only to be appointed bishop once he has been instructed in the holy canons and the sacred ministry of the church; he who must instruct others must not be under other people's instruction after his appointment.

If, as may be, there should in some places not be found three persons suitable for such selection, those making out the nomination papers are to be allowed to make them out for only two persons, or even one; but it must contain all the attestations that we have stated. If those whose duty it is to make the selection for bishop do not make out such nomination papers

⁵ 'Civil servant' = *cohortalis* (see *J. Nov.* 6, note 6). This chapter of the law re-states provisions also found in *J. Nov.* 6. Although in *J. Nov.* 6 the period of fifteen years is not explicitly set out, Van Der Wal suggests that it was probably already established practice and thus should be inferred (Van Der Wal (1998), p. 56 (entry 426) including note 22).

⁶ 'The appointer' = the metropolitan bishop (the head bishop in the province, who was appointed by the patriarch of the See concerned). See canons 4 and 6 of the Council of Nicaea, and Liebeschuetz (2001), p. 120.

⁷ See *J. Nov.* 38, Procopius, *Anecdota* 29.19 and Van Der Wal (1998), p. 57, note 28.

within six months, the one with whom the appointment rests is then to appoint the bishop, at the peril of his soul, all other procedures that we have stated being observed. If anyone is appointed bishop in contravention of the above-mentioned procedure, we command that he is, without fail, to be ejected from the episcopate; but further, the one who dared to appoint him in contravention of it is to be suspended from his priestly ministry for a year, and his entire estate, over whatsoever period of time it has come down to his ownership and in whatsoever way, is to be claimed for the ownership of the church of which he is bishop, because of the wrong way in which he has acted.

2

If anyone brings a charge against the person selected for episcopal appointment, on any ground that is capable, under the laws or the canons, of impeding his appointment, his appointment is to be held over, and the person by whom the bishop was to be appointed is first to conduct a careful investigation into the charge that has been brought against him, whether the accuser is present to follow up the charge he has brought, or delays in carrying his accusation through for up to three months. Should the investigator find him guilty of the charge, the appointment is to be disallowed; but should he prove not guilty, the appointment is to be unimpeded, and the accuser, whether he failed to establish the charge he brought or abandoned it, is to be banished from the province in which he lives. If anyone appoints the accused person prior to investigation, the appointee is to be ejected from his high priesthood, and the one who dared to appoint such a person is to be subject to the penalty stated above, by both being disbarred from his sacred ministry for a year, and having his entire property claimed for the church.

1. We decree that what is to be observed above all is that no-one is appointed as bishop by means of a payment, of gold or anything else.⁸ If any such sin is committed, the givers and the recipients, and their intermediaries, are putting themselves under condemnation by the divine scriptures and the sacred canons; for that reason, the giver, recipient and intermediary are to be removed from their high priesthood, or the honour of their clericate, and the payment made for that purpose is to be claimed for the church whose high priesthood he intended to buy. Should the one who received any payment for this purpose, or who acted as intermediary

⁸ See *J. Nov.* 6.

in the affair, be a layman, we command that he is to be charged double the amount paid, to be claimed for the church. We order, too, that it is not just the bribes paid in this way that are to be claimed: we also decree that any security put up for it in any way, and also liability against securities or the guarantor, and any other right of action, is to be inoperative; in addition, the recipient of the undertaking is not only to surrender the agreed amount, but is also to be charged a further amount equal to that contained in the agreement, which must be given to the church.

3

However, should any bishop wish to transfer his property, or part of it, to the church whose high office he is taking, either before his appointment or after the appointment, we are not merely not preventing that, and decreeing that he is free of any condemnation and penalty resulting from the present law, but we in fact adjudge him as deserving high praise: that is not a purchase, but an oblation.⁹

As for customary perquisites, all that we permit to be paid by bishops on their appointment are the sums specified in the present law, as follows.¹⁰

Our command, then, is that the most blessed archbishops and patriarchs, namely those of the elder Rome, Constantinople, Alexandria, Theoupolis¹¹ and Jerusalem, if custom has it that at their appointment the perquisite payable to the bishops and clergy is less than 20 pounds of gold, are to pay only the recognised perquisite; whereas if more than that had been paid before this law, nothing more is to be paid than the 20 pounds of gold. Metropolitans¹² appointed by their synod or by the most blessed patriarchs, and all other bishops appointed by either patriarchs or metropolitans, are to pay, if the appointee's church has an income of not less than 30 pounds of gold, 100 gold pieces¹³ for their enthronement fees, and 300 pieces to the appointer's notaries and the others in his service; if the church revenues yield less than 30 pounds of gold per annum, but not less than ten, he is to pay 100 pieces for enthronement fees and 200 pieces to the other customary recipients as a whole. In the event that the church's

⁹ See also *J. Nov.* 6 and *J. Nov.* 56.

¹⁰ For papyrological and other Egyptian evidence for such 'entry fees', see Wipszycka (1996), pp. 95–212.

¹¹ 'Theoupolis' = Antioch. This use of the term 'patriarchates' to refer to the Apostolic Sees plus that of Constantinople is regarded as a sixth-century development (see Kazhdan (1991) 3, p. 1599).

¹² Metropolitan bishops were the head bishops of each province.

¹³ The coins referred to are *solidi*.

revenues are less than ten pounds of gold per annum, but not less than five, he is to pay 50 pieces for enthronement fees and 70 pieces to the other usual recipients as a whole. If the church has an income of less than five pounds of gold but not less than three, he is to pay 18 pieces for enthronement fees and 24 pieces to the other customary recipients as a whole. If the church's revenues should be found to amount to less than three pounds of gold but not less than two, he is to pay 12 pieces for enthronement fees and 16 pieces for all other customary perquisites. We do not permit the bishop of a church with an income of less than two pounds of gold to pay anything, either for enthronement fees or for any other perquisites. The sums that we have designated as to be paid are to be received by the chief presbyter of the appointing bishop and his archdeacon, and distributed by them between the usual recipients.

We command that this is to be observed without fail, both so that churches do not become burdened with debts, and so that high priestly offices in them do not become venal. Should anyone dare to take more than the amount defined by us for enthronement fees or customary perquisites, in any manner, we command that three times any extra amount that has been paid is to be claimed from his property for the church of the one who has paid it.

So much for the bishops' appointment; . . .

4

. . . and after their appointment, we command that bishops are to be free of both servile and adscript status. It is otherwise, should a city councillor or civil servant have been appointed in contravention of the aforesaid ruling; if so, we command that they be removed from their episcopate and returned to their council or unit to avoid any affront to the high priesthood as a result of such status. However, those from council status who may be found to have been appointed as bishops before this law of ours are to be free of such status, but are to pay the lawful share of their property to the city council and the public treasury, with the proviso that ecclesiastical rights are not to suffer any diminution in respect of property acquired by them since their episcopate, which we have directed to belong to their church. In the event that the appointed bishop is subject to the authority of his parent, from the moment of his appointment he is to be independent.¹⁴

¹⁴ 'Subject to the authority of his parent . . . independent' = if he is *in patria potestate* he automatically becomes *sui iuris*: see *J. Nov.* 81.

5

We do not permit most God-beloved bishops and monks to become tutors or *curatores*¹⁵ of any person as a result of any law; but we do permit presbyters, deacons and sub-deacons who are called on for a position as tutor or *curator*, solely in right of kinship, to accept it, provided that within four months, reckoned from their being called on by the appropriate judge, they make a written declaration, before the appropriate judge, that they have accepted such duty of their own free will. If any of them does so, as he may, he is not to be under any prejudice¹⁶ in respect of another position as tutor or *curator*.

6

We do not permit a bishop, steward or other cleric of any rank, or a monk, to take on, whether in his own name or that of his church or monastery, the function of a collector or demander¹⁷ of public tax-contributions, or a tax farmer,¹⁸ or a tenant of others' holdings, or a *curator* of a household,¹⁹ or a legal representative, nor to be a guarantor for such activities, both so that there shall be no detriment from that cause to the holy houses,²⁰ and so that their divine ministries are not impaired.

¹⁵ 'Tutors': (Greek ἐπίτροποι, (Latin) *tutores* = ordinary guardians; '*curatores*' = supervisors (i.e. a form of guardianship that arose outside of the normal forms of tutelage (*tutela*)). For the translation into Greek of these Latin terms, see Van Der Wal (1999a), pp. 128–30. Thus far the law repeats the provisions of *Codex* 1.3.51, which are modified hereafter.

¹⁶ 'Prejudice' (Greek πρόκριμα) = Latin *praeiudicium* or pre-judgment. The effect of this clause is that having agreed to act as a guardian once, it is not to be simply assumed that he would do so again.

¹⁷ 'Collector or demander' = Greek ἐκλήπτωρ (see *J. Novs.* 130 c. 3 and 134 c. 2) and ἀπατητής. The terms were essentially synonymous.

¹⁸ 'A tax farmer' or 'franchisee of taxes' (μισθωτής τελῶν): this passage provides the only explicit mention of tax farming in the novels.

¹⁹ '*Curator* of a household (κουράτωρ οἴκου) = the manager of a large estate.

²⁰ 'No detriment from that cause to the holy houses' = so that the ecclesiastical estates (ἅγιοι οἴκοι or εὐαγείς οἴκοι) may not come to bear liability for the actions of such clerics or monks: indicating that hitherto it had been legal for clerics acting in such capacities to do so on the security (and at the risk of) ecclesiastical properties. It is instructive that clergy and ecclesiastics were often employed as administrators and stewards in the documentary papyri relating to the estates of the Apion family around Oxyrhynchus in the sixth and seventh centuries: *P.Oxy.* I 136 (dating from 583) records a deacon contracting to become an estate steward (προνοητής); *P.Oxy.* LVIII 3952 (c. 610) records a similar contract to which the principal party is a priest from the Holy Church of Oxyrhynchus; whilst *P.Oxy.* LVIII 3958 (614) records the Apion family to have employed as a cashier or manager of urban properties (ἐνοικολόγος) a psalmist from the confraternity of St Theodore (see Sarris (2006), pp. 52–5). The papyri would suggest, therefore, that this provision of the

However, should there be any holdings found adjacent to churches or monasteries, and should the administrators of the said holy houses wish to take them on rental or emphyteusis, we permit such rental and emphyteusis to proceed, as long as all the clergy and monks declare, either in the actual contract or with an entry in the records, their agreement that it is in the interest of the holy houses for this to be done. We also give licence to the most holy churches themselves, and other venerated houses, to make leases and emphyteuses between each other, and similarly we permit the clergy to rent the holdings of their own churches and administer them, provided that it is with the consent of the bishop and the steward; persons whom we have forbidden to do this, in another law, are excepted. If anyone acts in contravention of what has been stated, should he be a bishop, we decree that all his property, from whatsoever cause or person it has devolved on him, whether before his episcopate or since it, is to be claimed for his church; should those who have committed this offence be stewards or other clergy, they are to be charged whatever financial penalty their bishop may approve, to be claimed for the church. In this case those who have entrusted them with the farming of taxes or tenancy of any holding, or the collection or demanding of public taxes, or the supervision of an estate, or who have accepted them as guarantors for the above-mentioned businesses, are to have no action against the church or monastery, its property or its administrators, nor against the persons to whom they will have given credit, nor against their property or their guarantors;²¹ those who will have entrusted the above-mentioned persons with the collection, farming or demanding of collective or individual public tax-contributions, or taxes, or may have accepted them as guarantors, will be obliged to make restitution for any loss to the public treasury that may eventuate, out of their own resources.

7

No governor will be allowed to compel most God-beloved bishops to appear in court to give evidence. Instead, the judge is to send members

law was either subsequently repealed or simply widely ignored. Indeed, in *P.Oxy* I 136 (lines 37–39), the deacon and his guarantor expressly state that they were ‘renouncing the privilege of sureties, contrary to the new ordinance issued concerning sureties and people accepting responsibility’ (probably a reference to *J. Nov.* 4 or *J. Nov.* 99, or perhaps this clause of the present novel).

²¹ Again, this would suggest that hitherto such actions against the Church had been permitted. That being the case, it is possible that many of the instances of ecclesiastical institutions falling into debt with respect to tax collection and sureties referred to in *J. Nov.* 120 may have arisen from such circumstances.

of his staff to the bishops for them to make statements as to what they know, with the gospels displayed, as befits priests.

8

Nor do we permit a bishop to be brought to court or summonsed to attend before a civil or military authority on any financial or criminal charge, against his will, without a command from the Sovereign.²² We command that the governor who has dared to order him to do so, whether on a written or unwritten order, is to be deprived of his office, and then to pay a fine of 20 pounds of gold, to be given to the church whose bishop has been ordered to be brought to court or to attend; the court clerk²³ is to be deprived of his office, similarly, and then both subjected to tortures and sent into exile.

9

We forbid most God-beloved bishops to leave their churches and travel to other provinces.²⁴ In the event that any necessity arises for doing so, they will do so only with a letter from their most blessed patriarch or metropolitan, or, of course, by command of the Sovereign. It is to be noted that even the bishops under the most blessed patriarch of Constantinople are not allowed to come to the sovereign city without his leave, or a command from us. If a bishop of any region whatsoever is away, on those terms, he is not to leave his church for more than one year. Bishops who come to the sovereign city, as stated, from whatsoever diocese they are, are first of all to make their way to the most blessed archbishop and patriarch of Constantinople; it is thus through him that they are to have audience with our Serenity.²⁵ Those who either absent themselves in contravention of our rule, or remain away from their church for longer than the specified period of a year, are, firstly, not to have their expenses paid by the stewards of their church, and secondly, to be notified in writing by their priestly superiors to return to their church; if they delay their return, they are to be

²² This is the first attestation of such a privilege. The provision is referred to in the correspondence of Pope Gregory the Great (*Ep. Reg.* 13.49. [50]: see discussion in Kaiser (2008)).

²³ 'Court clerk': see *J. Nov.* 96.

²⁴ See *J. Nov.* 57 and *J. Nov.* 67.

²⁵ One notes, yet again, Justinian's determination that the imperial court should not be packed with petitioners.

summoned, in accordance with the sacred canons.²⁶ If they do not return to their church within the time specified by their superiors, they are to be ejected from their episcopate, and other, better men are to be appointed, under the force of the present law. Exactly the same applies also to clergy, of whatsoever degree or ministry.

10

For the conscientious observance of the church's condition as a whole, and of the sacred canons, we command each and every most blessed archbishop, patriarch and metropolitan, once or twice each year, to call together before them the most holy bishops under them in the same province, and to make a strict enquiry into all grounds of complaint that bishops, clergy or monks have against each other; to rule on these according to the ecclesiastical canons; and also to take corrective measures on any sin against the canons that may have been committed by any person.²⁷

1. We forbid most holy bishops, presbyters, deacons, sub-deacons, readers and anyone else in any holy order or position, to play at dice, or to participate with, or watch, those who do so play, or to be present as spectators at any show. Should any of them commit this sin, we command that he is to be barred from all religious ministry for three years, and be enclosed in a monastery.²⁸ If, in the meantime, he shows proper repentance for his fault, his superior has licence both to cut short the time, and to return him to his ministry. The most holy bishops whose duty it is to take punitive action in this matter are to know that if they fail to take punitive action on any such of which they have been informed, they will themselves be called to account before God for that failure.

2. No bishop is to be compelled, against his will, to discharge any cleric under him from his clericate.

11

We forbid all bishops and presbyters to exclude anyone from holy communion before cause has been shown for which the sacred canons command that to be done. If anyone excludes someone from holy communion in contravention of this, the one unjustly excluded from communion is to

²⁶ See *Codex* 1.3.42.

²⁷ Justinian thus decrees that provincial synods must be held at least once a year.

²⁸ The constitution provides a further example of the use of monastic enclosure as punishment (see also c. 11 below and Hillner (2015), pp. 214–41).

have the excommunication lifted by the higher dignitary, and is to be acceptable for holy communion; while the one who dared to exclude someone unjustly from holy communion is, without fail, himself to be excluded from communion by his superior for as long as he may see fit, so that he may justly endure what he unjustly caused.

1. It is not allowable for a bishop to strike anyone with his own hands; that is not for priests.

2. Should any bishop ejected from his priestly office in accordance with the sacred canons dare to set foot in the city from which he has been ejected, or to leave the region in which he has been commanded to live, we command that he is to be committed to a monastery in a different province, to rectify by life in a monastery what he did wrong in his priestly office.

12

We do not allow clergy to be ordained unless they are literate, hold the orthodox faith and lead a respectable life without having, or having had, a concubine or natural children;²⁹ they are either to be living chastely, or to have, or have had, a lawful wife who is his first and only one, and not a widow or divorcee, or otherwise forbidden by the law and the divine canons.³⁰

13

We permit no-one to become a presbyter below the age of thirty years, nor a deacon or sub-deacon below twenty, nor a reader below eighteen; nor is a deaconess to be ordained in the holy church who is below forty years of age, or who has married twice.

14

If an accuser appears at the time of the appointment of a cleric, of any order or degree, alleging that he is unfit for the appointment, the appointment is to be held over, and all the steps are to be taken, as to investigation for one thing, and penalties for another, that we have decreed above for the appointment of bishops.

²⁹ 'Natural children' = illegitimate children (Berger (1953), p. 473).

³⁰ On the prohibition against those who have re-married, see *J. Nov.* 6 c. 5 and *J. Nov.* 22 c. 42.

1. Should one about to be ordained deacon have no wife united with him, as stated above, he is not to be ordained without first being questioned by the person who ordains him, and promising that he is able to live respectably after ordination, even without a lawful wife. The ordainer cannot at the time of ordination give the deacon permission to take a wife after ordination; if that happens, the bishop who gave permission is to be ejected from his episcopate, and if a presbyter, deacon or sub-deacon does take a wife after ordination, he is to be ejected from the clergy and handed over, with his property, to the council of the city in which he was a cleric.³¹

2. If a reader marries a second wife, or one who, though his first, is a widow or divorcee, he is no longer to proceed to a higher ecclesiastical level; should he be promoted to a higher level, in any way whatsoever, he is to be ejected from it and returned to his previous one.

15

Nor are city councillors or civil servants to become clerics;³² this is to avoid any resulting affront to the holy clergy.³³ If such persons do become enrolled in the clergy, their ordination is to be null and void, and they are to be returned to their proper status, unless perhaps one of them has completed not less than fifteen years of monastic life; such men, we command, are to be ordained, although a city councillor must, of course, pay the lawful share to the city council and to the public treasury.³⁴ Even on

³¹ I.e. a deacon who marries after ordination is to be forced to become a city councillor (*curialis*).

³² 'Civil servants = *cohortales*. For this prohibition, see also *J. Nov.* 6.

³³ 'Affront' or 'insult' (Greek ὕβρις = Latin *iniuria*). The nature of the affront envisaged was that of moral taint: the brutal realities of provincial life were such that it was impossible to be an effective city councillor without, from an ethical perspective, getting one's hands dirty: as Justinian had declared in 531 (*Codex* 1.3.52), 'it is not right, for a man who has been brought up to indulge in extortion with violence, and the sins that in all likelihood accompany this, and is fresh from deeds of the utmost harshness as a city councillor, suddenly to take holy orders and to admonish and instruct concerning benevolence and poverty' (translation taken from de Ste Croix (1981), p. 474).

³⁴ 'The lawful share' = (in this instance) three-quarters of their estate (see *J. Nov.* 38). For bishops and clerics of curial background, see Rapp (2005), pp. 183–8. The Emperor Constantine had initially exempted those who wished to join the clergy from curial obligations, but it was soon appreciated that this policy threatened to undermine the effectiveness of civic government by providing an escape route for those eager to evade such responsibilities. Accordingly, Justinian had prohibited curial ordination in 531 (*Codex* 1.3.52). By allowing those who had spent fifteen years in a monastery to be ordained, however, Justinian effectively created a new Christian career structure or *cursus honorum* for men of propertied backgrounds aspiring to both social and spiritual

being inducted into the clergy, they must lead out their life in a way that befits a monk;³⁵ if any of them marries after being honoured with the clericate, or should he take a concubine, he is to be returned to the city council, or to the office or status to which he was subject.³⁶ This is so, even notwithstanding in the least that he has been at an ecclesiastical level at which the holder is not prevented by the sacred canons, or the law, from taking a wife.³⁷ We also decree that the same is to apply for all other monks who have changed from monasteries to any ecclesiastical degree, even should they not have been subject to any status-restriction.

1. We lay it down as a general law that no-one at any ecclesiastical level is allowed to withdraw from it and become a layman; those doing so are to understand that they will be stripped of any office, rank or position with which they may perhaps be endowed, and will be committed to curial status in their own city.³⁸ Those ordained from curial status before our law are to discharge their financial obligations through substitutes, but are to be free of the personal ones.³⁹

16

We do not permit a cleric of any level to make any payment to the person by whom he is appointed, or to any other; all he is to pay are the customary perquisites to the appointer's staff and the usual recipients, not exceeding one year's wages. He is to discharge his divine ministry in the most holy church to which he is assigned; and he is to pay nothing at all to his fellow clerics for his induction, nor is he to be deprived for this cause of his remunerations, or of the other apportionments to which he is entitled.

1. Nor is the head of a hospice, almshouse or hospital, or the administrator of any other holy house whatsoever, or the discharger of any ecclesiastical responsibility whatsoever, to make any payment to the one by whom he is being put in post, or to any other person whatsoever, for the administrative position entrusted to him. The payer, payee or intermediary

leadership (see further discussion in Rapp (2005) *passim*, but esp. pp. 100–52 for the authority which the experience of asceticism was perceived to endow).

³⁵ Note that monks were not clerics.

³⁶ 'To the office': i.e. if he is a *cohortalis* (on which see note 5).

³⁷ 'An ecclesiastical level at which the holder is not prevented . . . from taking a wife': i.e. even if he is a cantor or reader (for whom marriage was permitted).

³⁸ Justinian thus decrees that anybody who leaves the priesthood is obliged to become a city councillor, whether or not they were previously of curial status. This may be an innovation (see Van Der Wal (1998), p. 56, note 23 for further discussion).

³⁹ 'Obligations' = *munera*.

in any act in contravention of what we have determined will be stripped of his priestly office or clericate, or of any administrative post that has been entrusted to him, and the amounts paid will be claimed for the holy place for which such person received the appointment, responsibility or administration. Should the recipient or intermediary be a layman, he will be charged twice the sum paid, and it is to be given to the holy place for which such person received the administration, appointment or responsibility.

2. However, if a cleric of any degree whatsoever, or administrator of any holy house whatsoever, wishes to make over any of his property, either before or after his ordination or the entrusting to him of his administration or responsibility, to the church in which he is being ordained or the place for which he is undertaking the administration or responsibility, we are not merely not preventing that from being done, but rather are encouraging them to take such action, for the salvation of their soul; the payments that we are preventing are only those made to individuals, not, by any means, those offered to most holy churches and other holy houses.⁴⁰

17

If a slave is enrolled into the clergy with his master's knowledge and without objection from him, as a direct result of that enrolment he is to be free and free-born.⁴¹ If it is without his master's knowledge that his enrolment takes place, within a time-limit of only one year his master is to be allowed to prove his slave's status and to re-possess him. If the slave has become free as we have said, with or without his master's knowledge, as a result of his enrolment in the clergy, should he abandon his ecclesiastical ministry and return to secular life, he is to be handed over to his master, into slavery.

1. We permit registered estate labourers⁴² to become clerics even against their master's will, but only on the landholdings in which they are

⁴⁰ C. 16 essentially repeats the prohibitions contained in *J. Nov.* 6 and *J. Nov.* 56, from which bishops and clergy on the staff of the Great Church (i.e. the Patriarchate) of Constantinople were exempted with respect to the entry fees that they were obliged to pay.

⁴¹ In the fifth century the Emperor Zeno had issued a straightforward prohibition on the ordination of slaves, even with the consent of their owners: see *Codex* 1.3.36.1. 'Free-born' = they will be accorded free-birth status (*natalium restitutio*: see *J. Nov.* 78 and Berger (1953), p. 591).

⁴² 'Registered estate labourers' (Greek ἐναπόγραφοι <γεωργοί>). These were tied agricultural workers registered on the tax roster of their employer through whom they paid their taxes (see Sarris 2011(b)). Justinian here decrees that such labourers could join the clergy

registered, and provided that they still perform the agricultural work imposed on them, despite having become clerics.

18

If anyone founds a house of worship and either he or his heirs wish to put clerics in post for it, if they themselves supply the clerics' expenses, and those they nominate are suitable, their nominees are to be appointed; but if the divine canons forbid the appointment of those they have chosen, as being unsuitable, then the most holy bishop of the area is to take responsibility for putting in whomever he considers better.⁴³

1. We decree that most reverend clerics are to remain in attendance at their own churches, and perform all the holy ministry that pertains to them.⁴⁴ This is to be inquired into by the most holy bishop of each city and the leading members of each clerical degree, who are to subject the non-observant to canonical punishment.

19

We order that presbyters, deacons, sub-deacons, readers and cantors, all of whom we designate as clergy, are to keep under their own ownership the property that devolves on them in any manner whatsoever, analogously with the *castrensia peculia*;⁴⁵ even if they are under the authority of their parents⁴⁶, they are to make gifts and testamentary dispositions of it, with the proviso that their children – or if none subsist, their parents – are to receive their lawful share.⁴⁷

on condition that they continued to work on the estate on which they were registered, where they were also henceforth obliged to perform their clerical duties. By the sixth century, it was common for landowners to maintain churches and chapels on their properties which were integrated into the life of the estate (for an example of a priest engaged in agriculture on the Apion estates around Oxyrhynchus, see *P.Oxy.* XIX 2244, line 76). The law here repeats the provisions of *Codex* 1.3.16 and 1.3.36.

⁴³ For such private religious foundations, see Thomas (1987), pp. 5–58.

⁴⁴ 'Remain in attendance at' = they are effectively bound by paramonar contracts: see *J. Nov.* 57 and Sarris (2006), p. 170.

⁴⁵ '*Castrensia peculia*', i.e. all property that a son *in potestate* acquires after his admission to the clergy is to be treated as *peculium quasi castrense* (property which he could freely dispose of or bequeath without parental consent): see Berger (1953), p. 624. The law here repeats a provision of the Emperor Leo (*Codex* 1.3.33 and 1.3.49).

⁴⁶ 'Under the authority of their parents' = *in potestate*.

⁴⁷ 'Lawful share' = the *portio legitima*: see note 77 below.

20

If most reverend presbyters and deacons are found to have given false evidence in a financial case, it will be sufficient, instead of tortures, for them to be suspended from their divine ministry for three years and committed to a monastery.⁴⁸ Should they, however, give false evidence in a criminal case, we order that they are to be stripped of their clerical rank and subjected to the law's punishments. Apart from them, should those enrolled in the other ecclesiastical orders be convicted of having made fabricated witness-statements in any case whatsoever, whether financial or criminal, they are not just to be ejected from the clergy and their ecclesiastical rank, but are also to be subjected to tortures.

21

Should anyone have an action against any cleric, monk, deaconess, nun or canoness, he is first to inform the most holy bishop who is their respective superior, and the bishop is to decide the issue between them. If each side acquiesces in the findings, we command that it is to be put into full execution, through the local governor; but if one of the litigants should object to the findings within ten days, the local governor is then to try the case. Should he find that the judgment was correctly given, he is to confirm it by his own verdict, and put the findings into execution; the party twice defeated in such a case is not to be allowed to appeal. However, should the governor's verdict be contrary to the judgment of the most God-beloved bishop, appeal against the governor's findings is then admissible, and it is to be referred, and contested, as the law directs; provided that if it is by Sovereign's command or judicial order that a bishop is judging between any persons, the appeal is to be referred to the Sovereignty or to the person who delegated the case.

1. Should it be a criminal charge that is being preferred against any of the aforementioned most reverend persons, if someone is accused before a bishop and the bishop is able to discover the truth, he is to be ejected from his honourable position or degree, in accordance with the ecclesiastical canons; the appropriate judge is then to arrest him, try the case in accordance with the laws, and bring it to a conclusion. However, if the prosecutor presents his case first before the civil authority and the charge can be proved under trial at law, the records are then to be disclosed to the bishop

⁴⁸ The law here provides a further example of monastic imprisonment (on which see Hillner (2015), pp. 314–41).

of the area, and if it is acknowledged from them that he is guilty of the charges put forward, the bishop himself is then to dismiss him from the honourable position or degree that he holds, and the judge is to impose punishment on him consonant with the laws; whereas if the bishop considers that the facts have not been justly made out, he will then be allowed to hold over the stripping of the accused person's honourable position or degree, on condition that such person is then placed under legal caution and the case is then referred to us by both the bishop and the judge, for us to be apprised of it and to command as we see fit.

2. Should someone have an action against one of the above-mentioned persons on a financial case, and the bishop delays making a judgment between them, the plaintiff is to have licence to petition the civil authority, with the proviso that the defendant is under no circumstances to be obliged to provide a guarantor, but only to issue an unsworn contract of agreement,⁴⁹ with a hypothec on his property. Should it, however, be on a criminal case that a charge has been laid against one of the aforementioned persons, the accused person is to be placed under legal caution. Should it be an ecclesiastical matter, the civil authorities are to have nothing to do with such trial; it is the most holy bishops who are to bring it to a conclusion, in accordance with the sacred canons.

22

If some most holy bishops of the same synod should have a dispute with each other, either over an ecclesiastical right or over any other matters, their metropolitan is first to judge the matter, with another two bishops of his synod. If either side does not acquiesce in the findings, the most blessed patriarch of that diocese is then to hear the case between them, and to determine it as accords with the ecclesiastical canons and the laws; neither side can object to his verdict. If a petition is lodged against a bishop, by a cleric or by anyone else whatsoever, their most holy metropolitan is first to decide the matter in accordance with the holy canons and our laws; if there is any objection to his findings, the matter is to be referred to the most blessed patriarch of that diocese, and he is to give it its conclusion, in accordance with the canons and the laws. If it is against a metropolitan that such petition is brought, either by a bishop or by a cleric or by any other

⁴⁹ 'Contract of agreement' (Greek ὁμολογία) = Latin *promissio* (see Berger (1953), p. 657). The law here effectively re-states *J. Nov.* 83.

person whatsoever, the most blessed patriarch of that diocese is to judge the matter, in the corresponding manner. For all charges against bishops, whether they are arraigned before their metropolitan, a patriarch or any other judges whatsoever, no surety or contract of agreement is to be demanded of them over the case, the condition being that it is for them to make the effort to clear themselves of the charges brought against them.

23

We command that stewards, heads of almshouses, hospices, hospitals and other holy houses, and all other clergy, are to be answerable before the bishop who is their superior for the areas of administration entrusted to them, and to compile the accounts for their administration; they are to have exacted from them anything that they are proved by the accounts to owe,⁵⁰ for re-payment to the holy house to which the debt as a result of their administration is found to be due. Should they consider themselves to have been unfairly treated, the metropolitan is to investigate the matter, after the demand. Should it be the metropolitan who has investigated such charges against one of the said persons and exacted the debt, and should the person from whom it has been exacted consider himself to have been treated injuriously, the most blessed patriarch of that diocese is to adjudge the matter; we do not permit the above-mentioned persons to evade their bishops, and appear in other courts on such charges prior to the investigation and the demand for the sum owed. Should any ecclesiastic entrusted with such administration die before the presentation of accounts and payment of the amounts owed, we command that his heirs are to be liable both for rendering accounts and for the demands, in the corresponding manner.

24

Should any bishop or cleric of any province be found in Constantinople, and someone wants to enter an action against him, if joinder of issue in the same case has taken place in the province, that is where it is to be completed; but if it has not yet been commenced, he is to reply to those bringing the action against him only before the Most Illustrious prefects of the Eastern *praetoria* or before judges appointed by us.

⁵⁰ 'Anything that they are proved by the accounts to owe': i.e. they are to be personally liable.

25

The most reverend *apocrisarii*⁵¹ of any most holy church whatsoever who are resident in the sovereign city, or who are sent by their bishops to either the most blessed patriarchs or metropolitans, are not to be subject to any action or demand on behalf of their bishops, nor over a church matter, nor over a public or private debt, unless they should have instructions from their bishops or stewards to take certain persons to court. In that case, we give licence, solely to those taken to court by them, to bring against them any action they may have against the church or the bishop. Also if there are matters, or an action, as to which they make themselves liable while conducting their business, they are also to face proceedings on those.⁵²

26

If bishops or clerics are staying in the sovereign city, or in any other locality whatsoever, on a mission on behalf of their city or church, or for the appointment of a bishop, we command that they are not to be subjected to any vexation or harassment from any person whatsoever. Those who consider that they have them under an obligation are to have licence to take them to court after their return to their province;⁵³ no prejudice⁵⁴ over time-limitation against those who consider themselves to have them under liability is to result from such protracted absence.

27

If ever a cause arises for summons or execution to be served over any financial case whatsoever, whether public or private, on a cleric, monk, nun

⁵¹ *Apocrisarii* (literally 'those who answer') were ecclesiastical representatives or spokesmen appointed to represent their bishop or see. With respect to the patriarchates and the See of Rome, they were effectively ambassadors. Thus, in the late sixth century, the future Pope Gregory the Great served as Papal *apocrisarius* in Constantinople. On Gregory and his career, see Dal Santo (2012), who reveals how Gregory's sojourn in Constantinople impacted on his theology.

⁵² 'They make themselves liable' = such representatives bear personal liability (Greek οἰκεῖος κίνδυνος) for any contract they enter into while in Constantinople, and may not transfer such liability to their Church. The documentary papyri record a monastic agent from Oxyrhynchus to have been caught out by this doctrine of personal liability after having foolishly made a loan to a fellow Egyptian while visiting the imperial capital on which the latter later defaulted: see *P.Oxy.* LXIII 4397.

⁵³ 'Under an obligation' = Greek ὑπεύθυνοι.

⁵⁴ 'Prejudice' (Greek πρόκριμα) = Latin *praeiudicium*. In other words, ecclesiastical defendants may not escape justice by fleeing to the imperial capital and remaining there until the case is out of time.

or canoness, of any monastery whatsoever, particularly those of women, we command that the summons and the execution is to be carried out without injurious treatment and with due respect. No nun or canoness is to be dragged away from her monastery, but a representative is to be appointed by them as respondent for the case;⁵⁵ whereas monks are to be allowed to conduct cases, whether on their own behalf or their monastery's, either in person or through representatives. A judge or court clerk who contravenes this is to know that he will both be stripped of his office and be charged, by the Most Magnificent *comes* of the *privata*,⁵⁶ a fine of 5 pounds of gold; the court clerk will, of course, also suffer tortures, and be sent into exile. The most holy bishops locally are to see to it that nothing counter to this is done, or if there is any transgression, that the stated punishment should ensue. If the governor delays in applying the punishment, the bishop is to bring that to our knowledge.

28

By way of *sportulae*,⁵⁷ we do not permit any person enrolled in any ecclesiastical position whatsoever, nor, further, any deaconess, monk, female ascetic or nun, to pay more than four carats⁵⁸ for every criminal and financial case, of whatever value it may be, whether they receive the summons from a cleric, or from someone in the service, either in the sovereign city or in the province where they live. If a court clerk sent by command from us, from a governor, or from a most blessed patriarch, delivers a summons to one of the aforementioned persons in other provinces, he is to receive no more than one gold piece;⁵⁹ in the event that more than one of the aforementioned persons are summonsed on one and the same charge, he is to receive just one person's *sportula* on behalf of

⁵⁵ The emperor was eager to protect the modesty not only of nuns but also all women of good standing, which meant protecting them from the public gaze: see, for example, *Codex* 1.48.1 and *J. Nov.* 79. This did not, however, prevent women from being allowed to participate in legal actions: see *J. Nov.* 134 c. 9 (see also Hillner (2015), pp. 158–9). This prohibition against forcing nuns from attending legal proceedings reiterates that found at *J. Nov.* 79.

⁵⁶ 'Comes of the *privata*' = the *comes rerum privatarum* or head of the imperial estates or *res privata* to which fines accrued: see *J. Nov.* 112, note 14.

⁵⁷ '*Sportulae*' = fees (in this instance fees charged to those who appear at court): see Kelly (2004), pp. 64–8 and 174–5.

⁵⁸ 'Four carats': the gold *solidus* comprised twenty-four carats, which could be expressed monetarily through small denomination coinage or credit notes styled πικτάκια: see Sarris (2006), pp. 92–3.

⁵⁹ Justinian here sets the maximum level of fees that a clerk could charge at a lower level than had been ordained in *Codex* 1.3.32 (5).

them all. A bishop is not to be subject to any prosecution or vexation over the affairs of his church;⁶⁰ if he should be summonsed over affairs of his own, he is to be charged a *sportula*, while for actions brought against the church, it is, of course, the stewards, or else those appointed for that purpose, who face them. One daring to exact *sportulae* in contravention of this is to be made to repay to the one so charged double what he received, and if he is in the civil service he is also to lose his office; should he be a cleric, he is to be ejected from the clergy.

29

In accordance with the divine canons, we also forbid presbyters, deacons, sub-deacons and all others in clerical orders who have no wives, to have any woman brought into their house, apart, that is, from a mother, daughter, sister and other persons who escape all suspicion.⁶¹ If anyone, in contravention of this principle, does bring a woman into his house who is capable of putting him under suspicion, and he refuses to eject her from his house after a first and second admonition from his bishop or his fellow clergy not to live with such a woman, or if an accuser appears and he is proved to be living improperly with such a woman, the bishop is then, in accordance with the ecclesiastical canons, to eject him from the clergy, for committal to the council of the city in which he was a cleric.⁶² As for a bishop, we do not permit him to have a wife at all, or to live with her. Should he be proved to have utterly disregarded this, he is to be ejected from his episcopate, because he is showing himself unfit for his high priesthood.

30

We do not under any circumstances permit a deaconess to live with a man capable of giving rise to suspicion of an improper life. If she does not observe this, her ecclesiastical superior is to admonish her to put him out of her house without fail; if she omits to do so, her ecclesiastical ministry and her wages are to be withdrawn, and she is to be committed to a monastery and live out the whole of the rest of her life there.⁶³ Should

⁶⁰ The law here repeats the provision contained in *Codex* 1.3.32 (4).

⁶¹ See *J. Nov.* 6 c. 6.

⁶² 'For committal to the council' = any priest who keeps such a woman in his house and ignores the instructions of his bishop is forced to become a city councillor (*curialis*).

⁶³ The law here provides a further example of monastic enclosure as a punishment.

she have children, her property is to be shared per head between her and them, and the share applicable to the said woman is to be taken by the monastery for her support; should she not have children, her whole estate is to be divided equally between the monastery in which she is being enclosed and the church to which she had formerly been assigned.

31

Should anyone enter a church while the divine sacraments or other holy services are being performed and commit some insult⁶⁴ to either the bishop or the clergy, or to other ministers of the church, we command that he is to be subjected to tortures and sent into exile. If he disrupts the divine sacrament itself, and the divine services, or prevents them from being performed, he is to suffer capital punishment. Exactly the same is to be observed for processions in which bishops or clergy are taking part, so that if it is merely an affront that he causes, he is to be committed to tortures and exile, but if he breaks up the procession, he should suffer peril of his life. We command that this penalty is to be inflicted by military as well as civil authorities.

32

We forbid all lay people to hold processions in the absence of the most holy bishops of the area and of the most reverend clergy under them; what kind of a procession is it, in which no priests are to be found, holding the customary prayers?⁶⁵ Further, the precious crosses with which they go out in processions are not to be stored anywhere but in holy places; and if ever need calls for the celebration of processions, then, and only then, are the regular crucifers to carry the said holy crosses, and to accompany the bishop and clergy in celebrating the processions. This is to be under the supervision of the most holy bishops of the areas, their clergy and the local governors. If any of those mentioned under this head either contravenes the force of the present law or fails to enforce it, he will be subject to the stated punishments.

⁶⁴ 'Insult' or 'injury' (Greek ὕβρις) = Latin *iniuria* (see *Institutes* 4.4). The law here provides evidence for a measure of impiety and possibly anti-clericalism on the part of members of early Byzantine society, on which see Sarris (2011e).

⁶⁵ The emperor at this point reveals his suspicion of what might be termed 'popular' religious practices independent of episcopal scrutiny or control.

33

It remains for us to make regulations for holy monasteries and most reverend monks.⁶⁶

34

Accordingly, we command that the appointment of abbot or archimandrite in each monastery is definitely not to be made according to the rank of the monks.⁶⁷ Instead, he is to be the one chosen by the whole body of monks, or by those of higher repute. With the holy gospels displayed, they are to state that it is not out of friendship or any other favour that they have chosen him, but in the knowledge that he is both orthodox in faith and moral in life, worthy of the administrative position and capable of maintaining monastic discipline and the whole condition of the monastery, to its benefit. The most holy bishop under whose authority the monastery lies is then, without fail, to put the one so chosen in post as hegumen.⁶⁸

We order that all that we have determined for the appointment of hegumens is also to apply for women's holy monasteries and religious institutions.

35

If any one is desirous of entering the monastic life, we command that if he is known not to be subject to any status,⁶⁹ the hegumen of the monastery is to confer the habit on him whenever he so decides. If it is not known whether he is subject to a status of whatsoever kind, he is not to receive the monastic habit within three years; during the said time, the hegumen of the monastery is to test his conduct. If during the three-year period someone emerges claiming that the man is a slave, a *colonus* or registered estate

⁶⁶ The ensuing regulations, combined with those contained in *J. Nov.* 133, were to be highly influential and would be reflected in monastic rules and literature both east and west ranging from Cyril of Scythopolis' *Life of St Sabas* (in which, as Booth notes, 'the eponymous hero encounters Justinian himself and in that encounter embodies the monastic ideals within the emperor's novels') to the *Rule* of St. Benedict: see Booth (2014), pp. 16–17 and Clark (2011), p. 14.

⁶⁷ 'According to the rank of the monks' = appointment is not simply to be on the basis of precedence. Rather, the abbot must be deliberately chosen (see *RB* 64).

⁶⁸ Monasteries had been placed under episcopal supervision at the Council of Chalcedon in 451 (canon 4).

⁶⁹ 'Subject to any status', i.e. whether the aspirant novice is subject to legal restrictions by virtue of being a slave, an *adscripticius*, a city councillor, or *cohortalis*.

labourer of his,⁷⁰ or that he is absconding from his agricultural work or has committed theft, or that it is because of some misdemeanour that he has entered the monastery, should this be proved the man is to be returned to his master, with any property that he is shown to have brought with him to the monastery; first, though, he is to receive his master's assurance of immunity from suffering for it. However, if during the three-year period no-one brings an action against one of the said persons, the hegumen of the monastery is then, if he judges such a man to deserve it, to confer the habit on him after the three-year period has elapsed, and no-one is subsequently to cause him any trouble over status – that is, as long as he is resident in the monastery. He is, however, to repay the property that he is discovered to have brought into the monastery, to one shown to be his master. Should any of the said persons leave the monastery and go into secular life, or roam about in cities or countryside, he is to be committed to his proper status.

36

In accordance with monastic rules, we command that in all monasteries called *coenobia*⁷¹ everyone is to live in one household, and take meals communally. Similarly, all are to sleep, separately, in one household, so that they can provide mutual attestation of chaste behaviour. Exceptionally, some of them, either by reason of the length of their time under monastic discipline, or because of age or physical infirmity, may wish to live undisturbedly, and so spend their time in small individual cells situated within the monastery; but this must be with the knowledge and consent of the hegumen. All this is to be observed also for women's monasteries and convents.⁷²

In no region of our realm do we permit monks and nuns to live in one monastery, or there to be so-called double monasteries. Wherever such a monastery may be found, we command that the men are, without fail, to be separated from the women; the women are to remain in the monastery

⁷⁰ The distinction here is between 'free' *coloni* and those designated *adscripticii*: see Sirks (2008).

⁷¹ 'κοινόβια' were communal monasteries (see *J. Nov.* 5 c. 3). It is not entirely clear whether the emperor was expecting monks to sleep in one dormitory or simply under one roof. The following sentence would suggest the former, but whilst such arrangements would be common in western monasticism as it emerged under Benedictine influence (the *RB* having laid a great emphasis on such communal aspects), the archaeological evidence would suggest that monastic dormitories would prove to be comparatively rare in the Byzantine east. For 'household' the Greek text uses the word οἶκος, whilst the Latin of the *Authenticum* uses 'habitaculum' (or 'small residence').

⁷² For such institutions, see *J. Nov.* 59, note 15.

in which they are, while the men are to make another monastery for themselves. If there are several such monasteries, to avoid any need for building new ones the most holy bishop of the area is to see to the separate collocation of monks with monks in one monastery, and women with women in another; all property that they have in common is to be divided up between them, consonantly with their entitlement. To conduct business for the women, or to bring them the holy communion, the most holy bishop who is their superior is to allot them whichever presbyter or deacon they themselves choose, provided that he should have come to know him as being of orthodox faith and good life. Should the man chosen by them not be a presbyter or deacon, but the bishop judges him suitable for such ministry, he is to give him the appointment to the office for which he has been found suitable, and assign him to the business affairs of the monastery, on condition that even the man thus chosen as the women's man of business does not stay in their monastery.

37

If someone makes either a gift or a bequest to his children by way of either dowry or matrimonial gift, or to any other person, under the condition of their marrying or having children, or leaves them an inheritance or *legatum*⁷³ without condition initially, but burdens them with substitution or restitution⁷⁴ under one of the aforementioned conditions, we command that if those subject to such condition, male or female, enter a monastery or become clerics, deaconesses or conventuals, such conditions are to be invalid, and as if never written.⁷⁵ This relief is to be available also to the clerics and deaconesses of churches, should they remain as they are throughout their life, and either spend or bequeath, for pious purposes, property given or left to them under such condition. In the case of persons who, after entering a monastery or religious institution, abandon such chaste way of life, we command that the property given or bequeathed under such conditions, along with their other substance, is to belong to the monastery or religious institution

⁷³ '*Legatum*' = legacy.

⁷⁴ 'Substitution' (Greek ὑποκατάστασις) = Latin *substitutio* (i.e. the appointment of a substitute heir in the event that the first instituted heir did not take up the inheritance – see Berger (1953), p. 721); 'restitution' (Greek ἀποκατάστασις) = Latin *restitutio* (see Berger (1953), pp. 681–2).

⁷⁵ 'As if never written' = (in legal Latin) *pro non scripto*. The law here repeats the provisions of *Codex* 1.3.52 (13–14).

which they originally entered. However, we do not permit substitution or restitution made under the said conditions for the purpose of ransoming prisoners of war, or of supporting the poor, to be excluded in any of the said ways.⁷⁶

38

If a man, or woman, chooses the monastic life and enters the monastery childless, we command that his property is to belong to the monastery he has entered. However, should such person have children, and not have made a disposition of his property before entering the monastery, assigning the children their lawful share,⁷⁷ he is still to be allowed to divide his property between his children even after his entry to the monastery, provided that he does not give less than the lawful share to any one of his children; but the portion not given to the children is to belong to the monastery. Should he wish to distribute the whole of his property between his children, he is to count his own person in among the children and, without fail, keep back for himself one share, which must belong to the monastery as its right. Should he die while resident in the monastery before making the division of his property between his children, the children will receive their lawful share, but the rest of the estate is to belong to the monastery.⁷⁸

39

When an engagement is made between parties according to law, if the fiancé enters a monastery, he is to receive back what he gave as pledge⁷⁹ on the engagement, or if the fiancée chooses the monastic life, she, similarly, is to give back just what she received as pledge; for either side, the penalty is waived.

⁷⁶ The exception with respect to ransoming prisoners of war or helping the poor was an innovation of this law, and thus served to modify the provisions of *Codex* 1.3.52 (13–14).

⁷⁷ 'Lawful share' = *portio legitima*, i.e. the share of an inheritance that would pass to an heir under intestacy (see Berger (1953), pp. 618–19, *J. Nov.* 18).

⁷⁸ These provisions of the law leave many legal questions up in the air, such as the status of such property during the lifetime of the monk, or whether the monastery was to be regarded as equivalent to one child for the purposes of intestate inheritance (see Van Der Wal (1998), p. 157, note 141).

⁷⁹ 'Pledge' = the *arr(h)a sponsalicia* (i.e. money or items given by way of earnest-money or security to ratify an engagement) which became common from the fourth century onwards (see Berger (1953), p. 713 and Arjava (1996), p. 190).

40

If, once the marriage is in existence, the husband alone, or the wife alone, enters a monastery, the marriage is to be dissolved, without *repudium*,⁸⁰ but only after the person entering the monastery receives the habit. If it is the husband who has chosen the monastic life, he is to make restitution to the wife of her dowry and anything else he has received from her, and, additionally, a proportion of his matrimonial gift equal to what was due to the wife on the husband's death, under the agreement contained in the dowry-contract. Should it be the wife who has entered the monastery, in the same way the husband is to retain his matrimonial gift and the *casus*⁸¹ of the dowry agreed on the wife's death; but we command that he is to make restitution of the remainder of the dowry to the wife, together with any other part of the wife's property that is found to be with him.⁸² If both choose the monastic life, we command that the dowry-contract shall be inoperative: the husband shall retain his matrimonial gift and the wife shall receive her dowry and anything else she may be shown to have given her husband, so that, without penalty, both individually shall have the benefit of their own property – unless, perhaps, the fiancé may wish to give some gift or remission to the fiancée, the fiancée to the fiancé, the husband to the wife or the wife to the husband.

41

We give no licence either to parents to exclude from their inheritance children who have left secular life, for ingratitude on a ground preceding their monastic life; or to children to exclude parents in such circumstances.⁸³ We also forbid parents to withdraw from holy monasteries their children who choose monastic life.

42

If a monk leaves his monastery and enters another one, should he prove to have had any property at the time of his having left the monastery, we

⁸⁰ '*Repudium*' = unilateral dissolution of a marriage (see Berger (1953), p. 676). According to *Codex* 1.3.52 (15) the *repudium* had to be formally served. The impression of this law is perhaps that it could now be inferred (see Van Der Wal (1998), p. 73 (entry 552)).

⁸¹ '*Casus*' = see note 82 below.

⁸² Justinian here reiterates the provisions of *Codex* 1.3. 52 (15), 1.3.54 (4), *J. Nov.* 5 c. 5 and *J. Nov.* 22 c. 5–6: i.e. that the spouse receives the dowry or ante-nuptial gift as if the other had died (*in casum mortis*).

⁸³ Justinian here revises *Codex* 1.3.54 (5).

command that it is to belong to the first monastery, the one that he entered originally. The most holy local bishops are to see to it that neither monks nor nuns go travelling about to cities; should they have any necessary business, they are to conduct it through their *apocrisarii*,⁸⁴ while themselves remaining in their monasteries.

1. If a monk leaves the monastery and changes to secular life, he is first to be stripped of his position and rank, if he has one, by the local bishop, and then to be enclosed in a monastery. All property he subsequently proves to have is to belong to the monastery in which he is enclosed. If he again leaves the monastery, the governor of whichever province it is where he is found is to detain him, and enroll him in the staff under him.⁸⁵

43

If anyone abducts, seduces or corrupts a canoness, deaconess or nun, or any other woman whatever in a religious life or calling, we command that his property, and that of his accomplices in such defilement, is to be claimed for the holy place in which such woman resided, through the most holy local bishops and their stewards, and moreover the governors of each province and their staff. The perpetrators of such crimes, and their accomplices, are to suffer capital punishment; and such a woman is to be searched for everywhere, and committed, with her possessions, to a monastery in which she can be more securely guarded, so that she will not be found under the same charge again.⁸⁶ Should she be a deaconess with legitimate children, the children are to be given their lawful share. Should such property not have been claimed by the holy houses within a year from the discovery of such defilement, we command the *comes* of the *privata*,⁸⁷ without fail, to assert possession of it to our *fiscus*,⁸⁸ while the local governor who neglected to have the said property claimed is to be

⁸⁴ '*Apocrisarii*': see note 51. For the prohibition against 'gyrovagues', see *RB* c. 1.

⁸⁵ 'The staff under him': i.e. the fugitive monk will be forced to become a civil servant (*cohortalis*), on which see note 5.

⁸⁶ The assumption of the law is that the woman concerned is implicated in her own moral downfall, and thus her monastic enclosure is at least in part by way of punishment (see Van Der Wal (1998), p. 157). Procopius claims that the charge of defiling holy women (like that of paganism or sodomy) was often motivated by a desire on the part of the emperor to seize the estates of those so accused: see *Anecdota* 19.11.

⁸⁷ '*Comes of the privata*' = the *comes rerum privatarum* or the head of the imperial estates of the *res privata*: see *J. Nov.* 30, note 36.

⁸⁸ '*Fiscus*' = the treasury, meaning that the property was confiscated by the *res privata* (see *J. Nov.* 112, note 14).

deprived of his office, and made by the *comes* of the *privata* to pay a fine of 5 pounds of gold.

44

We totally forbid all those in secular life, and especially men and women on the stage, and also prostitutes, to make use of the habit of a monk, nun or canonesse, or to represent it in any way whatsoever.⁸⁹ All who dare to use such habit, or to represent or burlesque any ecclesiastical institution whatsoever, are to understand that they will be subjected to corporal punishments, and committed to exile; it is not just the most holy local bishops and the clergy under them who are to see to this, but also the civil and military authorities, the staff under them, and the local defenders.⁹⁰

We decree that those penalties contained in the present law which are recognised also in previous laws are to apply, and to be exacted without fail, not only in future cases or crimes, but also in ones that took place previously; whereas those just determined by means of the present law are, by our command, to be applied only in times to come.

Conclusion

Accordingly, your distinction is to see to the universal observance of what our Serenity has decreed by means of the present law, which is to be in force in perpetuity; by publishing edicts, you should bring it to the knowledge of all in this sovereign city.

Given at Constantinople, May 1st in the 20th year of the reign of the Lord Justinian, pious princeps, Augustus, 5th year after consulship of the Most Distinguished Basilius, indiction 9

546

Delivered to Peter, prefect of praetoria

⁸⁹ The law here alludes to the popularity of burlesques of a sacrilegious character, as well as casting light on sixth-century sexual peccadilloes.

⁹⁰ 'Defenders' = *defensores civitatum* (see *J. Nov.* 15).

The same Sovereign to Peter, prefect of praetoria

Preamble

Our purpose in issuing the present law is that the incorruptibility of judges should be patent, and that litigants should not be able to circumvent the laws by bribery.

1

Accordingly, we command that on every occasion when either cases are commenced or appeals tried before any judges whatsoever, the principal parties to the litigation, or those to whom the case may have been transferred in the interim, are first of all to swear in the judges' presence, touching the holy gospels, that they have not in any way whatsoever paid or promised, nor will subsequently pay, either on their own behalf or through any other person as intermediary whatsoever, anything at all to the judges or to any other person whatsoever for their favour over this issue, other than what they furnish to their advocates for their advocacy, or to other persons to whom our laws have ruled that payments are to be made. We direct that this is also to be observed in our divine *consistorium*,² whenever *consultationes*³ are brought before it, so that the aforementioned oaths are taken in the presence of the sacred Senate. If, as may be, some of the litigants are unable to appear before the judges, we then command that those who are present should take the aforesaid oath, while members of the

¹ This constitution is primarily concerned with judicial corruption and ensuring the probity of judicial proceedings. In it, Justinian introduces a new regulation that henceforth all legal hearings must include the swearing of an oath that no bribe or payment has been made to the judge. It also includes further regulation of government officials sent out to the provinces and what fees they were permitted to charge, and limits the role of *referendarii* to that of acting as legal interlocutors rather than agents of the court.

² 'Our divine *consistorium*' = the *sacrum consistorium* or 'sacred consistory', made up of the highest-ranking officers of state and members of the senate; it served as both a council of state and high court of justice. See Jones (1964), pp. 333–41. Jones suggests that by this point its role was largely ceremonial, but this constitution would appear to indicate otherwise.

³ '*Consultationes*': as set out in *J. Nov.* 28, note 19, these were cases referred to the emperor or his representatives by a lower court (= *consultationes ante sententiam*) or brought before them on appeal (= *consultationes post sententiam*).

serving staff are to be sent, together with the party of opposition, for the oath to be taken, similarly, in their presence. Should it be a woman who, because of the respectability of her life, is not accustomed to show herself to unrelated men, the deputation of officials⁴ is in that case to accept the oaths even without the opponent's presence. In the event of the absence abroad of the parties, or one of them, we command that the absent party is to take the oaths in the manner we have stated, with an entry in the records, before the governor of the province in which he is living, or before the local defender.⁵ Be it observed, in general, that he is to ensure that if any of the litigants, whether absent or present, refuses to take such oath, that too is to be disclosed to the judge; and by his verdict, a plaintiff is to suffer forfeiture of his action, while a defendant is to incur judgment against him.

2

If any of the litigants says that he has made or promised a payment to anyone, specifies the person, and proves it, he is to be awarded a pardon at the conclusion of the case. Should it be a financial case, the one shown to have accepted either a bribe or a promise is to be charged by the *comes* of the *privata* triple the payment or double the promise, and, in either case, is to lose the rank or office that he holds;⁶ whereas should it be a criminal prosecution, he is to undergo confiscation of his estate and to be sent into exile, as having worked, by taking a bribe, to transfer another's charge onto himself. If the *litigator*⁷ cannot prove the bribe or promise, the person alleged to have accepted the bribe or promise is to swear that he has neither been paid anything nor had a promise, either in his own person or through another; on such oath being taken, he is to be free, but the *litigator* who could not show proof is, in financial cases, to be charged the sum in litigation⁸ by the *comes* of the *privata*, while the case, of course, awaits its

⁴ 'The deputation of officials': these officials would visit the lady concerned to receive the oath in private. The social logic appears to have been that for a high-status woman to be viewed by state officials would not have been deemed an affront to her dignity, as they were equivalent to servants or slaves, whose gaze did not count. For a similar concern for female modesty (with respect to nuns) see *J. Nov.* 123 c. 27. On the seclusion of the sexes in sixth-century society and law, see Hillner (2015), pp. 158–9.

⁵ 'Defender' = the *defensor civitatis*. See *J. Nov.* 15.

⁶ 'Comes of the *privata*' = the *comes rerum privatarum* or head of the imperial estates of the *res privata* to which fines and confiscations accrued: *J. Nov.* 30, note 36 and *J. Nov.* 112, note 14.

⁷ 'Litigator' = a party to the trial (Berger (1953), p. 565).

⁸ 'The sum in litigation' = the *litis aestimatio*: a monetary evaluation of the plaintiff's claim made so as to facilitate a judgment reckoned in money (Berger (1953), p. 565).

outcome; on criminal charges, he is to undergo confiscation of his property, and the matter is to be concluded as the law directs before the appropriate judges. If the person disclosed by the litigant refuses the aforementioned oath, he is to be subjected to the penalties aforementioned for financial and criminal cases respectively. If one of the litigants swears that he has given no bribe or undertaking, but within four months, reckoned from the handing down of the verdict, a bribe or promise is shown to have been given, the stated penalties will be applicable against both giver and recipient. In cases conducted by tutors or *curatores*, it is the tutors or *curatores* who are to take the oaths;⁹ and if any of the stated penalties should become applicable pursuant to such oaths, it is the tutors or *curatores* who are to undergo it, with no prejudice¹⁰ arising from that against those known to be under guardianship or curatorship.

3

A further rule that we command to be observed by all judges whether military or civil, in every region of our realm, is that they are not to permit *magistriani*,¹¹ prefectorial officers, or any other clerk of the court whatsoever to receive from any person whatsoever, by way of *sportula*,¹² any more than what is declared in our laws, even should they produce a divine command from our Majesty. Should they find anyone demanding anything extra, they are to have licence to arrest and imprison him, and to demand quadruple the extra amount he has received; the basic amount is to be repaid to the one who has suffered the loss, and the triple amount is to be brought in to the *fiscus*.¹³ If the civil or military governor, on finding out about this either from a petition or in any other way, neglects to vindicate the injured party as stated, he will be charged quadruple the amount, out of his own resources, in the manner stated. We command that the relevant governors too, are to be charged the same fine by the *comes* of our *privata*,

⁹ 'Tutors' = (Greek) ἐπίτροποι, (Latin) *tutores* = ordinary guardians. 'Curatores' = supervisors: see *J. Nov.* 18, note 21. For the Greek translation of these Latin legal terms, see Van Der Wal (1999a), pp. 128–30.

¹⁰ 'Prejudice' (Greek πρόκριμα) = Latin *praeiudicium* or 'pre-judgment'.

¹¹ 'Magistriani' = *agentes in rebus* or government agents (see the further discussion in Avotins (1989), p. 104).

¹² 'Sportula' = fee. What this section of the law signifies is that officers of the imperial government sent out from Constantinople to the provinces were only permitted to receive fees at the officially sanctioned rate. See *J. Novs.* 8, 17, 24, 25, 30 and Van Der Wal (1998), p. 42, note 78.

¹³ 'Fiscus' = the treasury (signifying that the property was to be assigned to the imperial estates of the *res privata*: see *J. Nov.* 112, note 14).

should they come to know that court clerks on their staff have made an illegal exaction by way of *sportulae*, and neglect to punish it. We also give recipients of proceedings licence to pay court clerks no more than what is determined by our constitution; should court clerks have wanted to overcharge them, they are to have licence to resist them.

4

A law of both our father of pious destiny, on one part, and our Serenity, on the other, ruled that judges are in no circumstances to include in their written verdicts anything to the effect that they have been given, on the Sovereign's word, issued verbally, a command for certain persons to be taken to court, or made to appear; but that, instead, it is Admirable *referendarii*¹⁴ who are to make our commands public, as is fitting. In confirmation of the said law, we command that in the cases of which they inform our Serenity, or which they refer to us, Admirable *referendarii* are to have no licence, either themselves or their assistants, in person or through any other person whatsoever, to detain any person, put him under surety, exact anything from him or compel him to make any dispute-resolutions or agreements with his opponents, or to involve themselves in whatsoever way with whatsoever case.¹⁵ All that we permit them to do is simply to communicate our commands on any case, whether those are issued in written or unwritten form, to the competent judges, or those delegated. Should any of them dare to take any action contrary to the present law, the one who has suffered any loss or fraud in his affairs will not be subject to any prejudice at all concerning his right, but the one who has taken such an action is to be compelled, through the appropriate officeholder, to make restitution out of his own resources for the loss incurred by the person injured, and will in addition be subjected to the loss of his office and rank.

We command that all this is to apply not just for future cases, but also for those already commenced but not yet completed.

Conclusion

Accordingly, your excellency is to cause the present law, which is to be valid in perpetuity, to come to the knowledge of all by posting edicts in the

¹⁴ A reference to *Codex* 1.15.2 (of Justin I and Justinian). On *referendarii* ('referendaries') see *J. Nov.* 10 and Procopius, *Anecdota* 14.11, 17.32, and 29.28.

¹⁵ These prohibitions on *referendarii* are not contained in *Codex* 1.15.2.

sovereign city, in the customary manner, so that all become aware of our dispositions, made by us for their common benefit.

Given at Constantinople, June 15th in the 18th year of Justinian, 3rd year after consulship of the Most Distinguished Basilius, indiction 7 544

<The same Sovereign to Peter, prefect of praetoria>

[Supplied from Athanasius; Auth. has 'to Gabrielius, urban prefect']²

Preamble

Some judges have made use of referrals to our Serenity after numerous hearings of a case, with very heavy costs resulting to litigants over the cases they launch. This is something else that we have decided to rectify, by the present law, to avoid the resultant delay over cases, and the reopening of trials with new preliminaries.

1

Accordingly, we command that in no way and at no time whatsoever are any judges to refer to our Serenity cases that have been laid before them; they are to examine the matter in full, and to judge it in whatever way seems to them just and lawful. If the parties acquiesce in their findings, the verdict is also to be put into execution, in accordance with the force of law. However, should anyone consider himself to have been injuriously treated as a result of the conclusive verdict, he is to make use of a legal appeal; that is to be contested under the process determined by law, and to receive its final conclusion. Should the arbitrators on the case be two or more in number, and disagreement arises between them, we command that in that case, too, each of them is to give his verdict individually, as he sees fit.³

¹ Justinian here seeks to limit the flow of legal queries to the imperial court, and expedite the workings of justice at a provincial level, by implicitly abolishing the procedure of referring a case to the emperor for interlocutory adjudication prior to judgment (*relatio ante sententiam*), on which see *J. Nov.* 28, note 19. It would appear, however, that this reform would itself be reversed by 563 and the promulgation of *J. Nov.* 143 (see discussion in Van Der Wal (1998), p. 184, note 112), or, indeed, as early as 546 (see *J. Nov.* 126, note 6).

² Gabrielius was praised for his honesty by John Lydus (*De Magistratibus* 3.38), who dedicated to him his treatises on the Months (*de Mensis*) and on Signs (*de Ostentis*). A statue was erected to his honour along with an encomiastic verse recorded in the Greek Anthology (*Anth. Gr.* 16 32 lemma), which also contains a verse he composed on an image of Eros (*Anth. Gr.* 16 208). See *PLREIII*A, p. 498 (Gabrielius 1).

³ 'Each of them is to give his verdict individually', i.e. the judges are each to issue their individual judgments, including any dissenting opinions, after the manner of the UK or US Supreme Courts. Ironically, this procedure is not encountered in modern European civil law jurisdictions: see Van Der Wal (1998), p. 174, note 72.

Conclusion

Accordingly, your excellency on the one hand, and all other judges, higher and lower, on the other, are to take pains to observe what has been determined by our Serenity by means of the present law, which is to be valid in perpetuity; edicts are to be posted by your excellency in the sovereign city, in the usual manner, and instructions are to be despatched to the Most Distinguished governors of provinces, so that all are aware of what has been legislated by us for the benefit of litigants.

Given at Constantinople, October 15th in the 17th year of the Lord Justinian, pius princeps, Augustus, 2nd year after consulship of the Most Distinguished Basilius

543

<The same Sovereign to Theodotus, prefect of praetoria>²

[Supplied from Athanasius]

Preamble

Theodosius and Valentinianus, of divine destiny, ruled in a law³ that appeal-cases which have been notified are to be judged jointly by the *quaestor* of the divine Palace and the prefect of Eastern praetorians, the holder of your excellency's office at the time, in place of the *sacra*.⁴ We found, however, that something unworthy both of our realm, and of the Sovereignty itself, has been occurring at such trials: litigants, their representatives, their advocates and all those serving on such cases were using apparel, footwear and language, before our office-holders, that befit only those entering the Sovereignty, as if we ourselves were in session at the hearing; but even the judges themselves were issuing their verdicts, not in their own person, but as if we were present ourselves and giving interlocutory decisions.⁵

¹ In this constitution, the emperor legislates on the conduct of appeal courts. In legal terms, the most significant aspect of the novel is Justinian's insistence that judges should issue judgment with respect to the facts and the law irrespective of whether both parties turn up to the appeal. This would have helped avoid the situation whereby one party to a case was able to win it simply by preventing his opponent from appearing. Otherwise, the law is primarily of interest in terms of Justinian's denunciation of conduct at legal proceedings at which the emperor was represented in a judicial capacity by the *quaestor* and praetorian prefect. Justinian claims that litigants had been turning up to such proceedings dressed and deporting themselves in a fashion that was only appropriate when appearing before the emperor in person. Likewise, the *quaestor* and praetorian prefect had apparently been daring to sit in judgment not only as deputies of the emperor, but adopting his persona. For further discussion, see Bonini (1985), pp. 165–6 and Kelly (2004), p. 72. The elaborate court procedure and ceremonial against which Justinian legislates in this novel is described (and defended) by the contemporary bureaucrat and scholar John Lydus (*De Magistratibus* 2.15–16).

² On Theodotus, see *PLREIII*B, p. 1301 (Theodotus 3) and *J. Nov.* 112, note 2.

³ A reference to *Codex* 7.62.32.

⁴ 'In place of the *sacra*' = a partial rendering of the Latin *vice sacra*, meaning 'in place of the sacred <offices>', i.e. with these officials sitting in place of the emperor (see Berger (1953), p. 764). For such appellate procedure, see *J. Novs.* 28 c. 8, 29 c. 5pr., 30 c. 10 and 82 c. 4.

⁵ 'Interlocutory decisions', i.e. as if responding to a *consultatio*: see *J. Nov.* 28, note 19.

1

We are prohibiting that from happening in future, in any court, by decreeing that it is in their own person, not in ours, that the *quaestor* of our divine Palace at the time, and your excellency, or the prefect of sacred *praetoria* at the time, are jointly to preside and give interlocutory decisions or a verdict acknowledged by law;⁶ and the usual *scrinia*,⁷ of course, are to provide their own service on such arbitrations. The officer-holders judging such cases are to know that if in future there is any offence committed against this in any way whatsoever, they will be subject to the charge of high treason.⁸

2

On all appeals, this is what we command to be in force:

Whenever there is an appeal and both parties observe the set day within the time appointed, the judge will take pains to enquire into both facts and findings without delay, and give judgment in accordance with law and justice.

Should only the appellant come to court, we command judges to wait until the final day set, and should the victor not be found after search, to give a lawful conclusion on examination of the facts; whereas should only the recipient of the victorious verdict come forward, and the appellant not be found after search, the judges are to wait for not just the last set day, but for the period of *reparatio*, that is three months.⁹ Should the appellant not have been found even then, the verdict is no longer to be ratified by the expiry of time; instead, the judges are to examine both facts and findings,

⁶ The distinction the emperor is drawing here is between whether the officials are sitting on the emperor's behalf (*vice sacra*) with respect to *consultationes ante sententiam* or whether they are presiding over *consultationes post sententiam* (at which they would have delivered a final verdict: see *J. Nov.* 28, note 19). The former had been abolished by *J. Nov.* 125 just three years earlier. This law thus may reveal either sloppy draughtsmanship on the part of the emperor's legal officers, or that the reform of 543 was reversed even sooner than suggested by Van Der Wal (1998), p. 184, note 112. Alternatively, this law may in fact pre-date *J. Nov.* 125 (see note 14 below).

⁷ '*Scrinia*' = secretarial *bureaux*.

⁸ 'High treason' (Greek καθοσιώσις) = *crimen maiestatis* (see Harries (2007), pp. 81–8 and Berger (1953), p. 418).

⁹ '*Reparatio*' = *reparatio temporum*, i.e. a reinstatement of the term in which a plaintiff was obliged to appear at court to defend or pursue his claim on the grounds that it had initially been impossible to appear when expected (see Berger (1953), p. 674). In other words, in this instance, the judges were to allow the plaintiff an additional three months in which to appear.

albeit unilaterally. Should they find that the verdict was justly given, they are to confirm it; but if something has been overlooked, they are to rectify it and deliver a lawful verdict.

Once an appeal suit has been brought in during days within the time-limit, whether by both parties or only one, the verdict is no longer to be confirmed by the expiry of two years in future, but such cases are to be given their lawful conclusion, on consideration of both truth and justice, whether it is one party or both that has been present.¹⁰ For that reason, we command that in such cases not all examinations are to be deferred to the first appeal,¹¹ as was in force hitherto, but each is to have its own day, fixed in advance.

3

In addition, we decree that all judges are, without fail, to accept an appeal that has been lodged during the days appointed and is not forbidden by law, and within 30 days from the presentation of the appeal are to provide the litigants with the factual record, over their own signature, so that they will be able to disclose them in their support to the appropriate office-holder.¹² Should a judge delay doing this, the verdict will be confirmed by lapse of time, but the judge who has not observed this, and his staff, will be obliged to repay from their own resources any cost the litigant may incur as a result of the non-delivery to him of the factual record; they will also pay a fine at ten pounds of gold, to be brought into our *privata*.¹³

Conclusion

Accordingly, your glorious and noble authority is to take pains also to advertise the present law in this sovereign city, so that all may be aware of what they must observe.

¹⁰ Justinian is here decreeing that judgment should be given with reference to the legal rights and wrongs of the case, and one side should not simply be awarded judgment on purely procedural grounds. See also *J. Nov.* 49 c. 1.

¹¹ The law potentially permitted two appeals: see *Codex* 7.70.1.

¹² Justinian here legislates to prevent the judge of first instance from attempting to block an appeal by failure to provide the requisite documentation etc. (see Van Der Wal (1998), p. 178 (entry 1158)).

¹³ '*Privata*' = the imperial estates of the *res privata* to which fines accrued (see *J. Nov.* 112, note 14).

<Promulgated in the 20th year of the reign of the Lord Justinian, pius princeps, Augustus, 5th year after consulship of the Most Distinguished Basilius>

[Supplied from Theodorus]

546–7¹⁴

¹⁴ An alternative dating of 541–542 has been proposed for this law: see Lounghis, Blysidu and Lampakes (2005), p. 322 (under entry 1320).

127 | Nephews and nieces inheriting together with ascendants, and other heads¹

*The same Sovereign to Bassus, Most Illustrious prefect of praetoria*²

Preamble

In our desire to devise what is in our subjects' interest at all points, we have no hesitation in amending our laws. In this connection, we remember having laid down a law³ by means of which we ordered that, should anyone die leaving siblings, and children of another sibling predeceased, children of the predeceased sibling also, like the parent's siblings, are called to the inheritance, coming into their parent's place and gaining the parent's share. Should the deceased have left also an ascendant with siblings related through both parents, and children by a predeceased sibling, we commanded by means of the said law that those siblings should be called with the parents; but we excluded their siblings' children.

1

Accordingly, by a just amendment of this, we decree that if someone at death leaves both an ascendant as well as siblings able to be called with parents, and children of another sibling predeceased, the predeceased sibling's children are to be called as well, together with ascendants and their siblings; the share they are to take is the same as their parent would have been going to take if surviving. This decree of ours concerns a sibling's children whose parent was related to the deceased through both parents. To put it simply, we are commanding that they are to have the same degree

¹ In this constitution Justinian improves the hereditary claims in intestacy of nephews and nieces. More significantly, however, he extends to widowers who remain chaste after the death of their first wife the same privileges as he had previously extended to widows who chose not to re-marry, and legislates to punish husbands who sue for divorce without just cause in precisely the same manner as he had hitherto decreed wives should be punished (i.e. lifetime imprisonment in a monastery). The novel thus reflects Justinian's concern for a measure of equality between the sexes, on which see Krumpholz (1992), pp. 162–204.

² Bassus, unusually, is praised for his honesty by Procopius (*Anecdota* 21.6–7): see *PLREIII*, p. 178 (Bassus 4).

³ A reference to *J. Nov.* 118.

of precedence, when called with their siblings only, as when people are called together with ascendants and their siblings.⁴

2

As there is another point that we consider to deserve some amendment, we are making it into part of the present law. We find from actual experience in practice that it is necessary for wives to have their pre-nuptial gifts⁵ registered with an entry in the records, so that even should they lose the original contracts, confirmations of the arrangements made at their marriage should be available to them through the records. We are decreeing, correspondingly, that when either husbands themselves, or those acting for them, draw up contracts for gifts either before or in respect of marriage, if of a sum greater than 500 gold pieces, they have an obligation to register it with an entry in the records. If it is in the sovereign city, this is to be before the *magister censuum*,⁶ if in the provinces, before the respective defender of the city,⁷ or, generally, the person before whom such records can be made. If they do not register them, we command that as far as the wife's share is concerned they are even so to be ratified, and if occasion arises for a demand of the gift, or part of it, the non-registration of the gift is not to be put up against the wife. However, if the dowry-agreements and their falling due give the right for a demand on the husband's part for the dowry, or part of it, we command that if he did not register the gift with an entry in the records, as stated, he is to have no action; it seems to us unacceptable that the risk from non-registration of gifts should rest with wives, when it is their husbands who have the power to register them.

3

Further, as we consider that wives who do not enter on a second marriage deserve some precedence over those who do re-marry, we decree that, should a woman who has lost her husband refrain from a further marriage,

⁴ Justinian here promotes such kin from the third group or class to be called to succeed on intestacy to the second (see Van Der Wal (1998), p. 130 (entry 896)). For the broader reforms which Justinian had introduced to the law of succession five years earlier, see *J. Nov.* 118, note 1.

⁵ 'Pre-nuptial gift' = *donatio ante nuptias*.

⁶ 'The *magister censuum*': a high-ranking subordinate of the Urban Prefect who also had responsibility with respect to senatorial taxation and the opening of wills (Berger (1953), p. 570).

⁷ 'Defender of the city' = *defensor civitatis*: see *J. Nov.* 15.

she is to have the use of her pre-nuptial gift as we have decreed previously, but is also to have such proportion of its ownership as is effected by analogy with her children; in the calculation of ownership, she too is to be regarded as representing one child. We command that this is to apply not only to mothers, but also to fathers, and all other ascendants who do not enter on a second marriage.⁸

4

By means of a previous law of ours, we forbade both husbands and wives to serve *repudium*⁹ and break off a marriage except if there is a ground recognised by our law, and imposed penalties on both husbands and wives who dare to do so, while making some distinction in the penalties as between husbands and wives. As an improvement on this, we decree that there is to be no difference between husband and wife in the penalties for daring to do this: when they break off their marriages without a ground recognised by our law, husbands who dare to do this are to be subjected to the same penalties that we have determined against wives.¹⁰ As we have come to consider it just for an equivalent sin to be subject to imposition on them of comparable penalties, the penalties for husbands and wives are to be alike.

Conclusion

Accordingly, your distinction will make our present general law manifest by means of the customary edicts, both to the population of this great city and to the population of the provinces, so that not one of them all is ignorant of what has been legislated by us for their common wellbeing.

Given at Constantinople, September 1st in the 22nd year of the reign of the Lord Justinian, pius princeps, Augustus, 7th year after consulship of the Most Distinguished Basilius 548

⁸ This provision is consistent with Justinian's admiration for chastity on the part of the widowed (to which he had given voice in *J. Nov.* 22). The main point of interest with respect to this provision is that he now encourages similar chastity with respect to widowers, and extends to bereaved males the privileges previously extended to bereaved females. This marked a significant moment with respect to Roman attitudes to marriage, which had tended to treat the re-marriage of men as so expected as to be barely worth comment.

⁹ 'Repudium' = unilateral dissolution of marriage. The law alluded to is *J. Nov.* 117.

¹⁰ Justinian here decrees that husbands who are found to have served a divorce without just grounds (*repudium sine causa*) are to be imprisoned for life in a monastery (on which see Hillner (2015), pp. 214–41).

128 | Exaction and payment of taxes, and other heads¹

The same Sovereign to Peter, Most Illustrious prefect of praetoria

1

The present law is another that we are enacting in our efforts to bring about everything that has regard to assistance for our taxpayers.² By means of it, we decree that the detailed schedules of contributions for the next indiction³ should be published in the court of the Most Illustrious prefects of each diocese, with entries in the records, in July or August during each successive indiction. They are to indicate the amount imposed for tax in each province or city on each *iugum*, or on the *iulia* or *centuriae*,⁴ or under any other head whatsoever, in kind and in gold respectively, showing also

¹ In this important constitution, dating from 545, Justinian attempts to re-assert control over the system of tax-collection within the empire at a time when it is likely to have been shaken by the impact of the bubonic plague, which appears to have led to the death of many tax-payers and thus a precipitous decline in tax revenues also reflected in the numismatic record, which provides evidence for a contemporary crisis in state finances (see Sarris (2002) and Meier (2016)). The law combines genuine concern that taxpayers should not be fleeced by corrupt officials, and evident determination that all should pay their share, with an equally evident insistence that all taxable land should be subject to assessment and made to contribute. Accordingly, a major concern within the novel is the operation of the *adiectio steriliūm* (Greek ἐπιβολή), whereby abandoned or uncultivated lands were allocated to neighbouring landowners or village communities, who thereupon became responsible for paying the taxes due upon them (see Monnier (1892–5)). Indeed, Teall ((1965), p. 318) describes this law as setting out ‘the definitive form of the *epibole*’. The law is also of importance for the history of Byzantine taxation in that it provides further evidence for the Justinianic origin of certain key Middle and Late Byzantine fiscal institutions: in this instance that of the *solemnion*, on which see Bartusis (2012), pp. 74–8. For a further discussion of this law, see also Bonini (1985), pp. 158–60 and Brandes (2002), pp. 74–5.

² ‘Taxpayer’ (Greek συντελεστής): for the meaning of this word as used in the papyrological and legal sources, see Mirkovic (2008), Laniado (1996) and Liebeschuetz (2001), pp. 182–3. The term essentially signified a landowning taxpayer (i.e. somebody registered with respect to his own land and not that of somebody else).

³ ‘Indiction’ = the fiscal cycle. Strictly speaking, each indiction lasted fifteen years, after which a new tax assessment took place, but here the word is used for an annual cycle, indicating that the use of the term had become increasingly elastic since the institution of the first empire-wide indiction by the Emperor Diocletian in 297 (see Chouquer (2014), p. 311).

⁴ ‘*Iugum*, . . . *iulia* or *centuriae*’ = taxable units. The *iugum* appears to have comprised 100 *iugera* (or 288,000 square feet); the *iulium* was a term current in Illyricum for a fiscal unit

the bank value of each product, and the usual price prevailing⁵ in each area; also what proportion is to be paid into the *arca*,⁶ or is to be paid or spent in the individual province. Thus compiled, such schedules are to be sent to the provincial governors at once, at the beginning of each indiction, and through them are to be advertised in the cities under them by September or October; but for those who wish, copies of them are also to be provided straight away from the court of the Most Illustrious prefects, for taxpayers to find out how they have to make their contributions.⁷ If, prior to the notification, taxpayers make payments, or meet expenses in their province, at rates different from those contained in the detailed schedule for that year, we command that they are to reckon it in with their contribution for the same indiction, so that they suffer no over-charging. If such detailed schedules are not sent out by the date we have determined, those administering our *praetoria* at the time⁸ will pay a fine of 30 pounds of gold, and the administrators of each province⁹ will be charged a fine of 20 pounds of gold; if the detailed schedules are sent, but the provincial governor does not advertise them, he will be penalised with a fine of 10 pounds of gold and forfeit his office, his staff being charged a fine of 5 pounds of gold.

2

We command that the bringing-in of the produce in kind is to start immediately from the beginning of each indiction, and money taxes at the dates determined.

that reckoned both land (*iugum*) and labour (*caput*); whilst a *centuria* was a synonym for *iugum* (see Chouquer (2014), pp. 263, 316–18).

⁵ ‘The bank value . . . the usual price prevailing’: the law here distinguishes between the value at which goods were reckoned for official purposes and their price on the local market (see Sarris (2014), pp. 169–71). The documentary papyri from Egypt reveal late Roman officials to have carefully observed, recorded and reported local price movements and variations (see Jördens (ed.) (2006), p. 294).

⁶ ‘*Arca*’ = ‘chest’, i.e. the central treasury of the Praetorian Prefecture (see Chouquer (2014), p. 236). For the division between locally spent (but centrally supervised) tax receipts and those channelled to the higher levels of the state bureaucracy, see Liebeschuetz (1996).

⁷ The primary recipients the emperor is likely to have had in mind here were landowners and villagers (such as the Apion family with respect to its estates around Oxyrhynchus or the headmen of the Middle Egyptian village of Aphrodito recorded papyrologically in the archive of Dioscorus) who possessed the privilege of *αὐτοπραγία* or ‘self-collection’ of taxes: see Sarris (2006), pp. 103–14 and 150–4.

⁸ ‘Those administering our *praetoria*’ = agents of the Praetorian Prefecture.

⁹ ‘Administrators of each province’ (Greek *τρακτευταί*) = Latin *tractatores*: see Zuckerman (2004), pp. 124–5 and John Lydus, *De Magistratibus* 3.21. These officials acted as intermediaries between the provincial governor and the praetorian prefect, to whom they delivered quarterly accounts reporting on the progress of the tax-collection.

3

We direct that receipts or quittances, both partial and final, for the tax-contributions are without fail to be made out by those receiving the taxes, indicating the total of money and of produce in kind, and also of the *iuga*, *iulia* or *centuriae*, and the names, of the holdings for which they are receiving the contributions.¹⁰ If they do not make the receipts or quittances in the manner stated, we command that a fine of ten pounds of gold is to be demanded from them, and they are also to undergo tortures; if the governor of the province receives a suit about this, but does not punish it, and enforce the drawing up of receipts or quittances in the form we have determined, he is likewise to be charged a fine of 10 pounds of gold.

4

Another rule that we command to be observed is that if a taxpayer has a query over a holding on which tax is being charged, or about the amount of the tax, as may occur, the custodians of the tax-registers are, without fail, to be obliged by the governor of the province – or if he neglects this, the most holy bishop of the area – to produce them, and demonstrate the amount of tax in accordance with the purport of the tax-register; the landowner is then to be charged it.

5

Another point on which we have decided to assist our tax-contributors is that landowners are not to be put under compulsion to nominate receivers¹¹ for their tax-contributions in gold. Those in each province or city on whom rests the liability for the tax-demands, whether they be governors, city councillors,¹² *exactores*,¹³ *vindices*,¹⁴

¹⁰ For such receipts in the papyrological record, see Sarris (2006), pp. 43 and 52.

¹¹ 'Receiver' or 'conveyancer' (Greek υποδέκτης): the documentary papyri from Egypt suggest that it was common for landowners to contract with their estate stewards (and possibly others) for the latter to collect taxes from their tenants and employees. Such administrators were expected to provide surety for such contracts by supplying a guarantor (see, for example, *P.Oxy.* I 136). Justinian here decrees that whilst such arrangements were legitimate, they were not obligatory.

¹² 'City councillors' = (in this instance) Greek πολιτευόμενοι.

¹³ '*Exactores*' = civic tax-collectors (i.e. *exactores civitatis*): see Chouquer (2014), p. 294 and Thomas (1989).

¹⁴ '*Vindices*' = individuals charged with tax-collection in specified districts: see Sarris (2006), pp. 158–9 and John Lydus, *De Magistratibus* 3.49 (whose description suggests they may have been a form of tax farmer).

*canonicarii*¹⁵ or any others, are to receive the money on their own liability, and send it out, or spend it on the purposes for which it has been earmarked.

6

Another rule that we command to be observed is that a *canonicarius* is to be despatched to each province, such as to be capable, on the liability of those appointing him, of exacting the public taxes in such a way that there will be no cause for an *expulsor*¹⁶ to be sent out after him, inflicting extra expense on the taxpayer; for the future, in fact, we are abolishing the very title of *expulsor*. Should the *canonicarius* be found unsatisfactory, he is to be dismissed, instead of having an *expulsor* sent, and another *canonicarius* is to be despatched. We command the *canonicarius* himself to rest satisfied with his fixed perquisites, and to inflict no injury on the taxpayers.

7

In the event of any impost¹⁷ on whatever type of property, be it estate property or village property,¹⁸ we command that the recipient of the additional impost is to have the tax-demand on it from the time when

¹⁵ ‘*Canonicarius*’ = an official collector of the annual tax (κανών) employed by the praetorian prefect: see Jones (1964), pp. 405 and 457–9. They were possibly synonymous with *tractatores* (Stein (1949) 1, p. 221), on whom see note 9.

¹⁶ ‘*Expulsor*’ (from Latin *expellere* ‘to expel’ – see Van Der Wal (1998), p. 30, note 21): also mentioned in *Codex* 10.19.9. These references, taken together, would suggest that the *expulsor* was a specialist debt-collecting agent of the Praetorian Prefecture who was sent out to investigate non-collection on the part of *canonicarii* and others charged with the gathering of taxes at a local level.

¹⁷ ‘Impost’ (Greek ἐπιβολή) = (Latin) *adiectio (sterilium)*: the forced imposition on a landowner or community of the tax-liabilities of uncultivated or abandoned land. This is likely to have been a pressing issue at the time this law was issued due to the demographic impact of the plague (see Sarris (2002)). Those who had such liabilities imposed on them were allowed to cultivate the land. Justinian had exempted the Church from such imposts in *J. Nov.* 120. See also discussion in Chouquer (2014), pp. 229–30. It is clear from this provision of the novel that the person who had the tax allocated to them also acquired ownership of the land.

¹⁸ ‘Estate property or village property’: the former is described in Greek as ὁμόδουλα (‘in common servitude’), i.e. subject to a single master, whereas the latter is described as ὁμόκηνησα (‘subject to a single census’), i.e. a self-standing fiscal entity. For the translation, see Lemerle (1979), p. 19. Alternatively, the latter could possibly mean another estate in the same tax district or territory (see Jones (1964), p. 815 with note 105). However, Jones’ suggestion would appear to overlook the fact that many estates (as well as certain large villages) would have been regarded as possessing ‘autopract’ fiscal status (meaning the right to collect and transmit their own taxes to the imperial government). This effectively

the additional holding is made over to him. That is not to take place without a documented enquiry being held into it before the provincial governor, and the issuing of his decision determining who is to be the recipient of the impost. Should anyone consider himself injuriously treated, he is to be allowed to appeal, so that the appeal may be contested in the court of the Most Illustrious prefects, and receive its conclusion according to law.

8

On any occasion when the owner of any holding whatsoever either does not appear, in the event, or is incapable of meeting the tax-payment, that being what has caused the necessity for the impost, we command that his holding is at once to be made over to owners of estate or village properties, together with all the agricultural workers¹⁹ found on it, their *peculia*, the stores, produce, livestock and any other *instructa* and *instrumenta*²⁰ found there. In the event either that no person is to be found who ought, by law, to take it over, or that there is any other cause of delay over the impost, we command that records are to be made before the provincial governor showing the quality and condition of the said holding and everything found on it, so that city councillors, *exactores*, *vindices* or civil servants²¹ may take it over; but with the proviso that if those who ought by law to take it over are subsequently found, that is not to happen without restitution to the person taking it over for any depreciation or diminution on the part of the *exactores*, city councillors, *vindices* or civil servants.

9

We further command that taxpayers are not to be charged 'transportation costs',²² as they are called, for money or produce dispensed in the province;

granted them extra-territorial status (see Sarris (2006), pp. 103–14 and 150–4 and Tedesco (2013)).

¹⁹ 'Agricultural workers' (Greek γεωργοί) = (Latin) *coloni*.

²⁰ '*Peculia*' = the fund of property possessed by the *colonus adscripticius*, over which his owner or master had ultimate control (see Sarris (2011b)); '*instructa*' = *instructa domus*, i.e. the necessary furnishings and equipment of a house; '*instrumenta*' = *instrumenta fundi*, i.e. the equipment necessary for the satisfactory running of a rural estate or industrial property (see *Digest* 33.7 and Berger (1953), p. 505).

²¹ 'Civil servants' = *cohortales* (see *J. Nov.* 6, note 6).

²² 'Transportation costs' = Greek παραπομπικά.

on what is sent out, they are to pay no more than what was originally determined in each province.

10

Those sent to the provinces for any exaction of taxes whatever are not to begin their demand without first registering, in the local court, the instructions enjoined on them for this, so that those paying public taxes are not subjected to any danger or loss over them. Exactly the same is also to be observed for private lawsuits.

11

We further command that those who have been commissioned to demand taxes are not to be entrusted with collection on private properties.²³ If they have been given any such commission, they are not on any account to dare to carry it out, so that our taxpayers suffer no injury under the guise of public tax-collection.

12

Should anyone who does genuinely owe tax-contributions tell the court clerk²⁴ that he has someone else in debt to him, the court clerk is not to be allowed to dun the person named, at all, unless the first debtor is proved to be quite unable to pay his tax-contribution by any means; and there must first be an enquiry, before the governor of the province, into the question of whether the person named is genuinely a debtor. That done, it is lawful for the exaction to be made, in either case. Should anyone dare to make any exaction, or demand, in contravention of what we have ruled, he will be both stripped of his office and committed to exile, after confiscation. The governor who instructed that, or allowed it, is to be charged a fine of ten pounds of gold, and his staff will be subject to a fine of five pounds of gold.

²³ 'Are not to be entrusted with collection on private properties' = state officials may not be employed by landowners to collect taxes on their estates, as the ensuing conflict of interests would facilitate tax evasion. Landowners could, however, employ their own stewards or other private citizens to do this: see *P.Oxy* I 136. Alternatively, Van Der Wal (1998), p. 177 (entry 1145), proposes that what Justinian here means is that public tax-collectors could not be simultaneously employed to collect private debts (or, by inference, as estate stewards).

²⁴ 'Court clerk' (Greek ἐκβιβαστήρ): see *J. Nov.* 96. The inference is that the debtor has been summoned to court to appear before the governor.

13

Absolutely none of those serving on public tax-collection – *censuales*,²⁵ accountants or anyone else working for the public treasury – is to be allowed to deploy a claim of immunity against those alleging that they have been injuriously treated over the tax-exaction.

14

No-one at all is to be dunned for tax-contribution on plots of land that are not in his ownership. In the event that someone's agricultural workers or registered estate workers have a holding of their own, it is they who are to be charged the tax-contributions for it; their landlord is not to undergo any dunning on their behalf, unless, as may be, he has made himself responsible for such contributions, of his own volition.²⁶

15

We command that those exacting public taxes are to make use of just weights and measures, to obviate their committing any injustice or fraud on our taxpayers over that, either. If our tax-contributors consider that they have been unfairly treated as to either weights or measures, they are to have licence to receive measures and weights from the Most Distinguished governors, for produce, and weights from the Most Distinguished *comes* of the divine *largitiones*²⁷ at the time, for gold and other metals; and to have the said measures and weights kept in the most holy church of each city, so that the bringing-in of taxes, and military and other expenditures, may be made in accordance with them, without unfair burdens on our tax-contributors.

²⁵ '*Censuales*': officials employed to compile lists of taxpayers (Berger (1953), p. 386).

²⁶ The law here alludes to *coloni adscripticii* employed by a landowner also separately owning land of their own, for which their landowner could choose to become fiscally responsible, but could not be forced to do so. An example of this relating to the administration of the Apion estates around Oxyrhynchus can be found in *P.Oxy. LV* 3804, line 92. Offering to take over the tax-payments of peasants was a common means by which landowners drew workers onto their estates in late antiquity (see Sirks (2001)). The laws on the adscript colonate in general, however, would suggest that for a *colonus adscripticius* to continue to possess such property was unusual: see Van Der Wal (1998), p. 54 (entry 403) including note 13.

²⁷ '*Comes of the divine largitiones*' = the *comes sacrarum largitionum* (= Count of the Sacred Largesses) who, amongst other things, supervised the currency and the minting of coinage: see Jones (1964), pp. 427–38.

16

In our over-riding concern for our realm and its inhabitants, we command that there is to be no licence at all for the overseers of taxes²⁸ to have access to the moneys that have been set aside for the cities' public works, wheat-funds, aqueducts or any other *sollemnia*²⁹ whatsoever, or for *salaria*.³⁰ Without keeping back any part of these funds, or making appropriations for their own profit, they are to hand them over without delay or diminution, to be put to the uses for which they were originally earmarked; nor are city property-owners or inhabitants to dare to make deductions from the said funds in any way whatsoever, or to make payments or disbursements from them on account of levies, or for *sportulae*.³¹ Should anyone dare to make or receive any payments out of them, we command that his repayment to the city is to be in twice that sum, from his own resources. Nor are provincial governors, their staff or anyone else whatsoever to have any association at all with the said funds, or to obtrude themselves into their management; it is the most holy bishop of each city and its leading men, and moreover its property-owners, who are to appoint the father of the

²⁸ 'Overseers' = (Greek) (οἱ) προνοοῦντες. Note the similarity in terminology between the legislation and documentary papyri concerned with those who agreed to collect tax-revenues for local landowners such as *P.Oxy* I 136. For the sociological context to the adoption of official terminology in private contexts, see Sarris (2013).

²⁹ '*Sollemnia*' = tax-revenues hypothecated by the imperial government and set aside to meet specific items of annual civic expenditure, such as costs associated with public entertainment, civic food supplies or the maintenance of aqueducts (see *J. Edict* 12, *J. Edict* 13 c. 21 and Thurman (1964), p.136, note 279). The Greek text uses the Latin term, which elsewhere is used to mean 'formalities' (see Berger (1953), p. 710 and Avotins (1992), pp. 194–5). Such expenditure might thus have been thought of as 'routine'. The attestation of such *sollemnia* is interesting for two reasons. Firstly, it reveals the extent to which the structures of municipal government survived into the Justinianic period (to a greater extent than has sometimes been supposed), but with the city councils subject to growing central supervision. In other words, the *curiae* survived, but they operated with far less discretion as to how much money they could raise and what they could spend it on (as argued by Liebeschuetz (1996)). Secondly, the hypothecation of locally raised tax revenues which would otherwise have gone to the central government would remain a common procedure in the Middle and Late Byzantine fiscal systems. Significantly, such diverted tax revenues continued to be called *sollemnia* (see Bartusis (2012), pp. 74–8). The novel thus furnishes further evidence for a key building block of the Middle Byzantine fiscal system to have been in existence in the Justinianic era. The main difference between the early Byzantine and later *sollemnia* would be that, in the comparatively deurbanised world of the Middle Byzantine Empire, religious institutions and private estates emerged as the main beneficiaries of such arrangements rather than city councils.

³⁰ '*Salaria*' may have been synonymous with *sollemnia* (see Van Der Wal (1998), p. 34 (entry 248)). The term otherwise meant an allowance (or, originally, the soldier's salt ration).

³¹ '*Sportulae*' = fees (see Kelly (2004), pp. 64–8 and 175–7).

city, the grain-buyer and other such administrators.³² At the end of each year the most holy bishop of the city, with five of its leading citizens, is to demand accounts from their appointees; should it appear from such accounts that there is anything owing or missing, they are to charge it to such administrators, on the liability of those who appoint them, and it is to be reserved for the uses for which it was earmarked.³³ Should any of the said administrators be found unsatisfactory, we command that he is to be dismissed at once and someone else appointed by both the most holy bishop and the others, the landowners, as stated.³⁴ Those who nominate them are to be aware that in the event of any loss to the city, they will make it good out of their own property.

17

Such audits are not to be allowed to be entrusted to any member either of the Most Illustrious prefect's staff, or of another staff or *schola*,³⁵ either by order of the said office or of any other office-holder, even should he have received a pragmatic or other directive,³⁶ or a divine *commonitorium*,³⁷ empowering him to take any such action. If anything of the kind happens, the most holy bishop of each city and its leading citizens have licence not to make any response to such persons on the said heads, but to refer the matter to us, so that, with that information, we may order such people to make restitution out of their own property to the city for the loss imposed on it, and may inflict on them the appropriate punishment.

³² The novel here refers to municipal officers (Greek διοικηταί). For the 'father of the city' (Latin *pater civitatis*), see Liebeschuetz (2001), pp. 210–12: he was a civic official who answered to the provincial governor, effectively operating as an intermediary between *curia* and gubernatorial court. The procedure for appointment by bishop, leading-men and taxpayers (really meaning landowners) depicted here encapsulates the system of 'government by notables' that was increasingly characteristic of the cities of the Eastern Roman Empire in the late fifth and sixth centuries (on which see Laniado (2002)).

³³ For the growing involvement of bishops in civic affairs, see Rapp (2005), pp. 233–4 and 288–9 (discussing this law). For discussion of the precise meaning of 'the leading citizens', see Sirks, Sijpesteijn and Worp (1996), p. 102, note 42.

³⁴ 'The landowners' (Greek κτητορες) = the members of the city council and the representatives of any neighbouring senatorial estates (see Sarris (2006), pp. 157–9).

³⁵ 'Schola' = a unit of palatine officials such as the palace guard or under the command of the *magister officiorum*: see Berger (1953), p. 691.

³⁶ 'Pragmatic or other directive': i.e. an enactment issued by the emperor or any other high functionary of the state.

³⁷ 'Commonitorium' = *commonitorium sacrum*: an imperial instruction or memorandum to an official: see Berger (1953), p. 400.

18

We additionally command that the *scriniarii* of works under the prefects of the sacred *praetoria*³⁸ are also to have nothing at all to do with such audits; any authorisation to do anything of the kind, either general or specific, that they had been given previously, or might be hereafter, is to be inoperative. We wish the accounts for the stated matters not to be entrusted to anyone but a man of good repute and vested with a rank, whom we shall select, because we consider that to be in the cities' interest; he will have to have a divine command from us in writing, over our Piety's signature, containing both his name and rank, and the matters and dates for which we are entrusting the accounts to him. We instruct that those audited by such men are to rest entirely assured that they will undergo no further enquiry at all.³⁹

19

We additionally decree that in no region of our realm is the same person to be both a governor and a deputy for the office of the Most Illustrious prefects or the military leadership,⁴⁰ nor is anyone working on the exaction of public tax-contributions to act as deputy for the Most Illustrious prefects or the generalship. In a word, there will be no-one acting as deputy for the Most Illustrious prefects in the prefectures except, by our written command, on military service in a specific province of the said prefecture, when there actually is need for prefects to have a deputy sent, with the duty of seeing to military expenditure. Should there be any offence in contravention of this, the one who has appointed a deputy for himself will be charged a fine of 30 pounds of gold, and will make restitution for any expense or loss to which anyone has been put as a result of the person sent by him; and the person who has had the temerity to take the appointment will be removed from his office, and his position in the service, and will be penalised by a fine of ten pounds of gold.

³⁸ '*Scriniarii* of works under the prefects of the sacred *praetoria*' = *scriniarii operarum*, under the command of the praetorian prefects. These were state officials concerned with ensuring that public works were carried out (i.e. concerned with imposing such works, also known as *angariae*, on taxpayers, rather than collecting taxes in coin or kind from them). See further discussion in Jones (1964), p. 450.

³⁹ The effect of this section of the constitution is that henceforth only officials of the praetorian prefecture directly instructed by the emperor were to be allowed to audit civic accounts. The law thus differs from the provisions of *J. Edict* 12 of 535 (see Van Der Wal (1998), p. 35, note 47).

⁴⁰ 'Military leadership': i.e. he may not deputise for a *magister militum*.

20

Further, we forbid both civil and military governors in the provinces to employ deputies in the cities or *castra*⁴¹ of the provinces entrusted to them, that is from the time of their arrival in the province and for the duration of their office in it; a fine of five pounds of gold will be imposed on the governor employing a deputy, and on the person who dared to take on the appointment, respectively. Before the governors arrive in the provinces, however, we do give them licence to appoint deputies for themselves, with the duty of carrying out all the functions that governors are empowered to do, short only of extreme punishment and amputation, until their arrival. Also if any governor is sent on by our command to another province, he is to be allowed to employ a deputy for himself, similarly.

21

We command all governors, both military and civil, that it is their duty to hunt down those who have committed crimes of brigandage, violence, abductions of women, robbery or any other outrages whatsoever in their provinces, and to inflict on them the punishments of the law; nor are they to take anything in perquisites for doing this, so that our subjects are kept uninjured in all respects. For such causes, we do not permit any officeholder, higher or lower, military or civil, to appoint bandit-hunters, *biocolytae* or *tribuni*⁴² in their provinces, or men with the duty of disarming people; this is so that the provincials are not subjected to more acts of violence for such causes. If any governor does not observe these provisions, he is to be aware that not only will he be deprived of the office entrusted to him, but he will also pay a fine of ten pounds of gold, while the one who dares to take on such a task will be sent into exile, after tortures and confiscation of his property.

⁴¹ ‘*Castra*’ = (in Latin) camps or fortified positions. In the Middle Byzantine period, when many Byzantine cities were heavily fortified, the loan-word *kastron* would become a standard Greek term for city, replacing *polis*. This novel would suggest that this process of both civic and lexical transformation was already underway in the Justinianic era.

⁴² βιοκωλύται: this word is used in two senses in the novels: firstly for high ranking officials charged with suppressing provincial violence, and secondly for locally raised *gendarmes* and irregulars whom Justinian identifies as a cause of provincial disorder in *J. Nov.* 8 c. 13. It is clearly the latter who are referred to here. For a thoughtful discussion of the blurred line between bandits and bandit-hunters suggested by this semantic ambiguity, see Lanata (1984b), pp. 7–24. For epigraphic attestations, see Feissel (2009), pp. 111–12. ‘*Tribuni*’ = tribunes: here clearly meant, once more, as a term for irregulars.

22

We additionally command that provincial governors and their staff are never to burden taxpayers with transportation costs, levies or other expenses for any journeys they make from one city to another; they are to make their expenditures out of the *annonae*⁴³ allotted to them from the public treasury.

23

We additionally decree that provincial governors are, without fail, to spend fifty days in their provinces after laying down their office, and to respond to those launching actions against them. In the event that any of them leave their province before the fifty days are up, we command that all those who have suffered some detriment at their hands are to convene before the most holy bishop of the metropolis⁴⁴ of the said province, and each individually, touching the holy gospels, is to declare the detriments inflicted on him, with an entry in the records. Restitution is to be made, out of the estate of the person against whom these claims have been recorded, for all detriment to the injured parties, under the care of the governors and of the administrators⁴⁵ of that province at the time, and on their responsibility; they are to be aware that if they neglect to fulfil that duty, they will themselves be obliged to make restitution of all detriments to the injured parties, out of their own property.

24

If any of the provincial governors should be either recalled to another post, or entrusted with employment in another province, we command that he is to appoint a legal representative to deal with actions brought against him for detriments. Should he not have done this, we decree that records are to be executed before the most holy bishop, as stated above, and that all detriments are to be repaid to those who have sworn to the detriments

⁴³ *'Annonae'* = stipends (paid by way of remuneration).

⁴⁴ 'Bishop of the metropolis' = the metropolitan (or head) bishop. This provision reiterates those found on this topic at *J. Nov.* 8 and *J. Nov.* 95. The growing role of the bishop in such civic affairs would appear to herald the evanescence of the office of *defensor civitatis*, which Justinian had attempted to bolster in *J. Nov.* 15 (for this phenomenon, see also *J. Nov.* 134).

⁴⁵ 'Administrators' (Greek *τρακτευται*) = Latin *tractatores*, on whom see Zuckerman (2004), pp. 124–5 and note 9 above.

inflicted on them, in accordance with the purport of the records; this being, similarly, under the care and on the responsibility of the governors and administrators of each province at the time.

25

We decree that all financial penalties contained in the present law are to be charged by the *comes* of the *privata* at the time against those not observing the present law, and claimed for our *fiscus*.⁴⁶ If he does not claim them, he will himself, with the *schola*⁴⁷ that serves under him, be obliged to pay the total amount of them out of his own estate.

Conclusion

Accordingly, your distinction is to take pains to have what we have determined by means of the present salvific law, which is to be valid in perpetuity for the benefit and well-being of our taxpayers, observed throughout, unimpaired and unimpugned; and to cause it to come to everyone's knowledge by posting edicts in the sovereign city, so that through them it may become manifest to all.

Given at Constantinople, June 24th in the 19th year of the reign of the Lord Justinian, pius princeps, Augustus, 4th year after consulship of the Most Distinguished Basilius, indiction 8 545

⁴⁶ 'Comes of the *privata*' = the *comes rerum privatarum* or head of the imperial estates of the *res privata* to which fines and confiscations accrued; '*fiscus*' = the treasury of the *res privata*: see *J. Nov.* 112, note 14. As elsewhere, the imperial household thus benefits financially from the proceeds of justice.

⁴⁷ '*Schola*' = unit or office (although note *J. Nov.* 117 c. 13, note 35). The Greek text uses the Latin word (although it is itself of Greek etymology).

<The same Sovereign to Addaeus, prefect of praetoria>² [Supplied from Auth.]

Preamble

There is no sin on the part of any of our subjects so great as to be deemed unworthy of leniency from us. Even though our abhorrence of what they have done rouses us to punish them for it, we shall nevertheless, after having reprehended the sinners as they deserve, make the most of an opportunity to revert once more to our characteristic philanthropy and, on reasonable grounds, to allay the virtuous righteousness of our indignation.³ Such, indeed, is the function of the present law.

In the past, when Samaritans were showing arrogant contempt for Christianity, and straying into practically the most extreme folly of anyone, we chastised them with several penalties. One, in particular, was that they could neither draw up wills nor, on dying without them, transmit their inheritance to their relatives called in intestacy, except in the event that

¹ In this fascinating constitution, Justinian restores to Samaritans their right to inherit under intestacy and to bequeath property to their co-religionists. The emperor admits, in a revealing aside, that the earlier prohibition (which had allowed the *res privata* to seize Samaritan estates) had not, in fact been put into effect, alerting one to a more pragmatic and restrained side to the emperor and to imperial legislation than Justinian's autocratic rhetoric would normally reveal. The clear impression is of an emperor eager to draw a line under his past poor relations with the Samaritans of Palestine, who had risen in revolt against him in 529. In terms of casting light on a less confrontational aspect to sixth-century religious realities, it is also interesting that in this law, the emperor claims that the Christian bishop of Caesarea, Sergius, had effectively acted as an advocate for the Samaritans. The present constitution should not, however, allow one to lose sight of the often brutal realities of imperial religious policy: amid the aftermath of the Samaritan uprising against Justinian, the contemporary sources record that the community had been subjected to acts of harsh retribution: Procopius, for example (who was a native of the city of Caesarea, which had possessed a large Samaritan population), claims that 100,000 were killed (*Anecdota* 11.25–29), whilst John Malalas (on whose figures Procopius perhaps drew) records that 20,000 were killed, 50,000 fled, and a further 20,000 Samaritan boys and girls were sold to Arab tribesmen as slaves (Malalas 18.35). It should also be noted that this relatively liberal law would subsequently be repealed by Justin II (*J. Nov.* 144). For a possible reason for the Samaritan uprising, see Meier (2003), p. 213. For a further discussion, see Miller (2013), pp. 54–92, Nothlichs (2007) and Sivan (2008), pp. 125–42.

² On Addaeus, see *PLREIII*A, pp.14–15 (Fl. Marianus Iacobus Marcellus Aninas Addaeus).

³ Justinian here evokes the theme of imperial philanthropy (φιλανθρωπία) and restraint (on which see Lanata (1989), p. 40).

those called to the inheritance, in either case, were of the true Christian faith. We also forbade them to give *legata*,⁴ to appoint gifts or, generally, to put their property under any alienation, when the recipient was not of the orthodox faith. We recall having made these specific provisions in a general law;⁵ yet we did not maintain the same strictness in practice as we had in the text, because we did not accept that either our *fiscus*⁶ or any other department of state should receive anything from this source, even though the law explicitly allowed that.

1

Now, however, having observed that they have been brought back to a temperate attitude, we have taken the view that it is unworthy of ourselves to remain equally angry with people whose malady is no longer as it was. Yielding, above all, to the just requests made on their behalf by Sergius, most holy metropolitan bishop of Caesarea, who testifies that they have in fact improved, and guarantees their future quiescence,⁷ we have arrived at our present divine law. By means of it, we decree that in future Samaritans have licence to draw up wills and dispose of their own property as other laws provide, and as we are determining by means of the present one; and that if they die intestate, their successors among those called to inherit in intestacy are to follow the pattern of other people, except insofar as we are adjusting it by means of the present law. We are also permitting them to appoint gifts, to give and receive *legata*, and to enter into such contractual arrangements with full licence. After all, given that we have granted them the right to make wills and to dispose of their property as a whole, how could we be captious over details of the disposition?

⁴ *Legata* = legacies.

⁵ A general prohibition on inheritance by heretics can be found in *J. Nov.* 115 c. 3 (14) and *J. Nov.* 118 c. 6. On the basis of *Codex* 1.5, it is likely that this law was also applied to Samaritans. For specific legal treatment of Samaritans, see Noethlichs (2007), who discusses the present constitution at pp. 63–4.

⁶ *Fiscus* = treasury (signifying here the process of confiscation by the *res privata*: see *J. Nov.* 112, note 14). It is interesting that Justinian here reveals the extent to which legislation against heretics, religious dissidents and others was not automatically put into effect, but was rather used to establish a negotiating position. This is likely to have been especially the case with respect to Christological dissidents, who had been targeted by *J. Nov.* 115 c. 3 (14). As Noethlichs puts it, the imperial bark could be worse than the imperial bite.

⁷ Note the role of the leader of the Orthodox Christian community in terms of interceding on behalf of his non-Christian neighbours.

2

The exception is that we are not putting Christian successors on the same footing as Samaritans; justifiably, we are granting those with the sounder religion an important prerogative. Hence, should a Samaritan die intestate leaving children of different religions, the only ones called to his inheritance will be those who honour the true Christian faith, to the exclusion of all those who adhere to the same error as the deceased. We mean this not just for children, but also for all other kin, of whichever lineage they may be, so that those of true religion have preference over those whose allegiance is different. That, though, is if all those called should be in the same degree of entitlement, or have a single ranking in respect of the inheritance; even if they are of sounder religion, we are certainly not giving precedence and privilege to those of remoter degree who are excluded by those nearer.⁸

3

This does not mean that those excluded as a result of the foregoing provision have no scope for recantation. Should those excluded by it from inheritance make up their mind, even subsequently, to return to the true Christian faith, they will receive their shares, and be called to the inheritance just as if they had in fact been of the true religion from the outset; all that they will lose will be the interim profits.⁹ Should any of them draw up a will, we command that it is to be valid, as far as religion is concerned. Should the writer of the will be a father or any other ascendant, or descendant, and should all those called to the inheritance, without exception, be in the same error as his, he will make dispositions on his property in whatever way he wishes;¹⁰ but if only some of those called in the same degree should be in the same error as his, he will leave those no more than two *unciae*¹¹ of his estate, the rest going to those of the true

⁸ The effect of this section of the law is that Christian children would inherit over and above Samaritan children (thus providing covetous siblings with an incentive to convert). Samaritan children, however, would still have a priority of claim over and above orthodox Christian kin who were further removed from the deceased.

⁹ 'Interim profits': i.e. Samaritan heirs who subsequently converted were to lose only the proceeds derived from the property from during their time as Samaritans (see Noethlichs (2007), p. 63).

¹⁰ I.e. if all heirs are Samaritans, a testator may divide his inheritance as he wishes.

¹¹ '*Unciae*' = twelfths. Justinian here stipulates that if the family is religiously mixed, only one-sixth of the estate may be left to Samaritans.

religion, except if one of them, perhaps, leaves legacies¹² to Christians. In this situation, too, exactly as we have just ruled in the case of intestacy, the ability to enjoy equal status with those who have been Christians from the outset is still reserved for those who wish to recant. We do, however, grant a *de inofficioso*¹³ against this order of apportionment to ascendants and descendants who are of the true religious doctrines, and have perhaps been wronged under the terms of the disposition of the property.

4

We are also granting Samaritans the right to make gifts and bequeath legacies, to honour slaves with manumissions, and also to make contractual arrangements with each other without hindrance from our previously enacted law; and we are completely excluding our *fiscus*, as well as every other department of state: it can have no participation under that law in these people's inheritances, their property or their contracts. And we mean this not just for future cases, but even for the past, so that neither our *fiscus* nor any other agency at all is to interfere with their property over what has taken place then, either. Given that we have been magnanimous over the future, how could we quibble over by-gones? Having thus been deemed worthy of our present beneficence, they are to avow thanks to God and to us, and indeed to the most holy Sergius, who, in particular, has evoked this beneficence towards them on our part.

Conclusion

Your distinction, in the knowledge of the beneficence shown to them by means of the present law, will accordingly make what we have now decided manifest to the provinces by means of the customary edicts, for them to enjoy its benefits in perpetuity.

Given at Constantinople, June 15th in the 25th year of the reign of the Lord Justinian, pius princeps, Augustus, 10th year after consulship of the Most Distinguished Basilus 551

¹² 'Legacies' = Greek *πρεσβεία* (in place of the Latin *legata*, which Justinian tends to use elsewhere in the novels).

¹³ '*De inofficioso*': i.e. Justinian allows Christian relatives or heirs who feel they have been wronged the right to bring an action on the grounds that the will is legally unsound (under the *querela inofficiosi testamenti*): see *J. Nov.* 115 and Berger (1953), p. 665.

The same Sovereign to Peter, Most Illustrious prefect of the sacred praetoria

Preamble

Another matter that we consider of the first and greatest importance for the condition of our realm is that during our army's transits its modes of provisioning should be fault-free, and our taxpayers should be preserved from harm and loss.

1

Accordingly, we command that whenever our officers and troops are in transit, *delegatores*² are to accompany them, seeing to their provisioning; and the governors of each province through which a transit takes place are to have the required expenses ready, so that the members of our army are supplied faultlessly in each province, as they pass through. The *optiones*³ of each unit are to take in the produce without any extortion, and to distribute to the officers and men the *annonae*⁴ that are supplied in kind, the said *optiones* keeping the one-fifteenth⁵ portion assigned to them as their

¹ In this constitution, Justinian legislates to limit the harm done to taxpayers by troop movements across the empire by ensuring the careful regulation of the provisioning and supplying of the army on campaign. In particular, he decrees, any requisitioned goods were to be reckoned as tax-deductible. At the time when the law was issued, the empire was engaged in large-scale conflict with the Persians in the Western Caucasus, necessitating troop movements along the Black Sea coast, in eastern Anatolia and Upper Mesopotamia. For discussion of this law, see Jones (1964), p. 673 and Brandes (2002), pp. 106, 108 and 111–12. For the military context, see Sarris (2011a), pp. 155–6. For the politically sensitive nature of such requisitions and demands, see Sarris (2017) and Procopius, *Secret History* 23.12.

² '*Delegatores*' = provisioning officers who issued receipts in return for requisitioned goods or supplies: see Jones (1964), p. 673 (discussing this constitution). For papyrological evidence for such regulations in practice, see *P.Oxy.* XVI 1920 and 2046.

³ '*Optiones*' = quartermasters (see Treadgold (1995), pp. 88 and 95).

⁴ '*Annonae*' = stipends.

⁵ 'One-fifteenth': such perquisites were common for officials or employees in both official and private administrative contexts (see examples in *J. Novs.* 30 c. 3, 128 c. 6, 147 c. 1 and *J. Edict* 4 c. 3). It is not clear whether the level of the perquisite afforded to the officer in this instance was one-fifteenth of the whole in a literal sense, or 15 per cent: the latter was the scale of the remuneration that the Apion family from Oxyrhynchus expected from tax payments in kind it collected from its employees on behalf of the state (see *P.Oxy.* I 136).

remuneration. The customary *recauta*⁶ are to be issued by the *optiones* to the taxpayers for the payments made by them, on the liability of the accompanying commanding officers, *tribuni*, *comites*,⁷ transit officers and *delegatores*, and of the commanders of each unit. In no way are soldiers to incur expenditure without paying, at tax-contributors' expense, whether on the possible ground that no advance preparation had been made, or for *introita*,⁸ whose very name we are completely abolishing, so that our taxpayers are comprehensively protected from harm and loss.

2

Soldiers are to receive just the produce found in each locality; they are not to demand other things that are not found in that province, and thereby to subject our taxpayers to extortion or overcharging.

3

We command that the expenditure incurred by our property-owners, and shown on the *recauta*, is to be credited to them by your excellency's high office, without any extortion, over-charging or dishonesty whatever, towards the tax-contribution paid by them to the public treasury for the indiction⁹ during which the expenditure is made.¹⁰ If the disbursements on the part of those who have given produce in kind are found to amount to more than their contribution, we command that those who have expended more than their contribution are to be compensated out of the total body of that province's taxes. If the said province does not have tax-revenues adequate for the expenditure incurred, those who have made the said expenditure are to be compensated out of the general exchequer administered by your distinction; or else, they are to keep it back from their contributions for the following indiction, to be accounted to them without

⁶ *Recauta* = receipts (also known elsewhere as *delegatoria*). The term is only encountered in this law and texts derived from it (see Van Der Wal (1998), p. 38, note 56).

⁷ *Tribuni* and *comites* = officers commanding a regiment. By the sixth century, the two terms would appear to have been synonymous (see Treadgold (1995), pp. 87–92, esp. p. 91).

⁸ *Introita* = 'entrance fees' or 'entrance charges'. Apparently these were being levied, at the arrival of the units, on the successive localities through which they were marching.

⁹ On the indiction, see *J. Nov.* 128, note 3.

¹⁰ The law here suggests that any such demands made by an army in transit were to be treated as tax-deductible by the Praetorian Prefecture.

fail by those making the tax-collection.¹¹ This is all to proceed, and to be observed, on the liability of your distinction and of the administrators¹² and governors of each province, the staff under them, and the collectors, city councillors, and everyone working on the taxes.

4

We further command it to be observed that no officer or soldier is to take any reimbursement for transit, either from the cities or from the estate properties. Should anyone be found taking reimbursement for transit, we command that the one doing anything of the kind is to be charged double all that he dares to receive thereby.

5

If any of our officers or soldiers, or of the *optiones* themselves, do not make out *recauta* for the expenditure made by them, we command that the taxpayers who have furnished the expenditure are to have an entry made in the records. It is to be made before the governor and the most holy bishop of the city, if the governor is found to be in that locality; but before the most holy bishop of the city, or the defender¹³ of the area in which the holding is situated from which the expenditure was made, if the governor is not found in the said locality. By means of such entry, they are to make clear what was the sum of their expenditure, which of our officers it was who did not make out *recauta*, and with what army they marched through. Such record is to be sent to your distinction, and, as if *recauta* had been made, your excellency is to repay to the taxpayers the expenditure they have incurred, or to account it to them as we have said above; and is to keep back the actual sums, as shown in the record, from the payments assigned from the public treasury to the commanding officers and men who have incurred the expenditure.

6

Additionally, we command that in the course of their transits our commanding officers, the army's transit officers and its *delegatores*, are to send

¹¹ The Emperor Anastasius had forbidden such deductions from the following year's tax calculation: see *Codex* 10.27.2.

¹² 'Administrators' (Greek *τρακτευται*) = Latin *tractatores*: see *J. Nov.* 128, note 9.

¹³ 'Defender' = the *defensor civitatis*. See *J. Nov.* 15.

ahead to our army's destination during the route marches, and make preparations for the expenses. They are not to send to other cities, holdings or estate properties, and thereby collect funds from those holdings or estate properties as if the army personnel were due to stay there. If they do dare to take any payment for that, we command that the said record is to be made in that case also, showing what has been paid and to whom, and that whatever is shown by such record is all to be accounted or repaid by your distinction to those who have suffered such loss, in the manner we have stated above; and the commanding officers, those with any responsibility for our army's transit, and the *delegatores*, are to pay double what they dare to take for that, while the advance surveyors are to undergo punishments and exile.

7

If, by any chance, there are any provincial governors who collude with our army's transport officers in order to avoid preparing for the expenses, and thereby divert them to different cities and estate properties, we command such office-holders' tenure to be terminated; they are to be subjected to confiscation and exile, together with the staff under them. In these circumstances, too, our taxpayers are to be protected from loss, on the basis either of *recauta* that have been issued, or of the record duly made in the said manner.

8

We order that the above is to be observed not only for the transits of our own officers and soldiers, but also for those of others, of whatsoever nationality, who are despatched by us to serve in alliance with our realm.¹⁴

9

So as to avoid injury to our subjects' liberty over the provision of billets, we decree that absolutely none of our soldiers are to be allowed to take billets for themselves in the main apartments in which the masters of the households may be found in residence. Those are to be kept unmolested for their masters; the men are to take billets in other quarters.

¹⁴ Justinian here makes it clear that these regulations also apply to federate troops (*foederati*) and barbarian mercenaries fighting alongside the regular army, on whom see Teall (1965) and *J. Nov.* 103, note 22.

Conclusion

Accordingly, your distinction is to cause our decisions, manifested by means of the present law, both in the sovereign city <and in the provinces, to come to the knowledge of all, and is to make them manifest*> to the most holy local bishops, the Most Distinguished governors of provinces and all our taxpayers in each province and city, so that our taxpayers know what has been determined by us for their protection from harm, and are aware that should anything be done in contravention of it, and the victims of injustice let it go unreported, it is they themselves who will be to blame for such harm.

* Accepting S/K's lacuna and their suggested supplement [S/K, p. 654, line 3].

Given at Constantinople, March 1st in the 18th year of the Lord Justinian, pius princeps, Augustus, 4th year after consulship of the Most Distinguished Basilius, indiction 8

545

131 | Ecclesiastical canons and privileges¹

The same Sovereign to Peter, Most Illustrious prefect of praetoria

Preamble

The present law that we are issuing is on the subject of ecclesiastical canons and privileges, and other heads regarding most holy churches and other venerable houses.

1

Accordingly, we decree that the holy ecclesiastical canons issued or confirmed by the four holy councils – to wit, that of the 318 at Nicaea, that of the 150 holy fathers at Constantinople, the first at Ephesus, at which Nestorius was condemned, and that at Chalcedon, by which Eutyches was anathematised together with Nestorius – are to rank as laws.²

¹ This constitution introduces slight modifications to various regulations concerning the Church and the administration of religious and charitable institutions. It makes it clear that the decrees of the Ecumenical Councils carried the status of imperial law (a statement that was probably directed at those opponents of the Council of Chalcedon with whom Justinian found himself locked in dispute at this time), and clarifies the procedures for adjudicating over the implementation of bequests made by testators left simply ‘to Christ’, to individual named saints, or to general charitable purposes. The novel thus provides evidence for the growing prominence of the cult of the saints in sixth-century society. For the ecclesiastical context to this law in terms of the run up to the Second Council of Constantinople of 553, see Price (2009) 1, pp. 8–41. On the cult of the saints in this period, see esp. Dal Santo (2012), pp. 1–236. For a further discussion of this law, see Gaudemet (2001).

² ‘The 318’ = the number of bishops who attended: Justinian here refers to the four Ecumenical Councils of Nicaea (325), Constantinople (381), the First Council of Ephesus (431) and Chalcedon (451), at which both the ‘two-nature’ Christology of Nestorius and the extreme ‘one-nature Christology’ of Eutyches had been condemned (see Price and Gaddis (2005) 1, pp. 37–50 and 56–75: see under *Acts of the Council of Chalcedon* in the Bibliography). By virtue of the emperor’s pronouncement with respect to the Councils, ‘all of the legislative content of the decisions of these synods was incorporated formally into the legal order of the state, and it brought about an equalization of laws and canons’, with the emperor ratifying and lending legal force to the latter (Troianos (2012), p. 128). Three years earlier, Justinian had similarly ratified the decrees and canons of Church councils that had taken place in the re-conquered territories of Africa during the era of Vandal rule (see *J. Nov. Appendix 3*). That measure may have inspired this one. For the legal status of the (primarily Trinitarian rather than Christological) fourth-century Councils, see *Codex* 1.1.1 (= *Codex Theodosianus* 16.1.2).

We also accept the dogmas of the aforesaid 4 holy councils, just as we accept the divine scriptures, and we uphold their canons as laws.

2

In accordance with their decisions, therefore, we decree that the most holy pope of the elder Rome is the foremost of all priestly authorities; that the most blessed archbishop of Constantinople, the new Rome, holds second place after the most holy apostolic see of the elder Rome, and has precedence above all others;³ . . .

3

. . . and that the most holy archbishop, at the time, of Justiniana Prima, our native land,⁴ is always to have under his jurisdiction the bishops of Dacia Mediterranea, Dacia Ripensis, Praevalitana, Dardania, Upper Moesia and Pannonia: they are to be appointed by him, and he by his own synod. In the said provinces under him, he is to take the place of the apostolic authority of Rome, in accordance with the determinations of the holy pope Vigilius.⁵

³ The constitution here re-states the provisions of the First Council of Constantinople, canon 3, and Chalcedon canon 28. The primacy accorded to the Bishop of Rome was a primacy of honour.

⁴ As seen in *J. Nov.* 11, in 536 Justinian had re-named his place of birth in the Balkans *Justiniana Prima*, elevated it first to civic status and then to regional capital, and adorned it with lavish public buildings: see Procopius, *Buildings* 4.1.19–27, where this law is also alluded to, and *J. Nov.* 11 (where Justinian refers to the elevation of the city's bishop to the status of archbishop).

⁵ Vigilius was Bishop of Rome from 537 to 555, and had the difficult task of leading his Church through the transition to direct imperial rule of the Italian peninsula, which allowed for much more robust imperial intervention in Italian and pontifical affairs. For Justinian's complicated relationship with Pope Vigilius (whom he would eventually humiliate at the Second Council of Constantinople in 553), see Price (2009) 1, pp. 23–4, 27, 46–9, 52–5, and 2, pp. 72–4. For Vigilius and his career, see also *PCBE*, 2(2), pp. 2298–9 (Vigilius 6). Justiniana Prima, like the other cities of Illyricum, formally came under the jurisdiction of the Bishop of Rome. The authority the Archbishop of Justiniana Prima thus exercised was that of a 'Papal vicar'. Sarantis (2011), p. 24 suggests that until the promulgation of this novel, the imperial acknowledgement of Papal authority over Justiniana Prima had in fact been withheld (presumably partly so as to apply diplomatic pressure on the Papacy in the context of the emperor's on-going attempts to reconcile pro- and anti-Chalcedonian factions within the Church, and to induce him to be cooperative in the context of the emperor's Italian campaign).

4

In similar fashion, we command that the right of pontificate over the diocese of Africa, which we have granted, since God restored it to us, to the bishop of Carthago Justiniana,⁶ is to be maintained. The other cities, in various places, on which has been conferred the right to metropolitan status, are also to enjoy such privilege in perpetuity, as are their bishops; and all privileges and emoluments that have been assigned to holy churches or other venerable places by munificence from the Sovereign, or in any other way whatsoever, are to be confirmed and permanently maintained for them.

5

Additionally, we decree that the holdings of all most holy churches and other venerable houses are not to be subjected either to menial services⁷ or to *extraordinaria*.⁸ However, if need arises for road-surfacing, or for bridge-building or renovation, holy churches and other venerable houses are also to fulfil such a task, like other landowners, when they have possessions subject to the city under which such work is being done. However, if any property has come, or shall hereafter come, lawfully to any most holy church whatsoever, or other venerable house, from the estates of city councillors, we decree that it is to be free from the levy on *lucrativa*.⁹

6

Instead of periods of prescription of ten, twenty and thirty years, we direct that the only period of prescription to be put up against holy churches and

⁶ ‘Carthago Justiniana’ = Carthage, which Justinian had similarly renamed in his own honour (see *J. Nov.* 37). Justinian’s penchant for naming things after himself is subjected to bitter criticism by Procopius: see *Anecdota* 11.2.

⁷ ‘Menial services’ = Greek ῥυπαρὰὶ λειτουργίαι, Latin *munera sordida*. These were public responsibilities from which those in imperial service or of high status were excused, such as the obligation to work in mills, mines, or lime pits if summoned to do so, or to help in the construction or repair of buildings, roads, bridges and suchlike (see Berger (1953), p. 589).

⁸ ‘*Extraordinaria*’ = supplementary taxes. The Church had already been exempted from such charges under *Codex* 1.2.5, but Justinian may here be referring to the exemption of the Church from the compulsory assignment of abandoned or deserted land (*adiectio sterilium* or ἐπιβολή) on which he had legislated in *J. Nov.* 120.

⁹ ‘*Lucrativa*’: under *Codex* 10.36, property which was transferred for free (i.e. by inheritance, legacy, or gift) by a city councillor to someone of non-curial status (known as *res lucrativae*) had been subjected to a special tax (the *descriptio lucrativorum*), from which Justinian here exempts the Church as beneficiary: see Van Der Wal (1998), p. 39, note 61.

all other venerable places is that of forty years.¹⁰ That is what is to be observed also for the right to claim legacies and inheritances bequeathed for pious purposes.

7

Should anyone decide to build a venerable house of worship or monastery, he is not to start the building unless the most holy bishop of the locality holds prayer there, and sets up the precious cross.

1. Once someone has begun either to found a new house of worship or to renovate an old one, either he himself, should he be surviving, or his heirs on his death, are without fail to be obliged by the most blessed bishop of the locality and his stewards, and by the civil governor, to complete the work that has been begun.

8

If anyone dares to conduct, or to permit others to conduct, a church service in his own house, suburban holding or estate property, without clergy under the most holy local bishop, we command that his house, suburban holding or estate property where any such sin has been committed are to be claimed for the most holy church in the locality by the most God-beloved bishop, his steward and the local holder of civil office.

1. However, if the managers, tenants or emphyteutic tenants of the owner do anything to the contrary, or permit it to be done, without his knowledge, the owner is not to suffer any prejudice or loss, but those who have done so, or permitted it to be done, are to be banished from the province where the sin has been committed, their property being claimed by most holy church in the locality.

9

If anyone leaves an inheritance or *legatum*¹¹ in the name of our great God and Saviour Jesus Christ, we command that it is the church of the place in which the testator was domiciled that is to receive the bequest.

1. If anyone appoints one of the saints as heir, or should he leave a *legatum* to that saint, without specifically naming the place where the

¹⁰ See *J. Nov.* 111 (= *J. Edict* 5).

¹¹ '*Legatum*' = legacy.

venerable house is, and should there be more than one house of worship dedicated to the same saint in the same region or city, the bequest is, by preference, to be paid to the poorer one. If there is no house of the named saint in the city, while there is found to be one in its vicinity, it is to that one that it is to be given; but if there is no such house to be found in the vicinity, either, the bequest is then to be paid to the church of the city in which the testator was domiciled.¹²

10

If someone makes a disposition by last will for the construction of a venerable house of worship, or of a hostel, almshouse, orphanage, hospital or other venerable house, we command that the house of worship is to be completed within five years, under the care of the bishop of the area and the civil governor; whereas the hostel, almshouse or other venerable house is to be built within one year.

1. If the heirs do not cause the hostel, or any other venerable house whatsoever that has been directed by the testator, to be built within the year, we command that they are either to buy or to rent a house in which the instructions can be carried out until such most venerable house may be completed.

2. If the testator himself specifies who are to become the heads of the hostel or orphanage, or other such administrators, or should he leave such choice to his heirs, we command that his heirs are without fail to carry out his instructions. The most blessed bishops in the locality are to oversee whether the administration is carried on properly, and if they find that the administrators are useless, they are to have licence to replace them by satisfactory ones, with impunity.¹³

11

Should anyone make either a single or an annual bequest of inheritance or *legatum*, in movable or immovable property, for the purpose of ransoming

¹² Both with respect to Christ and to the saints, the law here repeats the provisions of *Codex* 1.2.25 (see also *Codex* 1.2.15). On the cult of the saints in the sixth century, see Dal Santo (2012), pp. 1–236.

¹³ On such private religious foundations, see Thomas (1987), pp. 5–58. Justinian here introduces a slight modification to the provisions of *Codex* 1.3.45 (1) (see the further discussion by Van Der Wal (1998), p. 138, note 53).

prisoners of war or supporting the poor, that too is to be implemented without fail by those commanded to do so.¹⁴

1. Should he not state specifically which place it is for whose poor he has left it, we command that the most holy bishop of the city in which the testator was domiciled is to take over the said property, and to distribute it to the poor of that city.¹⁵

2. If a bequest has been left for the ransom of prisoners of war, should the testator not have named the particular person through whom the ransoming is to be done, in that case too we command the local bishop and his steward to take the property bequeathed for that purpose, and implement such pious action. For all such pious intentions, it is the most holy local bishops whom we wish to see to it that everything proceeds in accordance with the deceased's intention, however firmly they may have been forbidden by the testators or donors to take any part in the proceedings.

3. If those commanded to carry out the instructions have delayed in carrying them out, despite a first and a second admonition from the most blessed local bishop and his stewards, through official personages, we command that they are to lose, in entirety, a gain bequeathed to them by the one who made the command; and the most holy local bishops are to claim all property allocated for all pious purposes, as stated, together with interim proceeds and increments, and the above-mentioned gain, and carry out the testators' directions, in the knowledge that, should they be neglectful over all this, they will be rendering an account to God.

4. However, should the most holy local bishop leave undone anything of what we have stated, his most holy metropolitan, too, is to be able to make the demand, and implement it; and anyone else is also to have licence to launch such an enquiry, and to strive to have such pious purposes implemented without fail.

12

If the heir does not implement the bequests for pious purposes, alleging that the estate left to him is insufficient for them, we command that his

¹⁴ In the sub-sections that follow, Justinian introduces slight modifications to the provisions of *Codex* 1.3.48.

¹⁵ Traditionally, Roman law had forbidden the bequeathing of property to so-called 'unknown persons' (*incertae personae*): beneficiaries had to be named, and general instructions that property was to pass to 'my descendants' or 'the poor' were deemed unsatisfactory. This issue had, however, been addressed with respect to charitable bequests in the fifth century: see *Codex* 1.3.24, 1.3.28, 1.3.45 pr., 1.3.48 pr. and Van Der Wal (1998), p. 151, note 110.

whole Falcidian gain¹⁶ is to lapse, and that whatever amount is found in such estate is to go towards the purposes for which it has been bequeathed, under the care of the most holy local bishop.

1. Should it be a *legatum* that has been bequeathed by anyone for pious purposes, we command that it is without fail to be paid over to those to whom it has been bequeathed within six months, reckoned from the registration of the will. Should those so burdened delay in paying such *legatum*, they will have a demand for proceeds, interest and every legal increment from the date of death of the maker of the bequest.

2. If it is an annual *legatum*¹⁷ that has been left to any venerable house whatsoever, should those commanded to pay it, or the place from which it has been commanded to be furnished, be in the same province or the neighbouring one, we command that such *legatum* is on no account to be alienated; but should either the regions or the persons from which the payment has been ordered be more distant, the recipients of the bequest are then to be allowed, if the party liable also agrees, to exchange the *legatum*, and to take in its stead a profitable source of income nearby, worth not less than a quarter as much again of the sum bequeathed, and unencumbered with heavy public taxes. Should they wish in fact to sell such *legatum*, they are not to accept a price lower than the cumulative value of such legacy over 35 years, with the condition that such price is to result in profit for the aforesaid venerable house to which it has been bequeathed.

13

We forbid most holy bishops in any way to transfer to relatives of theirs, or to any other persons, any property whatsoever – movable, immovable or ambulant¹⁸ – that may have come down to them in any way whatsoever since their episcopate. They are, however, to have licence to make payments out of it for the ransom of prisoners of war, the support of the poor, and other pious purposes, or for the benefit of their church.

¹⁶ ‘Falcidian gain’ = the portion of the estate reserved for the instituted heir under the *Lex Falcidia*: see *J. Nov.* 1, note 1. Justinian here abolishes the provision of *Codex* 1.3.45 (7–7a) and replaces it with what was arguably a harsher penalty (see Van Der Wal (1998), p. 151, notes 112 and 113). Justinian appears to exempt bequests *ad pias causas* from the Falcidian regulations (although, as Van Der Wal notes, this point has been contested): see also *J. Nov.* 1, note 21.

¹⁷ ‘An annual *legatum*’ = a bequeathed annuity (see also *Codex* 1.3.45.9–15 and 55 and Van Der Wal (1998), p. 152, note 115).

¹⁸ ‘Ambulant’: this term applied to slaves as well as livestock.

1. If there is anything remaining in their estate out of such property after their death, we command that it is to belong under the ownership of the most holy churches of which they held the priestly office. The only property that we permit them licence to alienate or bequeath to whomever they may wish is that which they are proved to have had before their episcopate, or which may have come down to them since their episcopate from those related to them by kinship; they can succeed to them, in intestacy, as far as the fourth degree.¹⁹

2. We decree that all that we have said about property coming down to most holy bishops since their episcopate is to apply also to most reverend heads of orphanages, almshouses, hospitals, old people's homes and hospices, and to all other administrators of venerable houses, for property that comes down to them in the said manner during the period of their administration.

3. If any bishop, cleric, minister in any ecclesiastical degree whatsoever, or deaconess, of a church dies intestate and without lawful successors, their succession is to belong to the church in which they had been appointed.

14

We command that neither by tenancy nor emphyteusis nor purchase, nor in any other way whatsoever, is any heretic to receive immovable property from any most holy church or other venerable place. Should any such sin have occurred, the heretic will lose anything he has paid for such purpose, and such property is to be claimed for the venerable place from which it had been given. For having betrayed Christians to heretics, the administrator of the house who had given the said property to the heretic is to be removed from all administrative office, committed to a monastery,²⁰ and barred for a year from holy communion.

1. If an orthodox owner of a holding on which there is a holy church alienates it, bequeaths it, or has given it on emphyteusis, tenancy or any terms whatsoever to a Jew, Samaritan, pagan, Montanist,²¹

¹⁹ For the propertied background of many late antique bishops, see Rapp (2005), pp. 172–207. On the relatives from whom bishops were permitted to inherit, see also *Codex* 1.3.41.

²⁰ The law here provides a further example of monastic imprisonment by way of punishment (on which see Hillner (2015), pp. 314–41).

²¹ 'Montanist': 'Montanism' was a charismatic Christian heresy of the late second century. Named after its supposed founder (Montanus), it remained embedded amongst the population of the province of Phrygia where he and his companions had established a centre (see Eusebius *HE* 5.17.2–3).

Arian²² or other heretic, the most holy church of the said district is to claim ownership of the holdings.

2. If any heretic – among which we also count Nestorians, Acephali and Eutychians²³ – dares to build a conventicle of his own unbelief, or Jews a new synagogue, the holy church of the locality is to claim the buildings for its own ownership.

3. In a case where someone has given a holding of his own to such a person on emphyteusis, tenancy or any other form of administration whatsoever, if the owner of the holding was aware that it was a heretic to whom he was entrusting it, the church of the city under which the property is situated is to claim the entire revenues of the period covered by the transaction. However, if the owner of the holding was ignorant of the fact that the person entrusted with it was a heretic, the owner himself is to be kept free from loss, because of his ignorance; but, in either case, the heretic is to be ejected from the holdings, and his property is to accrue to the public treasury.

15

Heads of orphanages are to have the position of guardians and *curatores*,²⁴ with the proviso that it is without giving security that they can both bring, and have brought against them, actions on property pertaining to the orphans in their own right, as well as on what pertains to the orphanages themselves. As for properties that belonged to one of the orphans, the heads of orphanages are to receive it in the presence of public *tabularii*,²⁵ and with entries in the records – in the sovereign city, this is to be done before the *magister censuum*,²⁶ but in the provinces, before their governors or the local defenders²⁷ – and they are to look after it; if they consider it necessary, they are also to alienate it and keep the sale price for the orphans, or to buy other property in its stead. They do not have to submit tutorial or curatorial accounts.

²² ‘Arian’, i.e. followers of the fourth-century theologian Arius, who argued for the superiority and pre-existence of ‘God the Father’ over ‘God the Son’. His teachings had been formally and finally condemned at the Ecumenical Council of Constantinople in 381 (see Chadwick (2003), pp. 20–6).

²³ On ‘Nestorians, Acephali and Eutychians’, see *J. Nov.* 109, note 4.

²⁴ ‘*Curatores*’ = supervisors (see *J. Nov.* 18 c. 9, note 21). This section of the constitution largely repeats *Codex* 1.3.31.

²⁵ ‘*Tabularii*’ = state notaries (Berger (1953), p. 729).

²⁶ ‘*Magister censuum*’ = a subordinate officer of the Urban Prefect of Constantinople (see Berger (1953), p. 570 and *J. Nov.* 127, note 6).

²⁷ ‘Defender’ = the *defensor civitatis*, on whom see *J. Nov.* 15.

1. We command that all the privileges possessed by the most holy great church of Constantinople are also to be observed for the pious orphanage of this sovereign city, the hospital named after Sampson of holy memory,²⁸ and for the houses of worship, hospices or other venerable houses under its jurisdiction.

Conclusion

Accordingly, your excellency is to take pains that what our Serenity has decided by means of the present law, to be valid in perpetuity, should come to the knowledge of all, by posting edicts in this sovereign city, according to custom. We ourselves will see that it is published in the provinces, as well, without any cost to our taxpayers.

Given at Constantinople, March 18th in the 18th year of the reign of the Lord Justinian, pius princeps, Augustus, 4th year after consulship of the Most Distinguished Basilius, indiction 8²⁹ 545

²⁸ For the hospital of Sampson, see Miller (1990) and *J. Nov.* 59, note 13.

²⁹ 'Indiction 8' = the eighth year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311.

132 | Edict on faith, to Constantinopolitans¹

Emperor Caesar Flavius Justinianus, fortunate glorious victor triumphator, ever Augustus, to the Constantinopolitans [Supplied from Auth.]

As is shown by the writings and edicts variously composed by us, we believe that the foremost and greatest good for all mankind is genuine confession of the true, faultless faith of Christians, for it to hold sway for ever, for all the most holy priests in the world to be united in concord and to confess and proclaim in unison the orthodox faith of Christians, and for every evasion devised by heretics to be done away with. But since heretics are carrying out the devil's work, with neither thought for the fear of God nor consideration of the penalties threatened against such people by the severity of the laws, and are deceiving some of the simpler people by secretly counterfeiting the congregations and baptisms of God's holy catholic and apostolic church, we have deemed it a pious act to admonish such people, by means of the present edict of ours, to abandon their insane heresy, and, instead of destroying others' souls by deception, to flee for shelter to God's holy church, in which the true dogmas are championed and all heresies are anathematised, together with their ringleaders.

We wish all to be aware that if, in future, there are found to be any who either form or join counterfeit congregations, we shall no longer have any toleration at all. We shall attach to the holy church the premises on which any such offence occurs; and we command that those who form or join counterfeit congregations are, without fail, to have inflicted on them the penalties of our constitutions.

Given at Constantinople, April 4th in the 18th year of the Lord Justinian, pious princeps, Augustus, 3rd year after consulship of the Most Distinguished Basilus 544

¹ The emperor, increasingly preoccupied with efforts to resolve the Christological dispute and bring order to the life of the imperial Church, here reiterates that heretical gatherings are illegal and heretical places of worship are to be seized. For the seizure by the government of property belonging to heretical churches, see Procopius, *Anecdota* 11.18–20. On the ecclesiastical context, see Price (2009) 1, pp. 8–41 (in the Bibliography under *Acts of the Council of Constantinople of 553*).

Emperor Justinian Augustus to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

The monastic, contemplative life is something sacred, and one that by its nature leads souls up to God; it not only benefits those who actually enter it, but provides pertinent benefit also to everyone else, through its purity and its intercession with God. Hence, in addition to the great importance attached to it by previous emperors, no small amount of our own legislation has been concerned with its dignity and good order. As there is nothing inaccessible to enquiry from the Sovereignty, which has received from God the charge over all mankind in common, we follow the divine canons and the holy fathers who laid them down.

We have already laid down a constitution² with intention that monks in communities should live together as what are called ‘cenobites’ and should not have separate places to live, nor amass property, nor have an unwitnessed life; but that they should have meals communally, all sleep in common and pursue an estimable life, acting as witnesses to each other’s

¹ In this important constitution, Justinian legislates to regulate the monastic life. The law constitutes a powerful expression of the emperor’s own perceived sense of religious and moral responsibility, as well as his view as to the nature of the contribution the prayers of ascetic communities made to the common good, through eliciting divine favour (on which see Rapp (2005), pp. 178–9). At the same time, this law both reflected and would inform the development of monastic literature. Its provisions are clearly echoed, for example, in the *Rule of St Benedict* (see Clark (2011), p. 14), and authors such as Cyril of Scythopolis or the Egyptian hermits Barsanuphius and John, eager to demonstrate their commitment to the imperial conception of the monastic life and its broader role, repeated in their own writings Justinian’s claims that (in the words of Booth) the proper function of monasticism was the ‘petitioning of God for the health of the state’ (see Booth (2014), pp. 16–17, Neary (2010) and Lesieur (2011)). The novel also casts fascinating light on sixth-century attitudes to the segregation of the sexes, both in a religious context and more generally. I am grateful to Daniel Neary for discussion of this novel.

² Justinian is here referring to *J. Nov.* 123 c. 36. See also *J. Nov.* 5 c. 3. The emphasis on communal living encountered here and in *J. Nov.* 123 is mirrored in contemporary and near-contemporary monastic literature such as the *Rule of St Benedict* (see, for example, on dormitories, *RB* c. 22). Such communal sleeping arrangements, however, would actually prove to be relatively rare in later Byzantine monasticism, which tended to favour individual monastic cells, mirroring the eremitic origins of the movement. For further discussion of this law, see also Hillner (2015), pp. 327–9.

good behaviour, with the younger ones respecting the grey hair of their supervisors, and taking on the duty of purposely staying awake so that even during sleep, as well, each shall maintain his good behaviour, and nothing untoward, nothing improper for others to see, shall take place while they are sleeping.

1

However, since certain facts have been reported to us that called for a further law, weightier and more secure, we have duly arrived at the present legislation to complete and amplify that constitution. By means of it, we decree that except for a member of the monastery living the life of quietude and contemplation by himself, perhaps with one or two attendants, no-one at all is to have a separate place to live, or a 'cell' as it is called; but in general, where there is a number of men, they should constitute a single assemblage, both at prayer and during all nature's innocent, irreproachable activities, eating communally, as stated, and sleeping communally. Should their numbers be such as to fit in one building, well and good; otherwise, there should be perhaps two or three buildings to accommodate them. However, no-one at all is to have anything of his own; day and night, their life is to be in common, so that their nights may have the same observance of rule as their days.³ Not all are asleep at once; it is understood that while some sleep others are awake, and at all events there will be some keeping watch on the sleepers.

If in any monastery under the ecumenical patriarch in this great city or in its environs, whether built by ourselves or by others, there are any rooms with separate accommodation for some monks, you will without fail take these down, and open up mutual visibility for them: all shall see each other's actions. After all, once they have dedicated themselves to God and abjured all worldly life, why will they have any reserve over doing so? We wish it to be in force now, and for all time to come that no-one shall have accommodation of his own, but all are to be in a body, and to observe each other's actions; obviously, they will take pains to make these such as to be entirely unexceptionable. Should anyone be seen to be so shameless as to dare to attempt any contravention of anything that has been laid down, the hegumen of the house is to enquire into it.

It is our intention that observance of rule should be stricter than at present. Firstly, there should not be several entrances to the monastery, but

³ On common property, see *RB* c. 33.

only one or perhaps two, with men in charge of the wicket-gate who are advanced in age, of good moral character and well-attested by all, who will not permit the most reverend monks to go outside the monastery without the consent of the hegumen, but will keep them enclosed and zealous for their religion, not distracting themselves in either their actions or their pursuits; and, night and day, they will prevent the presence of others in the monastery who will cause the most reverend monks' reputation not to remain upstanding.⁴ The monastery is to have a continuous wall built all round it, so that there is no way out other than by the wicket-gates.

2

Secondly, even should there be no church in the monastery, they are still not to use churches as an excuse for leaving it unsupervised, or going for walks and meeting anyone undesirable on the way there. Instead, at the time of the sacred liturgy they are to be with the hegumen, or with their leaders and elders; and when the liturgy is over the whole monastic body is to go back again to the monastery, sit down there, supplicate the great God and study the scriptures.⁵ The concerted voice of such sacred books is strong, and has the power to reform and refresh each man's soul with its sacred words; should they read them assiduously, they will never slip, nor be dragged down into human concerns.

In a most holy church established within a monastery, there are to be four or five elders of the said house who have come through every trial in their ascetic training, and have been found worthy of ordination to the clergy, perhaps as presbyters or deacons, or in the degrees below that. These will interview new arrivals, and discuss with them the contents of the divine scriptures, bringing it about that all monks are considered to be like themselves; they will be the wardens of the sacred house, and keep overbold youth, with its desire to break its proper bounds, under disciplined perseverance.

3

Next, neither will any woman at all enter a male monastery, nor any man a female one, either by reason of a memorial service for one at rest there after death, or for any other cause. This is so even in the special case that

⁴ See *RB* c. 66.

⁵ Again, the emphasis on divine reading (*lectio divina*) mirrors the Benedictine practice: see *RB* c. 48.

they may say that they have a brother or sister, it may be, in the monastery, or one of their family: monks, who have aspired to the life in heaven, have no kin on earth. After all, what would they be doing, if they did want admission in this way, unless what they want is something forbidden? What men should be doing, men can do in male monasteries, and women, likewise, can do in female monasteries what is assigned for women to do, without any commingling with each other, even if one should perhaps be said to be their brother or sister, or some other relation; not even for that reason do we permit entrance to be admissible for anyone. Should we excise the very starting-points, and block the opening for souls to be led astray through a mere look, and for their consequent fall, attainment of the higher life will be much easier and more straightforward for those consecrated to striving after it. Accordingly, all are to obey this law: men are not to be laid to rest in the graveyards of female monasteries, nor are women to be buried in male ascetic houses. Just as women's quarters are not a proper place for men, nor again men's quarters for gatherings of women, so it is also our intention that the dead should not involve the living in consequent unseemly minglings, which are where trouble starts; this is so that human nature may have no opportunity to let in forbidden distraction and levity, and to bring things divine into disrepute by behaviour improper for those practising the celibate life either to mention or to imagine, cloaked under feigned piety in the form of a funeral rite.

Clearly, the men assisting at funerals, mainly pall-bearers and grave-diggers, do have to enter monasteries; this presents no problem for male monasteries, but in view of the said prohibition, that is not so for female ones.

1. Accordingly, we decree that whenever anything of the kind is going to take place, and a woman – not a man, as we do not allow that – is to be buried in a female monastery, the most reverend women are to remain in their own quarters, and only the portress or portresses, and perhaps the superior herself should she so wish, are to be present at the proceedings. The men are to carry out the customary funeral rites quickly, and after digging the grave and covering up the body are to leave at once, without having seen any of the most reverend women, or having been seen by any of them. Nor are either men to devise any other excuse for entering female monasteries, or women for entering those reserved for men, on the pretext of the ceremonies known as 'minds' that are held in connection with a funeral on the third and ninth days, or when the fortieth has elapsed, or a year. In any female monastery it is perfectly possible for women to conduct them all, or men in a male one, without bringing any disrepute on holy monasteries by reason of such ceremonies.

4

As no legislation can be upheld without the safeguard of due surveillance, we decree that the head of each monastery at the time should maintain constant watch, and concern himself with each member's behaviour and disposition. He should at once correct any small impropriety that may be taking place, and not permit the growth of the fault, or the loss of a soul that has sought refuge in the ascetic life for its salvation. The monasteries' hegumen-general, should there be one in the region as there is in this fortunate city, is to concern himself over this, and to send out to the monasteries his own *apocrisarii*,⁶ as they are known; he is also to enquire of the neighbours as to whether there may be anything disreputable going on in one of the monasteries near them, and to bring it all into proper order, regarding this as calling for due care. The bishop of each city, whether he be patriarch, metropolitan or individual, is also to take care over this matter and to send out the most reverend defenders of his church⁷ to enquire into it, to see to its observance and to permit nothing improper to take place at all; or, if it should have taken place, to rectify it quickly. The most holy patriarch of this fortunate city is likewise to enquire into monastic affairs here, and to employ the most God-beloved defenders of the most holy great church, and anyone whom he may consider strict and authoritative, as watch-keepers over them; the object is that observance of rule, and punishment of wrongdoing, may improve further through having a larger number on watch.

5

As we have said before, each monastery under a hegumen must have what are called *apocrisarii*. These are to be men of advanced age who have already fought the monkish fight⁸ and are hardly likely to be subject to the assaults of the flesh, and who have had full experience of business affairs. And this is not just if it should be a men's monastery: for a women's one, equally, there are also to be two or three men – either eunuchs,⁹ if possible, or of advanced age and attested morals – to conduct business for them, and to administer the ineffable communion to them when it is time for that.

⁶ *Apocrisarii* = ecclesiastical envoys (see *J. Nov* 123, note 51).

⁷ 'Defenders': i.e. 'of the church' – see *J. Nov*.17, note 17.

⁸ 'The monkish fight': a reminiscence of 1 Tim. 6, 12.

⁹ For such employment of eunuchs (who were regarded as 'sexually safe'), see Tougher (2008), p. 78.

Should there be something essential that they wish to say on a matter of the monastery's business, or with reference to one of the nuns, they will have an interview with the superior alone – not with any other at all of the women in the monastery – arranging this, at the time, through the most reverend portresses. (There must, of course, be such women on gate-duty, to supervise alike all the comings and goings in the monastery, preventing egress, and ensuring that entry is barred to men, apart from the *apocri-siarii*.) They will see the portresses and announce their arrival, and the superior, on being informed, will come down and see them; they will then disclose to her their administrative matter, or the business on which they have come. Thus human affairs will be properly conducted, and at the same time morality will remain unassailed by evil from any quarter.

1. Mankind is multifarious, and no-one could keep nature under such control as to be without sin; that is for God alone.¹⁰ Thus, should anyone sin, if his fault is not serious the superior is to admonish and check him, leaving him an opportunity for repentance, so that he may improve his conduct and recover himself, without losing the efforts he has so far invested. If the fault is of a graver kind, the administering of correction should be in proportion to the offence, demanding correspondingly more forceful admonition, and strong repentance; and should he by these means succeed in saving the one who has begun to slip – we mean the same for women ascetics as for men – he should thank the great God, who said that there was joy in heaven among the angelic powers when any sinner is saved.¹¹ If the case is too grave for cure, however, he is then to expel the man from the monastery; this is so that, having given himself over from the better to the worse, he alone may reap the consequences of his own wickedness, without rubbing off any of his own defects onto others as well, like cattle infected with an incurable disease.¹²

The Sovereignty will not overlook neglect of this, nor refrain from wrath against the hegumen, and against the local bishop and the church defenders under him, should they not observe it; it is essential for the Sovereignty also that this matter should be taken in hand. This is because, should it be with clean hands and bared souls that monks address their prayers to God for the state, surely all will be well with the armies, there will be stability in the cities, the earth will bear us harvests and the sea will yield its own, because their prayer brings God's favour on the whole realm; when God is propitiated and favourable, how shall it not be that all things

¹⁰ 'That is for God alone': a proverbial statement also found at *Codex* 1.17.2 (13).

¹¹ A reference to Luke 15, 10.

¹² See *RB* c. 28, which also uses a medical metaphor.

abound in perfect peace and good order?¹³ Moreover, the state of mankind in general will be more reverent, and its life will be better, when it has respect for the moral purity of monks. There will thus be unanimous consensus, with the concurrence of everyone together towards this aim, and the banishment, as far as possible, of all wickedness, while, in its place, conspicuously better, holier practices are introduced into affairs. In our quest for this, we are convinced that what we are doing is a good work.

6

Another point that we wish to be observed without fail is that should one of our most reverend monks prove to have been resorting to any tavern, he is at once to be handed over to the defenders of the city,¹⁴ or, here, to your excellency's court. On conviction, the offender is to be chastised, and this is to be reported to his hegumen, who is to expel him from the monastery for having exchanged that angelic state for a life of shame. Monks have work to do, of two kinds: they must either be engrossed in the divine scriptures, or practise and toil at the manual labour, as it is generally called, that befits monks.¹⁵ A mind without useful occupation could bear no good fruit.

This, therefore, is the law that we are enacting on these subjects; it applies both in this sovereign city and in all provinces. We shall be sending it to each most holy patriarch, for due safe-keeping and observance; they will forward it to the metropolitans under them, who will pass it on to all other bishops, and through the bishops these provisions will all become known to the most reverend monks and their hegumens.¹⁶ And it is not only to the hegumen of each monastic house, nor only to the most God-beloved local bishop, nor the most holy metropolitans nor the most holy patriarchs that we are giving the oversight of this matter, but also, here, to your excellency, for you to carry out any more vigorous rectification that may be required over it, pursuant to information from the most God-beloved men; and, in the provinces, for their governors, after first being informed by the most holy bishops of the action to be taken.

¹³ Justinian here furnishes a forceful statement of his view of the contribution of ascetics to the common good of the Roman polity (see discussion in Rapp (2005), pp. 278–9 and Sarris (2011a), p. 210).

¹⁴ 'Defenders of the city' = the local *defensor civitatis*, on whom see *J. Edict* 15.

¹⁵ Justinian's emphasis on holy reading and manual labour is once more reflected in the *Rule of St Benedict*: see *RB* c. 48.

¹⁶ Justinian here usefully details how legal information was transmitted from the imperial court in Constantinople to provincial monasteries.

We neglect nothing in the sphere of the divine, or that justice requires us to uphold; thus, may both consecrated persons and office-holders, and above all the Sovereignty, be ever guiltless as to religion! Let them for ever strive that our commonwealth shall enjoy the munificence of our great God and Saviour Jesus Christ, thanks to the purity of its most reverend men, which clergy, monks, and bishops higher and lower, shall uphold, mindful both of the sacred canons and of our laws and constitutions laid down on this subject; by means of the present law as well, we decree that those are to be both applicable and in force.

Conclusion

Your excellency, in the knowledge of our decisions manifested by this divine law, is accordingly to take pains to put them into practical effect.

Given at Constantinople, March 16th, consulship of the Most Distinguished Apion

539

134 | Deputies; adulterous women; other heads¹

In the name of the Lord Jesus Christ, our God. Emperor Caesar Flavius Justinianus Alamanicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africanus,² pious fortunate glorious victor triumphator, ever revered Augustus, to Musonius, urban prefect³

Preamble

In looking about for ways to assist our subjects, we have constantly found various instances of harm inflicted on our taxpayers by deputies appointed in provinces by the authorities, both civil and military. We have already laid down a law on this, by which we have effected a partial rectification of the problem;⁴ . . .

¹ This wide-ranging and late constitution (dating from 556) casts light on important aspects of the development of imperial law and the evolution of imperial administration towards the end of Justinian's reign. In certain jurisprudential respects, there is a clear line of continuity between a number of the measures included here and the emperor's earlier laws: concern is shown for the interests of women (especially female ascetics) in legal proceedings; the rules with respect to marital conduct and divorce are tightened-up, with the emperor confirming his opposition to divorce by mutual consent; Justinian expresses his determination to ensure that governors personally discharge their responsibilities with which they have been entrusted, and do not sub-contract their responsibilities to others. At the same time, we see the emperor's rhetorically vaunted philanthropy reflected in his regulations with respect to penal amputation, which he seeks to curtail. In other respects, however, the provisions of this constitution point to the post-Justinianic future rather more than they connect with the past three decades of the emperor's reign. The constitution provides evidence, for example, for the weakening and evanescence of the office of 'defender of the city' (*defensor civitatis*), which Justinian had sought to re-invigorate. Likewise, there are indications that the central supervision of provincial and gubernatorial tax affairs was becoming increasingly intermittent, after a manner that appears to foreshadow important reforms of the Emperor Justin II. In terms of legal terminology and chancery style, moreover, in one crucial respect (pertaining to the Greek word *χωριον*), the novel has more in common with Middle Byzantine than Justinianic legislation (as represented, for example, by the so-called *Farmers' Law* of the Isaurian period). In various crucial respects, therefore, this law represents an example of what might be termed 'transitional' legislation. On the reforms of Justin II, see Sarris (2006), pp. 222–7. On Middle Byzantine legislation, see Humphreys (2015) (esp. pp. 195–232).

² On Justinian's triumphant titulature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ For Musonius, see *PLRE IIIB*, p. 906 (Musonius 1).

⁴ See *J. Novs.* 8 c. 4, 17 c. 10 and 128 c. 19.

1

... now, however, we are striving to give our taxpayers more far-reaching help. Accordingly, we decree that those holding office at the time as prefects of eastern and Illyrian *praetoria*, *comes* of the *largitia*⁵ and *comes* of the *privata* have no licence to send out deputies to provinces, nor to appoint, as deputies for their office, the governors of provinces themselves; nor, again, do provincial governors have licence to appoint deputies in any city of the provinces entrusted to them. We command that the only deputy there is to be for the prefecture is the one in Osrhoene and Mesopotamia;⁶ and if need calls, one may also be sent to other areas on the occasion of a campaign, for its provisioning – and that only by our command. We further command that neither military commanders nor *duces*⁷ are to have deputies, *biocolytae*⁸ or bandit-hunters in the provinces in which they have been commanded to hold office. However, in the event that need calls for either military commanders or *duces* to be sent to other areas, by command from us, there is then to be a deputy for the absentee, that too being by commission from us. No civil or military office-holder is to be allowed to travel about his province without compelling reason; and if necessity does call for some such travelling, we command that the office-holders, their retinue and the staff under them are to do so at their own expense. They are not to burden our taxpayers with requisitions, with so-called ‘visiting expenses’⁹ or with any other cost, nor to talk about ‘usual perquisites’ or ask for them, albeit some of their predecessors may have invented them, unjustly, for their personal gain; we do not want bad inventions to become validated even by long usage. All the above-mentioned civil and military authorities are to know that if any contravention of this occurs, the one who appoints a deputy will pay a fine of 20

⁵ ‘Comes of the *largitia*’ = the *comes sacrarum largitionum*; ‘comes of the *privata*’ = the *comes rerum privatarum*, in charge of money taxes and imperial estates, respectively (see Jones (1964), pp. 369–70 and 412–17).

⁶ The exception with respect to Osrhoene and Mesopotamia presumably relates to the status of these provinces as frontier territories where the empire had to face down the Persians (see also *J. Nov.* 163, where the unique military conditions in these same territories would oblige the Emperor Tiberius II to handle their tax affairs somewhat differently from those in other provinces).

⁷ ‘*Duces*’ = frontier commanders or commanders of a military district (see Southern and Dixon (1996), pp. 59–61, Treadgold (1995), pp. 31–2 and 97–8 and Greatrex (2007)).

⁸ These lower-level βιοκωλύται appear to have been a form of semi-private *gendarmerie* about whose activities Justinian had expressed concern in his provincial legislation: see *J. Nov.* 8 c. 12, 28 c. 6 and (for epigraphic attestations) Feissel (2009), pp. 111–12.

⁹ ‘Visiting expenses’ (Greek ἐπιδημητικά) = the expenses incurred by a governor’s visit.

pounds of gold and will be put out of his office, and the one who accepted the role will forfeit his property and be subject to exile.

2

For the further support of our decree, we command that local bishops, governors of provinces and the cities' populations themselves are not to accept anyone as either *biocolytes* or bandit-hunter in contravention of our present decree: without exception, we permit no office-holder who is present in his area to have a deputy. We command that, ideally, provincial governors should conduct themselves so correctly, and administer so well, that no need will arise for anyone to be sent to provinces over any matter requiring investigation or administration; but, if need does call for anyone to be sent to provinces for the purpose of tax-collection or because of any other problems arising whatsoever, he is not to have either the position or the title of deputy; and when the emissary reaches the province he is to fulfil the task entrusted to him without causing the taxpayers any extra expense, with the assistance of the governor of the province and of his staff.¹⁰ It may even be that it is over a prosecution of the governor that he has been sent; if so, we command that the local secretariat is still to serve him. As we are forbidding the existence of deputies, it follows that we are commanding governors of provinces and their staff to have the entire liability for seeing to the efficient collection of taxes, for the good order of their region, and for the suppression of all crime and injury. If there are either *vindices*¹¹ or collectors of taxes in the province, and they need any assistance, we command the governors of provinces and their staff to contribute their fully committed support, so that the collection of taxes proceeds unhindered. We also instruct the governors of provinces to try in person all cases launched, whether financial or criminal, that are within their competence, enquiring into them on their own liability and bringing them to a lawful conclusion. In addition, we command governors of provinces that when they are about to take up their position, whether they are here or abroad,

¹⁰ Justinian's opposition to the appointment of deputies appears to be informed, firstly, by a desire that officials fulfil the tasks they were appointed to perform and, secondly, that officials should not sub-contract such responsibilities to unofficial tax farmers whose perquisites would threaten to diminish the flow of tax revenues to the state.

¹¹ On *vindices* see John Lydus, *De Magistratibus* 4.39 and Sarris (2006), pp. 158–9; 'collectors' = ἐκλήπτορες (or *susceptores* in the Latin of the *Authenticum*).

they are to deposit security¹² in advance with the prefect, with our *largitiones* and with the *comes* of the *privata*, for the revenues payable to each of the said authorities; and even if they do not give security we command that they and their staff are still to be liable to the said authorities, just as if they had lodged security. It is in those provinces and cities where there are no *scriniarii*,¹³ *vindices*, or others responsible for the collection, that we wish the governor to have personal liability for the tax-exaction.

3

It has also reached us that some governors in provinces are so impiously disposed towards profiteering that they do not permit wills to be made – or, if made, to be registered –, marriages to be entered into, records of matrimonial gifts to be drawn up, bodies of decedents to be given up for burial, property to be inventoried, or any such transaction to be executed either in the records or by certification, <without a payment to themselves*>. As a result, we forbid all office-holders, civil or military, and their staff, or anyone else, to dare to do any such thing. If anyone does attempt to perpetrate any such abomination in any region whatsoever of our realm, or abets one who dares to do so, we command that such people are to be put out of office and sent into exile, and are to repay out of their own property double the consequent cost to the injured parties, who are also not to be

* Such a supplement to the text seems essential [S/K, p. 680, line 7].

¹² ‘Security’ = Greek ἀσφάλεια, to be deposited with the praetorian prefect, the *comes sacrarum largitionum* and the *comes rerum privatarum*.

¹³ ‘*Scriniarii*’ (σκρινιάριοι) = officials of the *scrinia* or sub-divisions of the imperial chancery. In this instance, therefore, they were officials of the central fiscal *bureaux*, otherwise referred to in Greek (in both the Justinianic and Middle Byzantine periods) as λογοθέται (see Berger (1953), p. 692, *Codex* 12.49, Stein (1949) 2, p. 444 and Van Der Wal (1998), p. 31, note 25). The implication of this section of the law is that in certain provinces, *vindices* and imperial tax-collectors sent out from Constantinople were permanently stationed, and thus bore full personal liability (Greek οικείος κίνδυνος) for the taxes they were expected to collect. In other provinces, by contrast, such officers were only appointed or sent out intermittently so as to supervise or apply *ad hoc* pressure on the governor and his staff, who in such circumstances made the collection and bore primary responsibility for it (see *Codex* 10.19.9). After Justinian, the latter model would become standard: thus, in *J. Nov.* 149, Justin II declares that only individuals willing to make such down-payments by way of security were eligible to be appointed as governors, who, in *J. Nov.* 167, are regarded as being synonymous with tax-collectors (see Van Der Wal (1998), p. 29, note 14). These later governors were locally elected and appointed, thus heralding a major easing of central imperial scrutiny and control (as argued in Sarris (2006), pp. 220–7). Only the Middle Byzantine re-casting of the Byzantine state would see the authority and remit of centrally directed *logothetai* restored (see Brubaker and Haldon (2011), pp. 625–722).

deprived of any other assistance that the laws provide. We give full licence to the most holy local bishops, and the leading men of the cities, to prevent such attempts; to see to it that all these transactions proceed unobstructed and without extra cost, in accordance with the law; and to keep us informed on these matters.¹⁴

1. We wish all office-holders, and all who hear cases on command from us, whether higher or lower, to accept legally lodged appeals, and to issue the proceedings to the litigants without delay, so that legal enquiry into them can proceed. We further command that when an appeal has been lodged according to law, decisions are not to be executed, or possession of property transferred, until the final judgment on it.

4

When adultery, abduction of women,¹⁵ murder or any other criminal acts whatsoever come to be committed in the province, we command that the provincial governors are to take punitive action on them all according to law, and arrest the criminals – the right ones, not substitutes: they are not to detain others from the same villages¹⁶ as those who have dared to incur the charges, nor to penalise their villages, nor impose distraints on account of the offender,¹⁷ nor drop the punitive action for the crime, for personal gain, nor take the offender's property as gain for themselves. What we want is for the guilty to undergo the punishments of the law; in no way do we permit our taxpayers to be the losers by it, nor the office-holders – or their people or staff – to be the gainers. Thus the authorities are not to be found to be punishing some unjustly out of cupidity for their property, while being bought off by offenders. If there is any contravention of this, the governor of the province will himself make good all consequent loss to the

¹⁴ Under *J. Nov.* 15, such supervision of the official drafting and registration of documents (*insinuatio apud acta*) would have fallen within the jurisdiction of the 'defender of the city' (*defensor civitatis*), whose authority Justinian had sought to bolster. The absence of any mention of that officer here is, therefore, potentially revealing, and is suggestive of a faltering of a further aspect of Justinian's reform programme in the aftermath of the plague (see discussion in Sarris (2002)).

¹⁵ On abduction, see Evans Grubbs (1995), pp. 140–202.

¹⁶ 'Villages': elsewhere in the novels, the word χωρίον is used to signify a rural settlement that formed part of an estate: see, for example, *J. Nov.* 162. Here, however, it seems to be used to simply mean a village, which would be its standard meaning in Medieval and Modern Greek (see Lemerle (1979), p. 18, note 1). This law may thus herald the beginning of a change in the terminology of the imperial Chancery.

¹⁷ The law here effectively repeats the provisions of *J. Nov.* 52.

victims of injustice. He will also be subjected to penal measures, and committed to exile; his assessor,¹⁸ if it is documented that he concurred with the governor's illegal action, will suffer similar punishment; and his staff, and the others who for their own gain have been his abettors in such actions, will not merely be obliged to make restitution to the victims for their losses, but those of them who are mainly to blame will be subjected to the penal measures of the law, and committed to exile.

5

Should someone guilty of crimes escape detection, or quit the province in which he committed the offences, we command that he is to be summonsed by legal proclamations from the governor. If he disobeys, he is to be proceeded against as our laws determine, and if he is discovered to be in another province, we command that the governor of the province in which any such offence took place is to write an official letter to the governor of the province where the offending person is living; on receipt of the official communication, that governor is to detain such person, on his own liability and that of his staff, and return him to the governor of the province in which he committed the crime, to be subjected to the penal measures of the law. If the recipient of the official letter neglects to do this, or if members of his staff act corruptly or disregard instructions, we command that the governor himself is then to pay three pounds of gold as a fine, and his staff another three. If the governor, or a member of his staff, takes a bribe not to detain such person, or detains him without rendering him, and is convicted of doing so, he will be stripped of his office and committed to exile.

6

A further point that we command to be observed by every authority is this: in the event of a written command from us to any governor whose period of office has terminated in the interim, his successor in office is to receive and register it. Should it be a private matter, he is to implement it and carry it through as if it had been addressed to him; whereas if such written instruction has regard to the public treasury, he is to enquire into it, and if it is not detrimental to the treasury, implement its contents; whereas if it is against the interests of the treasury, he is to take no action on it at all, but is

¹⁸ 'Assessor' = the governor's legal secretary: see *J. Nov.* 60.

first to inform us, for there to be a second command of ours on the subject. Should there be instructions from any governor whatsoever, in the event that before their registration either the issuer or the addressee of the instructions should have been removed from office, even then the successor in office is to receive and execute them, if they have been lawfully made; but if they are either illegal or against the public interest, we command that they are to be treated as if never having been written.

7

We have become aware that there is another impious crime being committed in various regions of our realm, such that creditors are daring to take debtors' children into custody, either as security, or to work them as slaves, or hire them out.¹⁹ This is something that we entirely forbid. We command that anyone who commits any such offence is not merely to forfeit the debt, but is also to be condemned to pay as much again to the person held by him, or to that person's parents. He is then to be subjected by the authorities of the region to corporal punishments, for having dared to detain a free person for a debt, hire him out or take him as security.

8

Something else that we have decided it to be necessary to rectify, for our taxpayers' benefit, is that if, on a loan-instrument, a wife has given her husband consent, or put her signature, thereby making her estate or herself liable, we command that nothing of the kind is to be valid or enforceable, whether such instrument has been made only once, or several times on the same property, and whether the debt is a private or a public one. Unless it should be plainly proven that the money was spent for the woman's own use, it is to be treated as if never written.²⁰

¹⁹ For earlier prohibitions on this practice, see Paulus, *Sententiae* 5.1.1, *Digest* 20.3.5, *Codex* 4.10.12, 4.43.1 and 8.16.6. The phenomenon is also recorded in the sixth century in the documentary papyri: see *P. Cairo Masp.* I 67023. For the role of credit relations in drawing peasants in particular into dependency, see Sirks (2001).

²⁰ The provision made here would be regarded as of great significance by legal scholars in the Medieval West (see Van Der Wal (1998), p. 126, note 71). For the legal context, see Arjava (1996), pp. 238–9. This section of the law is consistent with Justinian's general instinct to secure the interests of women and safeguard them against the perceived weakness of their sex, on which see Krumpholz (1992), pp. 191–204.

9

This, too, we consider it necessary to correct, with appropriate assistance: no woman is to be locked up or kept in custody on any financial matter whatsoever, by any officer-holders whatsoever. Should legal proceedings have been taken out against the woman for debts, public or private, she is to handle the case at law by responding to it either through her husband, or in person, or through whomever she may wish; should she be a widow, or never have been married at all, she is, similarly, to be allowed to put the case for her rights at law either in person or through whomever she may wish. We command that anyone daring to act in contravention of any of the above is to be subject to a fine of twenty pounds of gold if a higher office-holder, or ten pounds of gold if a lower, and those who have abetted them on the aforesaid matters are to be stripped of their position, subjected to tortures and sent into exile. If after legal notification the woman refuses to appoint someone to respond for her, or goes to law but is given judgment against her, she is even so not to be locked up or kept in custody, but legal process is to take its course against her belongings.

1. Should the case against the woman be a criminal charge, necessitating her being taken into custody,²¹ if she should be able to appoint a guarantor for her person, she is to be entrusted to him; but if she takes an oath that she cannot provide a guarantor, she will make a sworn pledge²² for her attendance at court. Should it be found to be a very grave charge on which she is accused, she is to be enclosed in a monastery or ascetic house, or handed over to women under whom it is possible for her to be kept in custody of a virtuous kind, befitting a free person, until her case is resolved; then, what the law has determined in her case is to go forward. Neither on any financial case, public or private, nor on any criminal case whatsoever, do we permit any woman either to be thrown into prison or to be under male custody, so that they may not be found to have suffered assaults on their virtue through such opportunities.

2. We permit no nun or canoness to be dragged out of their monasteries or ascetic houses for any legal action.²³

²¹ 'Custody': i.e. preventative detention.

²² 'Sworn pledge' (Greek ἐξωμοσία): rendered in the *Authenticum* as a *cautio iuratoria* or the strengthening of an obligation by means of an oath (Berger (1953), p. 384).

²³ The law here re-iterates *J. Nov.* 79 and *J. Nov.* 123 c. 27.

10

If ever a charge of adultery should be clearly proven, we command that the punishments to be inflicted on the guilty are those determined by Constantine²⁴ of pious destiny, and that those who have been intermediaries or abettors in so impious a crime are to undergo similar punishments. Should the adulterer have a wife, her dowry and the gift before marriage – or the share under our law, if the marriage was not accompanied by dowry-settlements – are to be reserved intact for her out of his property, while the rest of his property is to be taken by descendants or ascendants as far as the third degree, if there are any such, in their order of precedence and their degrees; if not, we command that it is to accrue to our *fiscus*.²⁵

1. As for the woman with whom he has committed adultery, she is to undergo the appropriate punishments and to be enclosed in a monastery.²⁶ Should her husband decide to take her back within two years, we give him authority to do so, and to resume cohabitation with her without fear of any consequent jeopardy, and with no impairment to the marriage resulting from what happened in the interim. If the aforesaid time has elapsed, or if the husband dies before taking his wife back, we command that she is to have the tonsure, take the monastic habit and live in the said monastery for the whole duration of her life.

2. Should she have descendants, they are to take two-thirds of her estate, in accordance with the formula determined by the law, and the remaining third is to be given to the monastery in which she is enclosed; but should there be no descendants, while ascendants are to be found who have played

²⁴ For Constantine's legislation on adultery, see Evans Grubbs (1995), pp. 205–24. It is often assumed on the basis of *Codex* 9.9.29.4 that Constantine had instituted the death penalty for adultery. In fact, this law (actually a law of Constans I) had been altered to include the death penalty by Justinian's law commissioners, and in practice judges had considerable discretion as to how to punish the offence (see Evans Grubbs (1995), pp. 216–18 and Arjava (1996), p. 196). This constitution would suggest that under Justinian, the standard punishments were death or confiscation of property with imprisonment. On Justinianic and post-Justinianic legislation on adultery, see also Gorla (1974) (discussing this novel) and Sinogowitz (1956). For imprisonment, see Hillner (2015), pp. 314–41.

²⁵ '*Fiscus*' = treasury (here, as generally in the novels, indicating confiscation via the imperial estates of the *res privata*: see *J. Nov.* 112, note 14). The main innovation contained in this measure would appear to be that those found guilty of a crime punishable by means of death or confiscation would no longer automatically have their property seized by the Crown, but rather, in the first instance, would have it re-distributed amongst their heirs (see Van Der Wal (1998), p. 134 (entry 915)).

²⁶ The law here provides a further example of the Justinianic innovation of monastic imprisonment by way of punishment (on which see, with respect to this law, Gorla (1974) and, more generally, Hillner (2015), pp. 314–41).

no part in such impious act, they are to take four *unciae*²⁷ according to the formula determined by law, and the eight *unciae* are to be given to the monastery in which such woman is immured. Should she have neither descendants nor ascendants, or only ascendants who have been party to such impiety, the monastery is to take her whole property. It is to be observed that the agreed sums contained in the dowry-settlement are in all cases to be retained by the husband.

11

As there are some who are eager to contravene the law of ours in which we specifically enumerated the sole grounds on which *repudia*²⁸ can be served, from either husband or wife, we command that in no way are there to be *repudia* on grounds other than those, nor, if they have taken place, are they to be valid; nor may they dissolve marriages by mutual consent, condoning each other's crimes.²⁹

1. If any do dare to dissolve their marriage on grounds other than those determined by us, we command that should they have descendants, either by that marriage or by a different one, their estates are to be given to those, according to the formula in the laws, and both husband and wife are to be enclosed in a monastery for the whole duration of their lives. Four *unciae* out of each of their estates is to be set aside for the monasteries in which they are enclosed, and of course, the husband will not have even the use of the share that is being given to the children. Should they have no descendants, but there are ascendants to be found, those are to take one-third of the estate, unless they concurred in the impiety of the dissolution of the marriage, while the two-thirds are set aside for the monasteries in which each is enclosed. Should there be neither descendants nor ascendants, or if the ascendants concurred in what happened, we command that the whole property is to be given to the monasteries in which they were enclosed. Our object is that God's judgment shall not be put into contempt, and our law contravened, as a result of this attempt at evasion.

²⁷ '*Unciae*' = twelfths. In earlier legislation on exiles, such property would have been assigned to the imperial treasury or a city council (Hillner (2015), p. 334).

²⁸ '*Repudia*' = unilateral dissolutions of marriage.

²⁹ This measure (punishing divorce by mutual consent) confirms the earlier shift in imperial policy heralded by *J. Nov.* 117 and is the culmination of Justinian's increasingly strict regulations with respect to marriage. Although it would later be repealed by Justin II in *J. Nov.* 140, subsequent emperors would, for the most part, incline towards Justinian's more hard-line position (see Clark (1993), pp. 25–6 and Van Der Wal (1998), p. 72, note 23, acknowledging the exception identified by Burgmann (1981)).

2. We command that abettors of such dissolutions of marriage, or those who draw up such forbidden instruments, are to be subjected to corporal punishments and sent into exile.

3. However, if those who have set about dissolving their marriage decide to reunite themselves before being enclosed in a monastery, we give them licence to do so; we remit them the aforesaid penalties, and permit them to keep their estates and live with each other just as if no such crime had taken place. If one of them wishes to resume the marriage, while the other does not consent, the penalties are to apply only against the one who refuses.

4. We command that all this is to be upheld both in this sovereign city and in the provinces, by both the *comes* of the *privata*³⁰ and the <comes of the> *schola* of the *palatini*, and by the governors of provinces and their staff, in the knowledge that if they are negligent over any such sin and do not observe all this, they will be subject to both exile and confiscation. We command the local most holy bishops, as well, to observe the said provisions, so that it shall be under their supervision that the persons handed over to them are enclosed in monasteries,³¹ and that the monasteries are paid the share that we have determined out of their property.

12

Should anyone accused of adultery escape the legal penalties because of corruption on the part of the judges, or in any other way whatsoever, but subsequently be found associating with the woman who had been the subject of the charge, or taking her in marriage, whether this happens in her husband's lifetime or even after his death, we command that the marriage is to be invalid; and also, despite the fact that the man who dared to commit the offence was acquitted the first time, we give every judge licence both to detain him and to subject him, after tortures, to the extreme of punitive measures,³² with no need for any other prosecution or proof. We also command that the woman is to be chastised, tonsured and enclosed in a monastery, to stay there for the whole duration of her life. The property of each of them is to be divided according to the aforesaid

³⁰ '*Comes* of the *privata*' = the *comes rerum privatarum*; 'the *comes* of the *schola* of the *palatini*' = either the commanding officer of units of palace guards stationed in and around Constantinople and on imperial estates of the *domus divina* (see *J. Nov.* 30, note 33 and Frank (1969), pp. 216–17) or of financial agents of the *sacrae largitiones* (Delmaire (1989), p. 127).

³¹ For further discussion of this practice, see Hillner (2015), pp. 314–41.

³² 'The extreme of punitive measures': this usually meant the death penalty, but for an exception, see *J. Nov.* 137 c. 6 (1).

formula, on the liability (as we have said before) of the *comes* of the *privata* and the local governors.

13

As we must consider the frailty of the human race, we are, in part, reducing corporal punishments: we are forbidding the amputation of both hands or also feet, or the infliction on anyone of the kind of tortures that result in dislocation of the joints, because dislocation of the joints is more serious than the severing of both hands.³³ We therefore command that in the case of a crime such that the law condemns the guilty to death, the criminal is to suffer the penalty imposed by the force of law, but if the offence is not such as to merit death, he is to be chastised by other means, or sent into exile; and if the character of the offence demands amputation of a member, only one hand is to be amputated.

1. For theft, we absolutely do not wish the amputation of any member, nor the death penalty; the thief is to be chastised by other means. ‘Thieves’, in our use of the term, are those who steal covertly, unarmed; for violent assault, with or without weapons, indoors, on the highway or at sea, we command that offenders are to undergo the penalties of the law.

2. By way of moderating financial penalties, not only physical ones, we decree that those who are accused on criminal charges for which the laws dictate confiscation or death on conviction or condemnation, are not to have their estate gained by officer-holders or their staff, nor yet is it to accrue to the public treasury, as under the old laws. Instead, should descendants subsist, those are to have the property, apart from the criminals’ profits from such crime; if no descendants subsist, but ascendants as far as the third degree, those are to have it.

3. If those so condemned have wives, we command that those are, without fail, to take both their dowry and the marital gift. If their marriage to such person was without dowry, they are to take the share determined by our laws of the whole property of the condemned, whether or not they have children. Should the offender have none of the above, we then wish his

³³ Amputation is prescribed as a punishment in *J. Nov.* 8 c. 12, *J. Nov.* 52 c. 1, *J. Nov.* 85 c. 5, *J. Nov.* 134 c. 7, *J. Nov.* 146 c. 1 and *J. Edict* 11 c. 2 (see Van Der Wal (1998), p. 48, note 23 and discussion in Manfredini (1995)). It would become a more marked feature of Byzantine law under the Isaurian emperors of the eighth century. Justinian’s philanthropic concern for human frailty is a common rhetorical theme of the novels, on which see Lanata (1984a), pp. 165–88. For its impact on the emperor’s attitude to criminal penalties (and in particular his determination that punishment should be calibrated according to the nature and severity of the crime), see Sitzia (1990).

property to accrue to the *fiscus*; except that in the case of those convicted of treason, we wish the old laws to be observed.

Conclusion

Your excellency is, accordingly, to see to the publication of our present divine law in this fortunate city, and to send it out to the provinces and make it known to the governors, for all subjects to learn how great is the care that we take of them.

Given at Constantinople, May 1st in the 30th year of the reign of the Lord Justinian, pius princeps, Augustus, 15th year after consulship of the Most Distinguished Basilius 556

[Greek only]

[No heading]

Preamble

We strive for the conspicuous increase among our subjects of everything that promotes our propitiation of the Deity.

We have received a tearful petition² from one Zosarius,³ of the province of Moesia. He informed us of his being subjected to a prosecution by the Most Distinguished governor of the area for payments, both public and private, which is nothing short of outrageous, because he has not let him issue writs in *persecutio*⁴ of property of his own for the money. That is something quite unjust, and vexatious in the extreme. If a man has once been deprived of what is his – through some contingency, not as a result of abandoning himself to indolence –, where is the justice in his plunging afresh into a life of ignominy, and very possibly being forcibly deprived of daily sustenance and physical shelter?

1

Acting on this information, and in our eagerness to rectify the worse by means of the better, in the service of the good God of all, and of there being no oppression in use in our days, we decree that no Most Illustrious or

¹ ‘Cession’ (Greek ἔκστασις) = (Latin) *cessio bonorum*: the process whereby a debtor who became insolvent through circumstance could voluntarily surrender his property so as to avoid the forced sale of his goods by compulsory order (which would have incurred legal disgrace or *infamia*): see *Digest* 42.3, *Codex* 7.71, and Berger (1953), p. 387.

² ‘A tearful petition’: the law thus provides a further example of responsive legislation inspired by appeals to the emperor. Moesia was situated on the Lower Danube and was subjected in the mid 550s to repeated attacks on the part of Slavic and other invaders from the north (see Sarris (2011a), pp. 175–7). Justinian here legislates to prevent governors and other officials from forcing individuals into *cessio bonorum*, and instead permits creditors to sue those in possession of property that rightfully belonged to the debtor (see Van Der Wal (1998), p. 177 (entry 1149)).

³ Zosarius is otherwise unattested.

⁴ ‘*Persecutio*’: an action by which one sues for something (so defined by *Digest* 44.7.28): see Berger (1953), p. 628. The implication seems to be that the governor had prevented the plaintiff from suing to recover his own property so as to meet his debts, thereby forcing him into default.

Most Magnificent office-holder is allowed to put compulsion for cession on anyone accountable for the said obligation of payments, be they public or private; nor is he to use such grounds as occasions for tortures, to make them prefer to accept loss of what is theirs as a means to spare themselves being punished corporally, and driven to a disgracefully ignominious death, as well as bearing the yoke of poverty. Instead, the debtor is to take an oath on the hallowed scriptures that he has no remaining means out of which to meet the debt, in the form of either property or gold; and if the law gives him any rights over either movable or immovable property, from either an inheritance or a gift from relatives, but he is not yet in possession of them even though it appears that he is entitled to them, and it is possible to confer part or the whole of these on the creditors – excluding his wife’s property, if it really does belong to her – this is to be done. The creditors are to have licence to make such actions their own, and whether the debtor is present or not, to bring proceedings in person⁵ against the one in possession of the rights at that time; he, to put it simply, is to stand in person⁶ for the one actually liable, in the case of any such action or claim to property.

Conclusion

Your conscientious and virtuous magnificence is therefore to observe what we have so piously decided, and is to impose a penalty of 10 pounds of gold on one who dares to contravene any of what we have determined on this. That will not be without jeopardy: jeopardy of life itself will be visited on those attempting to subvert, even only as far as bare intention, what we have justly decreed by means of this divine law.

Given at Constantinople, February 24th . . . of Justinian . . . consulship of the Most Distinguished Basilius, i.e. after 541⁷

⁵ ‘In person’ (Greek εις πρόσωπον) = Latin *in personam*. For such *actiones personales* (meaning an action based on the contractual or delictual obligations of the defendant) see Berger (1953), p. 346.

⁶ ‘Stand in person’, i.e. he substitutes the primary debtor. Justinian here effectively appears to be allowing precisely the sort of claiming against one’s debtor’s creditors that he had forbidden in *J. Nov.* 88. The procedure set out here is reminiscent of the ‘garnishee orders’ of the Common Law.

⁷ For the dating, see Lounghis, Blysidu and Lampakes (2005), p. 313 (entry 1277).

<The same Sovereign to Strategius, comes largitionum>² [Supplied from Athanasius]

Preamble

The members of the bankers' association of this fortunate city have become petitioners to our Majesty; there are several heads under which they have requested to receive our assistance, in view of the many people to whom they make themselves useful, resulting in their undertaking promises to pay³ and loans that are fraught with every risk.

They argue that while there is a divine constitution of ours requiring demands to be made in order – the first to be called to account being those liable and their property, and only after them their sureties, *mandatores*⁴ and guarantors – their association is excepted from this legislation; and that this puts them in the worst possible position, given that they themselves, not

¹ In this law (along with *J. Edict. 7*) Justinian responds to requests from the banking guild of Constantinople that various aspects of the law pertaining to the repayment of debts and other issues be revised to their benefit. Throughout, the emperor's tone is respectful but firm, giving with the one hand whilst refusing to give with the other. Such bankers (Greek ἀργυροπράται, Latin *argentarii*) acted as moneylenders, financiers and, crucially, moneychangers, exchanging small-denomination coinage for gold. Here it is the money-lending and borrowing business of higher-status bankers with which Justinian is primarily concerned. Such bankers appear to have combined their commercial activities with other professional careers, and could amass enormous fortunes, as revealed for the sixth century by the figure of Iulius Argentarius, whose charitable donations funded the construction of some of the finest churches of Ravenna (discussed in Barnish (1985) and Consentino (2015)). It is perhaps indicative of the growing sophistication of the East Roman economy at this time that such financiers become increasingly visible in the sources and can be seen to have exerted growing political influence, such as is perhaps reflected in the present law. Justinian would eventually alienate himself from important elements within the banking community from whom he exacted forced loans, as a result of which a plot against him was hatched in which the retired general Belisarius was implicated (see Malalas 18.141). His successor, Justin II, by contrast, went out of his way to woo the bankers by repaying such debts immediately upon his accession to the throne (see Corippus *In Laudem Iustini 2* in Cameron (1976), pp. 158–9, Chekalova (1973), Whitby (1985) and Zuckerman (2004), pp. 91–2). For a further discussion of legal aspects of this law, see also Lokin (2001a).

² The addressee was Flavius Strategius of the well-connected Apion family from Egypt, documents from whose archive are preserved in the papyrological record from Oxyrhynchus (see discussion in Sarris (2006), pp. 17–28 and *PLREII*, pp. 1034–6 (Strategius 9)).

³ 'Promise to pay' (Greek ἀντιφώνησις). For a papyrological example, see *P.Flor.* 343.3.

⁴ '*Mandatores*' = those who provide 'backing', hence here 'sureties'. The constitution referred to is probably *J. Nov.* 4.

being able to enjoy the benefit of the constitution, would face the prospect of a direct demand, whereas should they accept guarantees from others, the guarantors or their *mandatores* or sureties would not provide them with security.⁵ So either they too ought to share the same laws as everyone else, or our constitution ought not to be put up against them.

1

Accordingly, we decree that whenever any director of the bank has made a loan to anyone, and has received either a promise to pay, or sureties or *mandatores*, but the constitution and its order of proceeding is put up against them, the constitution is then to apply to them as well, unless they should have made a special agreement under which the lender has licence to proceed against the *mandator* or surety, as well as the principal, without awaiting the steps in the constitution. To encourage bankers' readiness to lend, in the public interest, we are accepting such agreements; they do not appear as being in conflict with the law, because it is open to everyone to spurn what the law has offered him. Should there be any such agreement, it is to be open to them to begin by proceeding even against the *mandator*, the surety and the other persons.⁶

Thus, if there has been no written agreement, the constitution is still to be valid against them, without exception; but if there is a written agreement, it is the contract that makes the rule, and it is on that basis that exactions are to be proceeded with.

2

Their second head was that of the other exception that we made previously,⁷ to the effect that when a director of the bank is in the civil

⁵ 'Security' (Greek τὸ ἰκανόν) = Latin *satisdatio*: see Berger (1953), p. 690.

⁶ The law had hitherto protected guarantors by demanding that a creditor should exhaust his recourse against the principal debtor before having recourse to the guarantor himself. In modern Francophone civil law this is known as the *bénéfice de discussion*. It would appear, however, that when bankers acted as guarantors, creditors had been permitted a direct and initial action against them. Accordingly, the bankers' guild had seemingly lobbied the emperor asking that they too should be granted exemption from the requirements of the *bénéfice*, and be allowed to move directly against the guarantors of indebted clients. For all his warm-sounding words with respect to the bankers, Justinian here actually rejects that request: the *bénéfice de discussion* (as a modern civilian would understand it) could only be set aside if an agreement to that effect had previously been agreed with the guarantor (see *J. Nov.* 4 and Van Der Wal (1998), p. 124) (entry 865).

⁷ A reference to *Codex* 8.13.27.

service, or has put his sons into the service, their sons in the service could not make use of the claim that their position in the service was bought with money not from their father or from any other source, but from creditors.⁸ They have requested that either such a presumption should not be applicable to them, or else they too should have the same right: thus, if there were someone in the service whose place, or whose sons' place, was bought with a loan from them,⁹ the security should be discharged to them¹⁰ even from the proceeds of his place in the service, or of his sons' place, should the debt not be able to be cleared from any other source.

Now, we have not enacted that law lightly, but on a proper principle, and we do not readily tolerate its being overturned.¹¹ Instead, we decree that – while the constitution is to remain in force, and this presumption against them contained in the divine constitution is not to be abrogated, because it appears that their numerous loans are not all made exclusively out of their own funds – they are to have the same privilege: that for anyone in the service, or with sons in it, his position, if it should be one of those that are saleable, is to be liable. So too is that of his sons – under all circumstances except if it should be quite clearly shown by them to have come down to their sons from their mother's estate, or from sovereign munificence –;¹² should they then have no other way to clear the debt, the sons are to discharge the security to the bank directors out of the proceeds of their service post. Those are the circumstances for which we are enacting this law, offsetting the presumption in the constitution; just as that constitution made the presumption against them, so too we are allowing the reciprocal remedy, to members of the said association only, as honourable recognition of their valuable service to the common good in making loan-contracts, and encountering numerous risks in order to serve others' needs.

⁸ In other words, such bankers' sons had argued that the imperial post could not be sold in order to meet the debts owed to a creditor of their father. The mention of bankers in imperial service alerts one to the fact that those who acted as *argentarii* appear to have done so as a supplementary profession.

⁹ 'From them': i.e., in this example, from the banker, as creditor.

¹⁰ 'Security should be discharged': i.e. it should be possible for the borrower or his son to be made to sell the post to meet the debt to the banker. The banker, as creditor, would thus be granted a tacit hypothec over the post (see Van Der Wal (1998), p. 103).

¹¹ *Codex* 8.13.27 had already permitted bankers to sue for the sale of such posts: see Van Der Wal (1998), p. 103, note 45.

¹² Justinian here decrees that such posts were only exempt from being claimed by a creditor if it could be proven that they had been awarded by the emperor or purchased with money derived from the mother (*bona materna*).

3

They made a further point that seemed not unreasonable: that should they make, or have already made, a loan in the form of a certain sum of money paid to someone for the purchase of certain property, movable or immovable, and should the property have been bought out of the money borrowed, their rights over the said property should take precedence over everyone else's, and they are to suffer no circumvention. Should they prove that it was acquired entirely out of their funds, and the borrowers cannot discharge the security to them in cash, the actual property bought with their money should accrue to them, just as if it had really been bought by them, and all that the purchaser had put in was his name. It is unjust for those who have disbursed their money not to have first and uncontroverted precedence with respect to the property that has been bought, provided only that, in written contracts, there should have been mention of hypothec. Should they observe that, they have all that they have requested from us – or rather, even more than what was asked, given that we are giving them more valuable rights than anyone else's over property shown to have been bought with their money. If, however, the contract was, or should be, an unwritten one, and should they have given money or payment in kind – as is often the practice of bank directors, with jewellery or silver being paid, or sold, in such cases – but not have received the price, they are then to be allowed to claim it as theirs, even without hypothecs. The borrowers will then not be in possession of property that does not belong to them, by unjustifiably retaining what they have received from others without having paid cash for it. Instead, if they should leave heirs, their heirs will either pay for it, or repay what was actually given; or if they leave no heirs, the bankers will be allowed to claim it. No-one else's additional hypothec on their property will be valid against them.¹³

4

Whereas we have enacted a law that bank directors are not to lend at interest of more than two-thirds,¹⁴ they have informed us that they do also lend without written contract, but meet with resistance over the interest on

¹³ In this chapter of the law, Justinian does appear to afford to bankers a genuine benefit by granting them an implied lien on property bought with their money, which was not generally afforded to other creditors: see *Codex* 8.13.16 and 17. For further discussion of this provision, see Lokin (2001a), pp. 26–7.

¹⁴ 'Two-thirds' = two-thirds of 1 per cent per month, or 8 per cent per annum. The law referred to is *Codex* 4.32.26.

the ground that the loan was undocumented and no stipulation has been interposed, there being this popular notion¹⁵ that interest ought not to accumulate without stipulation. Despite that, there are numerous cases of interest being generated without stipulation, on the basis of an agreement alone, and sometimes charged even without an agreement, as being automatically included. For that reason, we decree that they are to be paid interest, not only that for which there has been a stipulation,¹⁶ but also such as the law allows them to stipulate, namely two-thirds of 1 per cent. It would not be just that those prepared to assist virtually all who need it should be wronged by such pettifogging.

5

They further informed us that some of those making written contracts with them also keep documented accounts of the transaction, sometimes having them made up publicly, sometimes writing them themselves in their own hand, and sometimes signing them after others have drawn them up. They have requested us that any party entering into contracts with them who has made any such written record should still be liable for full discharge of the security to them, without relying on a claim that whereas they wrote out the contracts, agreements or records all in their own hand, or signed them after others had written them, the sum mentioned had not in fact been paid over to them;¹⁷ and that they should still have hypothecs from these contracts and receive two-thirds interest, even if that has not been written down.¹⁸

This is a question of the common good, and requires much consideration; we accordingly give it the response that it deserves. Should anyone have made a publicly executed contract, writing it out wholly in his own hand or signing either records or accounts written by others, we decree that it is certainly right for him and his heirs to be liable to actions, that is in

¹⁵ The ‘popular notion’ is traceable to the *Sententiae* of Paulus: see *ibid.*, 2.14.1.

¹⁶ ‘Stipulation’ (Greek ἐπερώτησις) = Latin *stipulatio*.

¹⁷ ‘Not in fact . . . paid over to them’: i.e. the debtors should be denied the defence of non-payment (Latin *non numeratae pecuniae*): the claim that a defendant had not in fact received the money for which he was being sued: see *Codex* 4.30.

¹⁸ ‘They should still have hypothecs’: it would appear that the bankers were asking for a general hypothec over the property of those to whom they gave credit (i.e. the hypothecation of the entire property of the debtor). The emperor goes on to reject this proposal, save for where a general hypothec had been expressly agreed to in the initial contract. In *J. Edict* 7, however, he would grant the bankers’ request.

person;¹⁹ we would not allow hypothec unconditionally to those who have not agreed that, but only should it be shown that mention of possessions has been made in the text, and should they have either hypothecated their effects, or at least simply included that it is ‘on the security of their possessions’, or, in general, if they have either said or written something such as to carry the implication of a hypothec. We do then allow the bankers a hypothec, so as to avoid either confounding the general import of the laws, or depriving them of the assistance that is practicable.²⁰

1. As to interest, should they agree it explicitly, it is to be as agreed; but if the text only says that the loan has been made ‘at interest’, the parties to the contract cannot allege that as no interest has been specified, the money is therefore not at interest: by presumption, the charge is to be as if the two-thirds interest had been explicitly named. That is what is to be observed in future; as for accounts recorded hitherto, they may charge interest at two-thirds even if there has been no mention of interest, as it is clear, with any bank director, that he makes loans at interest just as he pays interest himself,²¹ and could not make interest-free disbursements. In future, however, they must observe just what the present divine law allows them.

6

On the following point, we give them assistance without reservation. Should accounts be produced containing specific written statements of each purpose for which the money has been paid, and the party has put his signature to the said records – even should he not himself have written each

¹⁹ ‘In person’: i.e. they are to be liable to *actiones personales* (claims against them by virtue of their contractual obligations) rather than an *actio in rem* against their property (see Berger (1953), p. 346).

²⁰ Whilst denying bankers the general hypothec over the debtor’s property requested, Justinian does here nevertheless advance their interests by denying the standard defence of *non numeratae pecuniae* to any debtor who had issued a receipt for a loan. Hitherto, even if such a receipt had been issued, the debtor could claim that the transaction had not in fact occurred (it was seemingly not unknown for the receipt to be issued first: see Berger (1953), p. 459). In this section of the constitution, therefore, Justinian elevates the status of written proof, and shifts the onus away from the lender to prove that the loan had in fact been executed.

²¹ ‘Just as he pays interest himself’: the implication is that bankers were in the habit of borrowing money (from those whose professional or social status made it illegal to lend money at the higher rate of 8 per cent) which they then themselves lent on to others. For a papyrological example of an Egyptian landowner lending money to an Alexandrian banker, which the latter presumably intended to use to furnish credit to others, see *PSI* I 76 and Keenan (1978).

separate item in his own hand, or should he have made some agreement on it either in the form of a loan, a settlement of claim or otherwise – he cannot, having done that, then demand proofs of the purposes detailed, unless he in person or his heirs may wish, superfluously, to put an oath to the lender. That is all we allow him, and that only provided that it is during the period allowed for an action for non-payment;²² if even that has already elapsed, we do not burden the bankers with an oath, as we have laid down in our general laws, despite its being really unnecessary: after all, what justification would there have been in actually believing that someone who had written an account in his own hand, or proffered it, was so disordered as to acknowledge in writing sums that had not been paid?

Conclusion

Your excellency, and every other office-holder in our realm as well, is accordingly to take pains to observe our decisions, manifested by means of this divine pragmatic law, intact in perpetuity. A penalty of ten pounds of gold is imposed against those contravening this, or permitting its contravention.

*Given at Constantinople, April 1st, consulship of the Most Distinguished
Belisarius*

535

²² 'Action for non-payment' = the *exceptio non numeratae pecuniae*, on which see Berger (1953), p.459. The time limitation for this defence was two years: see *Codex* 4.30.14.

137 | Appointment of bishops and clergy¹

[Greek only]

In the name of the Lord Jesus Christ, our God. Emperor Caesar Flavius Justinianus Alamanicus Gothicus Francicus Germanicus Vandalicus Africanus,² fortunate glorious triumphator, ever revered Augustus, to Peter, Most Illustrious magister of the divine officia³

Preamble

If we are zealous that the civil laws, over which God in his goodness to mankind has entrusted us with authority, should be permanently and reliably observed for the protection of our subjects, how much greater is the zeal that we ought to put into the observation of the sacred canons and divine laws, which have been set down for the salvation of our souls? Those who observe the sacred canons are rewarded with God's help, while

¹ As noted in the Introduction, from the mid 540s Justinian's concerns were increasingly theological in nature, as he attempted to wrestle with the empire's apparent loss of divine favour as implied by the advent of the bubonic plague, the increasingly destabilising effects of the Christological debate, and, perhaps, anxiety as to the fate of his own soul. His attempts to doctrinally unify the imperial Church would culminate in the Second Council of Constantinople of 553, but, as this law (dating from 565) reveals, his determination that the imperial Church and its personnel be fit for purpose and capable of fulfilling their intercessory, soteriological, and providential mission remained evident to the very end of his reign. In this constitution, Justinian draws upon his earlier legislation (especially *J. Nov.* 123), patristic texts, the writings of St Paul and the provisions of the canons of the Council of Nicaea (325) to legislate on episcopal appointments, so as to ensure that the empire's bishops were properly elected, instructed, and supervised. On the emperor's religious policies and priorities, see Price (2009) 1, pp. 8–103, Wesche (1991), Rapp (2005), pp. 278–89, and Sarris (2011a), pp. 160–8. For a further discussion of this novel, see Albanese (1967).

² On Justinian's triumphant titulature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ '*Magister of the divine officia*' = *magister officiorum*, on which see Jones (1964), pp. 575–83. The addressee, Peter, was a lawyer by training who had served as a high-ranking diplomat on the emperor's behalf, leading embassies to both the Ostrogoths and Persians and negotiating the peace treaty that was agreed with the Sasanians in 562 (such diplomatic missions came under the official remit of the *magister officiorum*). He was also a historian and antiquarian scholar, who wrote a history of the office of *magister officiorum* detailing imperial ceremonial which was excerpted in the tenth century for the *De Cerimoniis* ('Book of Ceremonies') of the Emperor Constantine VII, an account of his negotiations with the Persians which was drawn upon at the end of the sixth century by Menander the Guardsman when writing his history of imperial diplomacy, and a Roman history covering the period from the death of Julius Caesar in 44 AD to that of Constantius II in 361, of which around twenty fragments survive. See *PLREIIIB*, pp. 994–8 (Petrus 6).

those who contravene them are putting themselves under his condemnation; and subject to severer condemnation are the most holy bishops, to whom has been entrusted the duty of enquiring into the canons, and watching to see if any contravention of them has been left unpunished.⁴

We have received various petitions against clerics and monks over failure to observe the divine canons, and against some bishops, as living a life not in accord with the divine canons; others, too, have been discovered to be ignorant even of the holy oblation itself, or of the prayer for holy baptism.

1

Accordingly, with God's judgment in mind, we have ordered canonical enquiry and correction to proceed on each of the cases reported to us. Given that the general laws do not permit the misdeeds of the laity to be left uninvestigated and unpunished, how should we tolerate the overlooking of what has been decreed canonically by the holy apostles and fathers, for the salvation of all mankind?

A particular cause that we have found for many people's falling into error is that synods of most holy priests have not been taking place, as was determined by the holy apostles and holy fathers. Had that been observed, heed for the synod's scrutiny would have caused everyone to take pains both to learn the duties of the divine ministry and to live virtuously, in order to avoid being subjected to condemnation under the divine canons.

Another equally significant cause for what has been wrong in some cases is that bishops, presbyters, deacons and other clergy have been being ordained without examination, and without attestation as to the orthodoxy of their faith and the rectitude of their life: if those entrusted with the duty of praying for the laity should be found unworthy of God's ministry, how will they be able to propitiate God for the laity's sins?⁵ That ordinations of priests should be carried out with the utmost strictness is something St Gregory the Theologian also teaches us, following the holy apostles and the divine canons. Here is what he says, in his *Great Apology*:

Measuring himself against Paul's canons and the standards he laid down on bishops and presbyters – that they should be 'temperate, virtuous, not drunken, not violent, good teachers, irreproachable in every way and

⁴ For Justinian's views on the moral responsibilities of bishops, see Rapp (2005), pp. 278–89.

⁵ Justinian's views on the intercessory function of priests mirror his conception of the role of ascetics within the Roman polity as set out in *J. Nov.* 133.

unassailable by the wicked' – , who is there who will not find that there is much that falls outside the straight path of the canons?⁶

Again, the same author says:

First one must be cleansed, then cleanse; become wise, and so impart wisdom; become a luminary, and illuminate; grow close to God, and bring others to him; be sanctified, and sanctify; lead, by the hand; give counsel, with understanding.⁷

Again on the same topic, the same St Gregory, in the same discourse, writes:

Who is it that forms – as in one day he formed men from clay – the champion of the true service, the one who will stand with angels, glorify with archangels, and be a fellow-priest with Christ?⁸

By this, the Theologian is showing what sort of men they must be who are appointed to the priesthood. And here is what the same author writes, in the same discourse,⁹ about those ordained unworthily:

... those who bring nothing with them in advance to contribute to the priesthood, who have never suffered any previous hardship in the cause of what is good, who are shown up as learning to be religious only while they are teaching it, and who cleanse before they have been cleansed; temple-robbers yesterday and priests today, strangers to holiness yesterday and expounders of mysteries today; long practised in evil, and improvisers in religion: that is the work of human favour, not that of the Spirit.

As to the fact that the divine canons prevent remarried men from being clerics, here is St Basil's teaching:

The canon absolutely excluded remarried men from the ministry.¹⁰

⁶ Gregory the Theologian or Gregory of Nazianzus (329–390) was Patriarch of Constantinople and a crucial figure in the development of Trinitarian doctrine and the reconciling of Greek intellectual tradition and Christian faith (see Ruether (1969)). For the passage cited, see Gregory *Oratio* 2 c. 69 (Migne, *Patrologia* XXXV col. 477). Gregory is quoting Paul I *Tim.* 3.2.3.

⁷ *Ibid.*, c. 71.

⁸ *Ibid.*, c. 73.

⁹ Here Justinian, or his adviser, makes a mistake: the passage that follows is from a different work, Gregory's *Speech in praise of Bishop Athanasius* (= *Oratio* 21 c. 9).

¹⁰ Basil, *Epistolae* 188 c. 12. Basil the Great or Basil of Caesarea (c. 329–380) was a formative figure in the development of Byzantine monasticism and pastoral theology (see Rousseau (1994)).

That is what St Basil says; and the holy fathers had so high a concern for the priesthood that those assembled at Nicaea issued a canon in these terms:

The great council comprehensively prohibited a bishop, presbyter, deacon or any member of the clergy at all from being allowed to have a woman brought in to live with him, apart, that is, from his mother or aunt, or only persons immune from suspicion.¹¹

2

We are therefore making the present law in pursuance of the terms of the divine canons. By means of it, we decree that whenever need arises for the appointment of a bishop, the clergy and leading men of the city whose bishop is to be appointed are to assemble and, with the holy gospels displayed, make out nomination papers with respect to three persons. Each is to take an oath on the divine scriptures, and is to include in their text that their choice of these men is not as a result of any bribe, promise, friendship or favour, or of any other attachment, but because they know that they are of the orthodox catholic faith and of respectable life, and over the age of thirty years; also that none of them has either a wife or children, nor, to their knowledge, has had, or has, a concubine or natural children, but that even if one of them did previously have a wife, she was in fact the only one, and was not a widow nor a divorcee, nor one forbidden by the sacred canons; but further, that they know that none of those for whom nomination papers are being made out is in the city council or is in government service,¹² unless, if he had been a city councillor or government official he has been in a monastery and completed not less than fifteen years of unimpugned monastic life. For these persons, our previously stated procedure for the nomination papers being made on them is of course also to be observed:¹³ out of the three persons for whom nomination papers are thus made, the one to be appointed is the one who is preferable in the appointer's choice and judgment.¹⁴ A certificate is to be demanded of the prospective appointee by the appointer, containing the facts of his orthodox faith, with his signature; and he is also to recite the divine oblation used at the holy communion, the prayer at holy baptism and the other forms of prayer. The appointee is also to take an oath himself,

¹¹ Nicaea canon 3. See also *J. Novs.* 6 c. 5 and 123 c. 29.

¹² 'Government service' = i.e. he is not a *cohortalis* (see *J. Nov.* 6, note 6).

¹³ Here, as elsewhere, the law largely repeats *J. Nov.* 123.

¹⁴ 'The appointer' = the metropolitan bishop (in most cases).

on the holy scriptures, that neither personally nor through another person has he made or promised, nor will he subsequently make, any payment in furtherance of his coming appointment to the person appointing him, to those who have made out the nomination papers for him or to anyone else at all. If anyone is appointed bishop in contravention of the above-mentioned procedure, we command that he himself is, without fail, to be ejected from the episcopate, and so is the one who dared to make the appointment in contravention of these instructions.

3

If anyone makes an accusation against a prospective appointee as bishop, presbyter, deacon or other cleric or hegumen, on any ground, such appointment is to be deferred, and an investigation of the charge is first to be held in the presence of the accuser, who is to follow up the information he has laid. Should the accuser default or delay, the intending appointer is, even so, to hold a very strict enquiry, within three months. Should he find the accused guilty under either the divine canons or our laws, the appointment is to be disallowed; but should he be shown to be innocent, whether the accuser was present or not, the appointment is to take place, and the accuser – either if he was present but failed to establish his charge, or if he should have withdrawn – is to be ejected from his position, if a cleric, or to undergo the appropriate chastisement, if a layman. If anyone appoints the accused prior to investigation, both appointer and appointee are to be ejected from the priesthood.

4

Because what has been stated in the canons, to the effect that synods of most holy bishops must be held in each province, has hitherto <been largely neglected*>, it is most essential that we should correct what has not been observed. The holy apostles and the fathers determined that synods of most holy priests or bishops, with investigation into matters arising and decisions on due corrective measures, should be held in each province twice each year, namely one in the fourth week of holy Pentecost and the other in the month of October;¹⁵ but we, having found that as

* Accepting S/K's proposed supplement [S/K, p. 698, line 4].

¹⁵ According to Blume, this is the first occasion in Justinianic law that a period of time is reckoned in terms of weeks after the Jewish manner.

a result of such neglect, all sorts of things have been going wrong with a large number of people involved, consequently command that there is at all events to be a single synod each year in each province, in either June or September. Those appointed by the most blessed patriarchs, but without the right of appointing other bishops, are to assemble before the patriarchs; those appointed by the most holy metropolitan of each province, before the metropolitan. Issues launched, or information received from anyone, either on a matter of faith, or of canonical enquiries or administration of ecclesiastical property, or concerning bishops, presbyters, deacons or other clerics, or hegumens or monks, or with reference to an unauthorised way of life, or on any other matters requiring correction, are to be raised and duly investigated, and their correction is to proceed in conformity with the divine canons and our laws.

5

Nor are these matters to be investigated solely at what are to be the annual synods, but also whenever any priest, cleric, hegumen or monk is accused on any point of faith, unbecoming life or contravention of the divine canons. If the accused should be a bishop, it is his metropolitan who is to examine the allegations; if a metropolitan, the most blessed archbishop under whose authority he is; if a presbyter, deacon or other cleric, or a hegumen or monk, it is the most holy bishop under whose authority they are who is to examine the charges. If their truth has been proved, each is to be subjected to the canonical penalties for his fault, under the judgment of the examining bishop.

1. This is all to be in force not just for bishops, clergy and hegumens being appointed hereafter, but also for existing ones who may be accused, by anyone, of anything forbidden by the divine canons and by our laws. Once these procedures are duly in place, the laity too will have the reward of great resultant progress and amendment in both orthodoxy of faith and propriety of life.

6

In addition, we command that all bishops and presbyters are to celebrate the divine oblation, and the prayer at holy baptism, in a voice audible to the most faithful congregation, not in silence, to the end that that may be a further means by which the hearers' souls may be roused to stronger

contrition and to the glorification of the Lord God. This is as the divine apostle teaches in the first epistle to the Corinthians, in the words:

Because if the blessing you give is in spirit, how will one in the ordinary person's position say 'Amen' to God at your thanksgiving, when he does not know what you are saying? You do well to give thanks, but the other man is not being edified.¹⁶

Again, he says in Romans:

Faith for justification is in the heart, but for salvation it is on the lips.¹⁷

That is why it is appropriate that the prayer at the holy oblation, and also the other prayers to our Lord Jesus Christ, our God, with the Father and the Holy Spirit, should be offered out loud by the most holy bishops and presbyters. The most holy priests are to be aware that, should they overlook this, they will be answerable to the fearsome judgment of our great God and Saviour Jesus Christ; and also that we too, on finding this out, will not acquiesce in it, nor leave it unpunished.

1. We further command that, should provincial governors see that any part of what we have legislated is being neglected, they are first to put pressure on the metropolitans and other bishops to hold the said synods, and implement all that we have instructed on the synods by means of the present law; and then, should they see that the bishops are procrastinating, they are to inform us, in order that proper corrective measures may be set in motion on our part against those who are omitting to hold synods. Both governors themselves and the staff under them are to understand that if they do not observe these instructions, they will be subjected to extreme penalties.

2. By means of the present law we are also confirming all the legislation that has been enacted by us in various constitutions on bishops, presbyters and other clerics, and also on all those in charge of hospices, almshouses, orphanages and other holy houses.

Conclusion

Accordingly, your excellency is to take pains to bring our decisions, manifested by means of this divine law, to the knowledge of all, by putting

¹⁶ 1.Cor. 14.16–17.

¹⁷ Romans 10.10.

up notices in the usual places in this sovereign city; and is to publish it to the governors of provinces.

Given at Constantinople, March 26th in the 38th year of the reign of the Lord Justinian, pius princeps, Augustus, 24th year after consulship of the Most Distinguished Basilius

565

138 | Interest not to add up to more than the double¹

[Latin only]

*Emperor Justinian, pius princeps, Augustus, to Hermogenes*², *magister officiorum*³

Our Divinity's constitution limiting the charge on a debt to double the sum is absolutely clear. Therefore, if certain of your creditors have received what amounts to double, while others have so far had less, those who have gained interest payments amounting, over various periods, to double the sum are not to be permitted to offer you any vexation;⁴ others are similarly obliged to say no more, once they have been similarly paid in full. Provided that your petition is truthful,⁵ we decree, by the directive of the present rescript, that if they have gained what they were owed, the guarantees for the interest are to be recovered; or, if they remaining to hand, are to be void of their force.

[Date, and further head, missing: probably 535 or 536]⁶

¹ This short constitution, written in the form of a response to a petition, upholds the provisions of *J. Nov. 121* that the total interest payments on a debt could not exceed the principal (*ultra duplum*): see Casimatis (1931), pp. 63–4.

² Described in the *Chronicle* of John Malalas as a 'wise man' (18.34), Hermogenes enjoyed a distinguished career in imperial service in the 520s and 530s, which involved him in both administrative and diplomatic missions (as was common for those holding the post of *magister officiorum*: see Haldon (2005), pp. 41–2). For further details concerning Hermogenes, see also *PLREIIIA*, pp. 590–3 (Hermogenes 1).

³ The *magister officiorum* was 'the effective head of the empire's central administration' (Haldon (2005), p. 41).

⁴ See *J. Nov. 121*.

⁵ 'Provided that your petition is truthful' (*si preces verae sunt*): this was a formulaic phrase used in imperial responses to petitions from private citizens. Such petitions were not usually submitted with supporting evidence. Accordingly, it was standard for the emperor to include this reservation in his reply (see Berger (1953), p. 648).

⁶ For dating, see see Lounghis, Blysidou and Lampakes (2005), p. 262 (under entry 1053).

139 | Remission of penalty for unlawful marriages¹

[Greek only]

In the name of our Lord Jesus Christ, our God. Emperor Caesar Flavius Justinian to Florus²

Preamble

Your distinction has referred to us the villagers from Sindys, and the Hebrews of Tyre, as having come under our divine constitution by contracting unlawful marriages, and not paying the quarter-share of their estate, as has been directed in that situation.³ However, some of them are now of the third age,⁴ and are fathers of children. In view of that, they have tearfully supplicated not to be compelled now to dismiss their wives, but to be allowed to keep them; and for their children born, or to be born, from them to be their successors, without their having to fear any consequent penalty.

¹ In this law, the emperor effectively grants to certain Jewish communities in and around Tyre in the Lebanon the right to contract endogamous marriages (in accordance with Jewish tradition) and, in return for the payment of a fine, escape the provisions of *J. Nov.* 12 (see Evans Grubbs (2011a), p. 391). Tyre was a major centre for the production and working of textiles, including wool and silk (see Delmaire (1989), pp. 462–3). The latter was of particular importance to the imperial authorities, which oversaw and supervised the silk trade and would soon establish it as a state monopoly (see *J. Nov. Appendix* 5, note 1). It is likely that the privilege granted to the Jews of Tyre through this law was conceded by way of recognition of their importance to this trade (see Jones (1964), p. 862 and Procopius, *Anecdota* 25.13–26). For further discussion of this law in the context of Justinian's policies towards Jewish communities, see Klingenberg (1998), pp. 12–16.

² The addressee is possibly to be identified with the Florus who was appointed to an honorary consulship in 536. See *PLREIIIA*, p. 490 (Florus 1).

³ For this provision, see *J. Nov.* 12 c. 3; if an unlawful marriage was dissolved within two years, the miscreants lost a quarter of their property, but all of it if the marriage lasted longer than that.

⁴ 'Of the third age': i.e. in their third stage of life. Justinian treats the period between birth and puberty as the first stage, the period between puberty and the age of full legal majority (twenty-five) as the second, and the period from the age of twenty-five onwards as the third: see *Codex* 1.4.30, 6.26.10 and *J. Nov.* 72 pr. As well as being common amongst the emperor's Jewish subjects, endogamy (against which Justinian had legislated in *J. Nov.* 12) had long been favoured in peasant societies so as to ensure that property remained within the family (see discussion in Goody (1983), pp. 103–57).

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We accordingly decree that they are to pay ten pounds of gold each in respect of the above-stated grounds of charge, while the heavier penalty is, in their case alone, to be remitted. They are to keep their cohabiting partners, and also to have as *sui*,⁵ and as their successors, those born, or perhaps to be born, from them.

Our making of this decree is not a precedent for others: everyone else is to know that, should he make any such request, he will lose his property, as well as not obtaining any part of the request, and will live in permanent exile, after undergoing corporal punishments.⁶

No-one shall cause trouble to those who have been treated by us as deserving a special mark of favour, nor to their wives, their children existing or prospective, or their estates, either as the result of a verdict from your court or in any other way whatsoever.

Conclusion

Accordingly, your distinction is to take pains to put into practical effect our decisions manifested by means of this divine pragmatic directive, with the additional force of a special mark of favour from us.

[No date; S/K suppose 535 or 536.]

⁵ 'Sui' = *sui heredes* or an heir who was under the paternal power of the deceased at the time of death (see Berger (1953), p. 487).

⁶ Despite Justinian's protestations, the same privilege with respect to endogamous marriage would be granted to the inhabitants of Mesopotamia and Osrhoene: see *J. Nov.* 154.

140 | Enabling dissolution of a marriage by consent¹

<Emperor Justin to Julian, urban prefect>² [Supplied from Athanasius; more formal in Auth.]

Preamble

Mankind has nothing more admirable than marriage: from it stem children and successive generations, the peopling of villages and cities, and society's best bond. Hence, it is our prayer that marriages should be so successful for those contracting it as never to be the work of an unlucky daemon, and that married couples should not split up without just cause for their marriage to be dissolved. But as it is difficult for this to be maintained for all mankind – in so large a population, it is outside the realms of possibility that some unreasonable enmities should not supervene –, we have thought it appropriate to devise some remedy for this, in particular where the consequences of pettiness have escalated so far as to engender real, irreconcilable hatred between the partners.

In the past, it was allowable for such couples to part from each other with impunity by mutual consent and agreement, and numerous laws have been enacted with provisions to that effect, calling dissolution of marriage taking place in that way *bona gratia*, in the ancestral language.³ Later, however, a law⁴ was laid down by our father, of divine destiny, who in piety and virtue surpassed all previous sovereigns there have ever been, which disallowed the dissolution of marriage by consent. What he had in view was his own sound, firm principle; but he had no conception of the wretched,

¹ In this finely crafted and carefully composed constitution, the Emperor Justin II rescinds his uncle Justinian's penalties against divorce by mutual consent. In words that can be read as a critique of the Justinianic project as a whole, he declares that Justinian's legislation, whilst admirable in principle, had failed to take into account the weakness and frailty of the human condition and thus had ultimately demanded too much of people. For discussion of this law, see Clark (1993), pp. 26–7, Puliatti (1984) 2, pp. 53–87 and Bonini (1972b). For further attempts on the part of Justin II to distinguish the new regime from the old, see also *J. Nov.* 148 pr. and Sarris (2011a), pp. 226–31. It would appear, however, that Justin II's reversal of Justinian's draconian divorce legislation would itself be reversed (although we do possess the text of a later but alas undated law permitting divorce by mutual consent, issued by an unknown emperor): see Van Der Wal (1998), p. 72, note 23 and Burgmann (1981).

² On the career of Julian, see *PLREIII*A, pp. 735–6 (Iulianus 15).

³ '*Bona gratia*' = in good faith: see *J. Nov.* 22 c. 4.

⁴ See *J. Nov.* 117 c. 10 and *J. Nov.* 134 c. 11.

petty attitude of others. We ourselves would also very much have wanted his law to stand, and remain in its own force; but we have had numerous petitions from people who detested their marital union, and were setting their face against it. Giving as their motive the consequent domestic warfare and fighting, something excessively painful and distressing in any circumstances, they were petitioning to dissolve the marriage, despite their having no grounds to put forward on which the law would allow them to do so with impunity. For some time we would try to put off their urgent desire for this, sometimes advising them, sometimes adding threats, to give up their unreasonable mutual dislike and to progress towards agreement and a better frame of mind; but we were not achieving anything, because of the difficulty of reconciling people once they are in the grip of unreasonable, passionate hatred. In some cases the result was that they actually resorted to plotting against each other, by poisoning and other lethal means; thus even the fact that they had children could often not bring them together to be of one and the same mind.

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Accordingly, judging this situation as unbefitting our times, we have looked towards the present law. By means of it, we decree that, as in the past, it is to be allowed to dissolve marriages by consent, and that the penalties assigned in our father's constitution to those dissolving marriages by consent are no longer to be in force. Given that it is reciprocal intention that constitutes marriages, it is reasonable for the opposite state of mind to dissolve them, by consent, with notice of divorce served to make that plain.

1. It is to be clear that all other provisions contained in the laws, and especially in our father's divine constitutions, on marriage, children and the grounds on which it has been allowed to dissolve a marriage – or on cases where they do so without reason, but not, as our present decree directs, by mutual agreement –, as also on the penalties determined in them, will remain in force as a result of this law also, and will retain their own force throughout.

Conclusion

Accordingly, your excellency is to give instructions for our decisions, manifested by means of the present divine law, to be published to all in this sovereign city, in the customary manner.

*Given at Chalcedon, September 14th in the first year of the reign of the Lord Justin, pius princeps, Augustus, indiction 15*⁵ 566

⁵ 'Indiction 15' = the final year of the then current fifteen-year fiscal cycle, on which see Chouquer (2014), p. 311.

141 | Edict of Justinian on immorality, to Constantinopolitans¹

[Greek only]

[No heading]

Preamble

We are all constantly in need of God's mercy and goodness, but particularly now, when we have angered him in many ways by reason of the multitude of the sins we have committed. He has threatened us, and shown what we deserve as a result of our sins; but he has been merciful, and has held his anger in restraint, in expectation of our penitence, because he does not desire the death of us sinners, but our conversion and life.² It is therefore entirely unjust of us to spurn the richness of a merciful God's goodness, restraint and forbearance, lest, in the hardness and impenitence of our heart, we store up wrath for ourselves in the day of wrath;³ instead, everyone should refrain from wicked ways and practices, but particularly those who have fallen into the corruption of the filthy, unholy practice justly abhorred by God: we refer to debauchery between males, by which some males godlessly dare to inflict their obscenity on others.⁴

¹ The city of Constantinople stood astride a major seismic fault-line, and at the end of 557 the city had been struck by a powerful earthquake which had inflicted considerable damage on the city and structurally weakened Justinian's great cathedral church of Hagia Sophia, leading to the collapse of its dome the following year. By virtue of the Biblical legend of Sodom and Gomorrah, earthquakes were interpreted by Christians in the sixth century as a sign of divine displeasure directed in particular at the sin of sodomy (against which Justinian had legislated in *J. Nov.* 77). The earthquake of 557 thus led the emperor to instigate a renewed crackdown on those suspected of sodomitical practices. It is interesting that the only individuals known by name to have been punished by Justinian for this offence, however, were prominent bishops, whose unmarried status rendered them vulnerable to the charge of homosexuality. The emperor, therefore, would appear to have regarded the earthquake as providing a useful pretext to move against his enemies in the Church (see Malalas 18.18, Procopius, *Anecdota* 11.34–6, Boswell (1980), pp. 172–3 and Meier (2003), pp. 587–98).

² An allusion to Ezekiel 33.11.

³ See Romans 2.4–5.

⁴ See Romans 1.27.

1

Taught by the divine scriptures, we know what just punishment God inflicted in the past on the inhabitants of Sodom for their lust for this form of intercourse, such that that land is still being consumed with unquenchable fire;⁵ in this way, God is educating us to set our face against this unholy practice. We know, again, what the divine apostle says on such matters, and what the laws of the realm explicitly declare;⁶ thus, all should hold fast to the fear of God, and refrain from such an impious and unholy practice, one not to be found committed even among unreasoning creatures. Those whose conscience is clear of any such thing are to keep themselves so in time to come, as well; while those who have fallen into this corrupt state are not merely to cease from it in future, but are to repent as they should, and prostrate themselves before God. They are also to report their diseased condition to the most blessed patriarch, receive a method of treatment, and, as the scripture text has it, bear fruit of repentance,⁷ to the end that the merciful God, in the abundance of his acts of compassion, may find us, too, deserving of his mercy; and that we may all give him thanks for the salvation of those who repent, against whom we have even now commanded the authorities to take proceedings in the service of God, who is justly angry with us.

At this time, as we look towards the solemnity of the holy days,⁸ we call upon God, in his mercy, to bring to repentance those who have wallowed in such filth with this impious practice, so that no further occasion may be given us for punitive action. We further proclaim to one and all of those with such sin on their conscience that if they do not cease from it, and report themselves to the most blessed patriarch during the holy festival, propitiating God for such impious practices in the interest of their own salvation, they will bring more painful punishments⁹ on themselves, as being deserving of no forgiveness in future. Enquiry and correction on this matter against those who do not report themselves during the holy festival, or who persist in the said impious practice, will not be given up or neglected, lest through such inaction we incur God's wrath against us for

⁵ See Genesis 19.1–25.

⁶ See Romans 1.26–7 and *J. Nov.* 77.

⁷ See Matthew 3.8. For penance as a criminal penalty in Justinianic law (primarily for sexual offences and heresy), see Hillner (2015), pp. 106–7.

⁸ 'The solemnity of the holy days', i.e. the approach of Easter.

⁹ 'More painful punishments': Procopius reports that Justinian had those found guilty of pederasty castrated and paraded around the streets of Constantinople: see *Anecdota* 11. 34–6.

overlooking a practice so impious and forbidden, capable of angering the good God into destroying us all.

[in Latin] To be published to our citizens of Constantinople.

Given at Constantinople, March 15th in the 32nd year of the Lord Justinian, pius princeps, Augustus, 18th year after consulship of the Most Distinguished Basilus

559

*Emperor Justinian Augustus to Marthanes*²

Preamble

The penalties determined by our predecessors as sovereign against those who dare to castrate are in fact manifest to all;³ but a certain time ago there were some who did in fact dare to commit such an impious crime, in disregard of their own salvation, and who have consequently paid the penalty they deserved, while others, after punishment, have also been sent into exile. Even so, they have not desisted from their unholy practice, with the result that such abomination has become widespread; and so exceptional is it for even a minority to survive out of a large number that some of those who did survive have deposed, before our eyes, that only just three survived out of ninety. Who, then, is so dismissive of his own salvation as to overlook these acts, and leave them unpunished? Given that our laws impose punishments on those who draw sword on anyone, how could we be able to overlook murders committed so brazenly, an act contrary to both God's laws and ours? We have therefore deemed it essential to proceed more severely, by means of the present law, against those who dare to do such things.

1

Accordingly, for those in any region of our realm whatsoever who dare, or have dared, to castrate any person whatsoever, we decree that, should it be

¹ Slave eunuchs had become an increasingly common feature of life in the late Roman empire (especially at the imperial court). Castration, however, had come to be regarded with considerable disapproval by the Church. Justinian here legislates against castration on moralising grounds, declaring that any slave found to have been castrated after September 1st 548 was to be automatically granted his freedom, even if he had been castrated for medical purposes (see Van Der Wal (1998), pp. 50–1 (entry 379)). For eunuchs in the late Roman and Byzantine world, see especially Hopkins (1978) and Tougher (2008).

² Marthanes may have been the son-in-law of the Emperor Leo I whose corrupt and violent practices whilst serving as an imperial governor in Cilicia are described in detail by Procopius (*Anecdota* 29.28–38). See *PLREIIIB*, pp. 835–7 (Marthanes 1).

³ See *Digest* 48.8.4.2 and 48.8.5. The *Digest* treated the act of castration as equivalent to murder.

men who dared or dare to do this, exactly what they have done is to be done to them;⁴ and that even should they survive, their property is to be appropriated for the public treasury, through the holder of your distinction's office at the time, and they are to be sent to Gypsus,⁵ and must remain there for their whole lifetime. Should the perpetrators be women, they too are to be punished, have their property appropriated for the public treasury through the holder of the said office at the time, and be sent into exile. Thus the result of the impiety from which they thought, or think, of making a profit will be that they undergo punishment, and forfeiture of their property. As for those who commissioned this and handed persons over for this purpose, or who provided, or provide, houses or any place for it, be they men or women, we command that they are to undergo the same punishments, for having been accessories to this unjust practice.

2

As for those who have been made eunuchs, they ought to have been freed longer ago, only that is what we are commanding for those who have been made eunuchs by anyone, in the territories of our realm, since the end of the twelfth indiction of the cycle just past.⁶ They are not to be dragged into slavery in any way, or by any form of agreement whatsoever; and no contract that is or shall be made concerning them in any way whatsoever is to be valid, whether publicly or privately written, or by fraud. Neither are what are called 'examinations' to be held on such people;⁷ nor, if held, are they to be valid. Instead, we command that everyone who abets such transactions in future is also to undergo the penalties stated above.

In the event of a slave's being made a eunuch as the result of illness, we command that he too is to obtain his freedom; after all, those free from the

⁴ For such talionic tendencies in Justinianic criminal law (described as marking the return to 'a primitive form of vendetta'), see Sitzia (1990).

⁵ For the mines at Gypsus, see *Codex* 9.47.26.5 and *J. Nov.* 22 c. 8, note 14. Their property was to be confiscated and assigned to the imperial estates of the *res privata* (see *J. Nov.* 112, note 14). For further discussion of forced labour, see Millar (1984) and Hillner (2015), pp. 199–207. Prior to the Justinianic legal innovation of monastic imprisonment, forced labour had been the only truly custodial penalty envisaged by Roman legislators.

⁶ 'The cycle just past': imperial taxes were re-assessed every fifteen years, leading to the concept of the fifteen year 'indictional cycle'. The reference to the end of the twelfth indiction of the cycle just past signified that the law was to apply to any slave castrated after 1 September 548 (see Van Der Wal (1998), p. 51).

⁷ 'Examinations' (Greek ἀνακρίσεις). This term appears in several papyri and would appear to refer to legal proceedings which set out to check or ascertain the true legal status of individuals who were imported as slaves from another province or abroad (see Van Der Wal (1998), p. 51, note 2 and Wolf (1978) 2, pp. 255–61).

outset who have such an illness, as may happen, are their own masters in securing for themselves any remedy they wish. Accordingly, we command that those who have been made eunuchs in our realm since the above-mentioned date, with whomsoever they are, are to be sought out; they are to be free, and are never to be dragged into slavery. After the present law, if anyone does have the temerity to detain any of those who have been made eunuchs, we give the eunuchs themselves licence, immediately on obtaining freedom as a result of the present law, to denounce them: if here, that is to be before the Sovereignty, the most holy patriarch of the day and our Most Illustrious officer-holders; but if in the provinces, before the most holy local bishops and the provincial governors. Thus, under the care of all our officer-holders and on the responsibility of the staff under them, whether in Constantinople or in any other region of our realm whatsoever, they may be avenged, and the freedom given them under our present law may be upheld.

There is no way in which we tolerate so many murders being caused in our realm by reason of those who dare to commit such crimes. Given that barbarians have carried out our instructions on this,⁸ after hearing of them, how would we permit any such crime to be committed or left unpunished in our realm, after so much legislation on the part of our predecessors as Sovereigns?

Conclusion

Accordingly, your excellency will carry out and uphold our decisions, manifested by this divine general law, both here and abroad.

Given at the seventh <milestone>⁹, November 17th in the 32nd year of the Lord Justinian, pius princeps, Augustus, 17th year after consulship of the Most Distinguished Basilus 558

⁸ ‘Given that barbarians have carried out our instructions’: Procopius records that Justinian had managed to persuade the inhabitants of the Caucasian territory of Abasgia (modern Abkhazia) to desist from their traditional practice of castrating small boys whom they then sold as slaves (the Caucasus serving as the main source of eunuchs for the Roman empire): see Procopius, *Wars* 8.3.19. There are grounds to believe, however, that the consequent drying up of the Caucasian supply of eunuchs may have led to an increased incidence of castration amongst native-born Roman boys so as to meet demand (see Tougher (2008), esp. pp. 30, 45 and 64–7).

⁹ On the milestones of Constantinople, see *J. Nov.* 87, note 10.

143 | Women raped; those who marry the rapists¹

[Latin only]

*The same Augustus to Areobindus*²

Preamble

That the head of state alone has power to interpret a law is something that it occurs to no-one to doubt, seeing that his pre-eminent status also claims for itself the authority to promulgate the law.³

¹ Although the English translation here uses the words 'rape' and 'rapist', classical Roman law did not really possess a concept of rape in the way that English Common Law does. Violent sexual assault had been punishable as an act of violence (*iniuria*). Beyond that, the Latin term *raptus* primarily meant abduction, which might, or might not, have included a sexual dimension. As noted by Evans Grubbs, as in many other societies in which arranged marriages were common, in the Roman world it was not unknown for arranged marriages to be obviated by means of 'bride abduction': a man would abduct or 'grab' a woman (sometimes with her tacit consent) and then negotiate with her family to marry her (the inference being that her virginity could no longer be guaranteed and thus an arranged marriage on attractive terms would be harder to achieve). Such bride abduction came under growing criticism from Christian emperors from Constantine onwards as well as from the Church, the leaders of which appear to have felt that the practice encouraged lax sexual morality. In an important law of 533 (*Codex* 9.13.1), however, Justinian had overhauled the inherited legislation and fundamentally re-cast it to make *raptus* much closer to rape as we would understand it. The offence was no longer one which was regarded as primarily affecting unmarried girls, but was widened in its conception and scope to include sexual assault on women of every status (including slaves, married women, widows, and female ascetics). It even became possible for an engaged woman to allege rape against her *fiancé*. Moreover, with respect to the abduction of brides, the woman was henceforth to be treated as a victim even if she had consented to her seizure, and she was able to lay a claim to the entire estate of the offender, whom her family was entitled to kill. The woman and her kin were thus provided with an incentive to report the offence. It is clear from the present law that the legislation of 533 was put into effect, for here Justinian is obliged to wrestle with its misinterpretation. It had been argued, Justinian reveals, that abducted women were entitled to the property of their abductors even if they consented to marry them. Justinian here declares this position to be completely erroneous: both his legislation and that of the Emperor Constantine had forbidden women from marrying their abductors, and that prohibition still stood. The law thus reveals the on-going conflict between the imperial wish to stamp out bride abduction and the persistence of what was evidently a deeply rooted social institution, which would survive in Mediterranean peasant cultures into the modern era (see Evans Grubbs (1995), pp. 183–93 and Beaucamp (1990), pp. 115–21). This law is repeated almost verbatim at *J. Nov.* 150. For further discussion, see also Haase (1994b).

² On Areobindus, see *PLRE* IIIA, p.110 (Areobindus 4).

³ 'That the head of state alone has power to interpret a law': as noted in the Introduction, in his programme of legal codification Justinian had established the person of the emperor as the only legitimate source of law and had denied legal scholars and jurists any significant

In this connection, we recall having previously laid down a law⁴ on rape of women, irrespective of whether or not they had reached betrothal or marriage, or whether they were widows: we inflicted the death penalty not only on the rapists, but on those with them, and also on others known to have abetted them at the time of the assault. By means of the same law, we granted punitive action of this kind* not only to the women's parents but also to blood-relations, tutors and supervisors.⁵ We also provided in particular for penalties if the women raped were already married or betrothed, because it is adultery that is being committed, as well as rape, by an outrage of that kind: over and above the other penalties, we ordered by the same law that the rapist's patrimony, and also that of others who were with him, is to be claimed for the raped woman, so that, by means of the rapist's property, she could be supplied with the resources for payment of a dowry to her lawful husband.⁶ We also added the specific point that no woman or girl who had been raped had licence to opt for marriage with the rapist: she was to be joined in marriage with whomever her parents wished apart from the rapist, no licence being permitted to the raped woman, in any way, at any time, to marry the rapist; we even ordered that if her parents consented to such marriage, they are to be exiled.

* *in huiusmodi* [S/K, p. 707, line 9]: deleting *in*, following the almost identical text of *J. Nov.* 150 [S/K, p. 726, line 1].

To our surprise, some have tried to argue that if a woman who had been raped – whether willingly or unwillingly –, accepted marriage with the rapist, contrary to the tenor of our constitution, she ought still to have the rapist's property, either as a supposed benefit of the law, or by will, in the event that one had actually been made. Those who presumed to argue in that way have failed to understand the purport of the aforesaid law: given that we forbade such a marriage to stand even if the rape-victim wanted it, and that we expressly subjected the raped woman's parents to the penalty

interpretative role, whilst in *J. Nov.* 105 c. 2 he had declared the person of the emperor to be the 'embodiment of the law'. Justinian here re-states his lofty conception of the nature of the emperor's monopoly on legal affairs, which broke down any meaningful sense that the emperor was himself bound by manmade laws. This was, of course, a major complaint of the historian Procopius and stood at odds with a more republican strain of thought which persisted in Byzantine political culture: see Procopius, *Anecdota* 14.7–10, O'Meira (2003) and Kaldellis (2015).

⁴ *Codex* 9.13.1.

⁵ 'To . . . tutors and supervisors': Latin *tutoribus et curatoribus*. As noted above, the victim's family had been granted the right to kill the offender.

⁶ As seen, by granting the victim the property of the offender, Justinian had provided women and their families with an incentive to report the offence.

of exile for consenting to such marriage, how could we have bestowed the benefits given to a rape-victim on rape-victims who choose marriage to the rapists?

To cut away their unnecessary doubt for the future as well, we have therefore chosen to interpret the earlier law by means of the present one.

1

Accordingly, we decree that if a rape-victim, of whatever status or age, decides that she should opt for marriage to the rapist, especially without her parents' consent, she is not to receive the rapist's inheritance either by benefit of the law or by will, nor to claim his property in any way. The benefit given by our law to a rape-victim of claiming the property of the rapist, and of those who abetted him at the time of the assault, is to be transferred as of right, from the date of the rape, to her parents, if both or one of them survive, who are proved not to have specifically consented to the marriage. A rape-victim who had no compunction in defiling herself by marriage to the rapist is no longer to have the rapist's patrimony; instead, it is to be transferred to the parents we have named above, those who did not consent to the marriage. Cases of such illicit sexual intercourse are properly to be corrected by punishments, not honoured by benefits. But if the parents are already deceased, or if they did consent to such criminality, the property of the rapist, and also of others who took part in the crime, is to be claimed for the resources of the treasury.

Areobindus, most dear and affectionate father,⁷ we decree that this interpretation is to be valid not only for future cases but also for past ones, as if our law had been promulgated with such interpretation from the outset.

Conclusion

Accordingly, your excellency is to give orders for the putting of our Eternity's decisions, made by means of this law, into effect and observation.

Given at Constantinople, May 21st in the 37th year of the reign of the Lord Justinian, pious princeps, Augustus, 22nd year after consulship of the Most Distinguished Basilius 563

⁷ This was the appropriate imperial form of address for a praetorian prefect.

*Emperor Justin to Diomedes, prefect of the sacred praetoria*²

Preamble

Both our father, of pious destiny,³ and we ourselves have frequently taken pains to change the Samaritans' impious heresy, and their irrational madness, for the better, and to free their souls from the disease that has them in its grip; but in the majority of them we have been unable to achieve our original aim. In fact, some of them have taken their madness to such lengths as even to go back again, after receiving salvific baptism, to the evil from which they had emerged, and have been exposed as worshipping as Samaritans do, and sharing their delusions. Accordingly, we have decided that it is right to renew the original legislation against them, laid down previously by our father.

1

For that reason, we decree that they are not to inherit either with or without a will, nor to receive bequests, nor to acquire property by way of gift. Samaritans, or heretics generally, are not to have successors by call in intestacy, even if those pretend to accept the true faith of Christians while that is not in reality their belief, nor is their practice consonant

¹ In *J. Nov.* 129 of 551, Justinian had rescinded the prohibition on Samaritans bequeathing property to Samaritan heirs. In this law, issued in 572, the Emperor Justin II reverses the late emperor's unusually liberal measure, allowing it only to apply to Samaritan *coloni* working on the estates of Christian landowners. The ownership of property by *coloni adscripticii* beyond the estates on which they worked is recorded in *J. Nov.* 128 c. 14 and *P. Oxy.* LV 3804. Moreover, those *coloni* who had acquired the status of 'free *coloni*' (*liberi*), of whom there may well have been a significant number in Palestine, would have acquired ownership of their personal fund (*peculium*) which they could leave to their heirs, who also inherited the obligation to perform agricultural labour for the landowning employer. By permitting Samaritan *coloni* to leave property to their heirs, Justin thus provided them with an incentive to remain on the landowners' estates. Justin II was keen to advance the interests of members of the landed aristocracy, and that wish is reflected in this law. For further discussion of this legislation and related matters, see Noethlichs (2007), Puliatti (1984) 2, pp. 331–49, Sarris (2006), pp. 220–7 and Sarris (2011b).

² On Diomedes, see *PLREIII A*, p. 402 (Diomedes 2).

³ 'Our father' = Justin II's uncle Justinian.

with it; nor, unless the intended recipients should be orthodox in both faith and actions, are they to write wills, leave legacies or make gifts in their favour. Should there be no such recipients, we command that these people's estate is, on their death, to belong to the most sacred crown treasury. Thus the divine directive, classed as law, that was previously bestowed on them by our father, allowing them to inherit, to have heirs, to be honoured with *legata*⁴ or to leave bequests, will be annulled for the future; it will have absolutely no validity. The mad adherents of the Samaritans, who have shown themselves to be unworthy of that directive's generosity, will have no-one but themselves to blame for alienating themselves from the mercy of our great God and Saviour Jesus Christ, and for their forfeiting the former acts of munificence given them by our Sovereignty for the amelioration of their attitude – certainly not so that they should persist for ever in their false belief.

2

We are making an exception from the present law for the agricultural workers who espouse Samaritan beliefs. This is not for their own sake, but for the upkeep of the estate properties on which they work, and by reason of the income of taxes and revenue from these estates to the public treasury; also because their error is due to their rusticity. These we do allow to put down their ascendants, descendants and collateral relatives as heirs and legatees, even should those be in the grip of the Samaritan error, provided that they are working their plots of land, as prosperity from these goes to the owners of the estate properties, and, through them, to the public treasury. Even without wills, the above-mentioned will come into inheritance from each other, for the reason stated; and if no relative is found, we wish the secure possessor of the land on which the deceased was a worker to take what has been left by him, and act in place of the crown treasury, as also meeting the public tax-payments for it.⁵

1. We absolutely do not permit a Samaritan to be in the government service, nor to take on a curial function, nor yet to be an advocate or an assessor, nor to be appointed as one of the most eloquent rhetors,⁶ nor to educate the young.

⁴ The law referred to is *J. Nov.* 129; '*legata*' = legacies.

⁵ Landowners were liable for the taxes paid by their *coloni adscripticii*: see Sarris (2011b).

⁶ In the sixth century 'rhetor' primarily meant a practising legal advocate (see Lillington-Martin (2017), pp. 158–9).

2. Should any of them, after receiving salvific baptism, prove to have returned to their previous error, by observing sabbaths or acting in any other way that adequately proves their receiving holy baptism to have been hypocritical, we command they are to suffer confiscation and to be committed to permanent exile. We subject to the same penalties those who bestow impious patronage on such people, against the true faith of Christians.

3. It is our resolve that it is not right to accept them too readily when they present themselves for untainted baptism; instead, there should be a certain procedure, and catechetical instruction, over a sufficient period. That is to say, once they have realised what sound doctrine is, they should receive instruction over two years and learn the scriptures to the best of their ability, and only then be admitted to the holy baptism of redemption, earning true redemption by their repentance over that length of time; whereas we allow the very young, with no doctrinal understanding, to be regarded as worthy of holy baptism even without this procedure.

4. No Samaritan will have a Christian as a slave; simultaneously on acquisition, he will at once be seized into freedom. Should the slave be of the same misguided belief as the purchaser, if he embraces the belief of Christians he is at once to be allowed to enjoy the free status of a Roman.

Conclusion

Accordingly, your distinction is to give orders for our decisions, manifested by means of the present law, to be put into practical effect, by posting them up in the customary places.

Given at Constantinople, May 18th in the 7th year of the reign of the Lord Justin, pius princeps, Augustus, 6th year after consulship of the same

145 | ***Dux or biocolytes in future to have no licence to be present in either of the two Phrygias or Pisidia, or to despatch any of their men and detain anyone; nor are people in the said provinces to go off to those holding such commands in Lycaonia and Lydia and put anyone under a complaint before them, the civil governors being competent to deal with cases that arise***¹

*The same Sovereign*² to *Areobindus*,³ *prefect of praetoria, ex-prefect of the fortunate city and general*⁴

¹ In the early sixth century the diocese of Asia (including the turbulent provinces of Pamphylia, Lydia, Lycaonia, Pisidia and the two provinces of Phrygia) had been governed by a vicar (*vicarius*). In 535, however, Justinian had abolished the vicariate (see *J. Nov.* 8) and the administration of these territories had been overhauled in a series of constitutions that had sought to crack down on the endemic violence and lawlessness of the regions' inhabitants by uniting civil and military authority in the hands of governors bearing the title of *praetor* (see *J. Novs.* 24 and 25). In that legislation, Justinian had also prohibited the employment of bandit-hunters and free-lance *gendarmes* in the employment of local potentates styled βιοκωλύται, who are also attested in the epigraphic evidence (see Feissel (2009), pp. 111–12). There are some indications, however, that, as in the Pontic territories (see *J. Edict* 8), brigands and others had sought to take advantage of Justinian's concentration of gubernatorial power at a local level to escape justice by moving between provinces. Accordingly, this law reveals, Justinian had been obliged to appoint a high-level policing officer, also styled the *biocolytes*, to pursue malefactors across the territories as a whole. In the present law (dating from 553) that post is abolished in response to petitions from locals that it was no longer needed due to the pacification of the region (for such high-ranking *biocolytae*, see also *J. Nov.* 128 c. 21). No novel appointing a *biocolytes* to these areas survives, but the law referred to evidently represented a reversal of the emperor's earlier reforms.

² 'The same Sovereign': in fact, this is a law of the Emperor Justinian, indicating that the preceding law of Justin II was inserted into an existing collection of Justinian's novels.

³ For Areobindus, see *PLREIII*A, p. 110 (Areobindus 4).

⁴ 'General' (Greek στρατηλάτης) = (Latin) *magister militum* (one of the great regional commanders of the army, although, in this instance, probably referring to the honorary title of *magister utriusque militiae*, signifying supreme commander). See Van Der Wal (1998), p. 19, note 32, Durliat (1979) and Lee (2005), p. 117.

Preamble

Every time that we find the appropriate remedy for a given situation as it arises, once the need has passed we resume our previous position; when the malady is over, we stop the treatment just there.⁵ The intention of our present divine law is another such case.

Not long ago, we were informed that civil disorders, for one thing, and incursions of bandits, for another, were taking place in both Phrygias and in Pisidia, so that the situation was beyond a civil administration to deal with. We therefore set up a military command in those provinces, and in Lycaonia and Lydia as well, giving the person assigned to that role the title of *dux* or *biocolytes*.⁶ Now, however, the people of the two Phrygias and Pisidia have in fact petitioned us, arguing that what was wrong there is now over: there are no bandit groups in that region, * nor are the provinces veering into anarchy*⁷; and they cannot bear the burden of the government devised by us, because its employees are constantly descending on the provinces, making arrests, and grinding them down with the excessive costs.⁷ Also, that those regions are full of disturbances among the military;⁸ and, in general, their provinces are uninhabitable, whereas the civil authorities themselves are capable of putting the situation to rights even on their own. Further, a number of the inhabitants themselves are treating the compliance of others as a boon, and using this governmental arrangement as cover under which to detain innocent people, thus gaining unjust ends of their own.

- Accepting the emendation [S/K, p. 712, line 4 of app. crit.] of the meaningless εἰς ἄνδρας ἐκτρέφεσθαι ταῖς ἐπαρχίαις in the text [p. 712, line 5] to εἰς ἀναρχίαν ἐκτρέπεσθαι τὰς ἐπαρχίας.

⁵ Justinian here uses a medical analogy to account for his decision to reverse an earlier reform. He does the same in *J. Nov.* 111. On the use of medical terminology, see also Lanata (1984b), pp. 206–27.

⁶ This setting up of the *biocolytes* as a separate military commander represented a clear reversal of Justinian's earlier provincial reforms: see Jones (1964), p. 294 (where parallel reversals of the emperor's reform legislation are also discussed).

⁷ The claim that the emperor's subjects could not bear the burden of the form of government devised for them by the emperor could almost be read as a self-criticism of the Justinianic project as a whole, and in a sense anticipates Procopius' sophisticated critique of the problematic nature of Justinian's policies, found in Procopius' *Buildings (de Aedificiis)*: see discussion in Sarris (2007).

⁸ The implication here is that the imperial army itself had become the primary cause of disorder at a local level.

1

In sympathy with this oft-repeated argument of theirs, we have arrived at the present divine law. By means of it, we decree that the provinces we have mentioned, namely Phrygia Salutaris, Phrygia Pacatiana and Pisidia, are in future to be removed from the command that we previously set up over them, as well as over Lycaonia and Lydia. From now on, those holding that command are to have no licence either to be in those particular provinces, as if they had any role in their government, or to despatch any member of their staff, or one of their other people, and detain anyone; nor are people from those provinces to have any licence themselves to run to successive holders of that command and lodge complaint against each other, whether the issue be a financial or a criminal one. They have the prospect of a fine of thirty pounds of gold; we are ruling out all admission to the provinces we have mentioned for those who at any time hold the command, or for any of those enrolled in their staff. They will not make orders for those provinces or their inhabitants, nor will they otherwise take over any matter pertaining to them; instead, they will rest content with the provinces of Lycaonia and Lydia as their only spheres of command, just as if we had confined their government to those two provinces at the outset, without having given them any role in the two Phrygias and Pisidia. We are freeing those provinces from all the consequent difficulties; it is the civil authorities who will deal with all cases regarding either financial or criminal matters, and they are to know that should they not pursue any case of banditry or incursion that occurs in their own regions, or robbery of property, and reclaim what has been taken, they will be obliged to compensate out of their own resources for the consequent loss, just as much after laying down their office as while they hold it. Thus, should there be any attempt on the part of the military commander of Lycaonia and Lydia, in time to come, either in person to enter the provinces we have mentioned, or to despatch any member of his staff, we also give the bishops of the cities permission to keep him or his emissaries out, when they intend to make an entry, and to drive them away from the region, as having been excluded once for all by means of the present divine law. Additionally, a fine of thirty pounds of gold is to be imposed on the holder of the office at the time, and of those assigned to serve under him, if he gives any such command, or if they have the temerity to carry them out; also forfeiture of office, and jeopardy to their property itself.

Conclusion

Your distinction, in the knowledge of the provisions decreed by means of the present divine law, will accordingly make decrees pursuant to them, and will employ edicts and instructions to those governing provinces and to the bishops of the cities,⁹ so that this law will also be posted up in the cities, and our decisions on this matter will become manifest to all.

Given at Constantinople, February 8th in the 26th year of the Lord Justinian, pious princeps, Augustus, 12th year after consulship of the Most Distinguished Basilus 553

⁹ It is interesting that the bishop appears to have entirely supplanted the figure of the 'defender of the city' (*defensor civitatis*), who is conspicuous by virtue of his absence from this law (as is also true with respect to *J. Nov.* 134). The constitution thus provides further evidence for the evanescence of an office Justinian had attempted to render more robust (see *J. Nov.* 15).

The same Sovereign to Areobindus, Most Illustrious prefect of praetoria

Preamble

In listening to the sacred books, the Hebrews ought not to have clung to the bare words of the text; they should have looked at the prophecies stored up in them, through which they proclaim the great God and Saviour of the human race, Jesus, the Christ. Instead, they have committed themselves to interpretations that are actually unreasoned, and so they remain, to this day, astray from the true belief. Nevertheless, as we have learnt that

¹ Jews in the empire of Justinian found themselves in an increasingly precarious and vulnerable social and legal position. Although there existed large Jewish communities in Palestine, southern Italy and elsewhere, with the Jews (as inferable from *J. Nov.* 139) playing an important role in the production and exchange of textiles and other areas of economic activity, their legal position was increasingly disadvantageous and their culture was becoming increasingly detached from that of the empire as a whole, as a reassertion of Jewish ethnic and linguistic identity occurred. In the early fifth century, Theodosius II had made it clear in his legal compilation that Judaism was a publicly acknowledged and legal faith within the empire (see *Codex Theodosianus* 16.8.9). The constitution declaring Judaism to be licit, however, had been pointedly omitted by Justinian's law commissioners when compiling the *Codex Iustinianus*, and Justinian's general attitude to Jewish communities was one which favoured intervention in internal Jewish affairs so as to attempt to sow division and disunity. Procopius records, for example, that the emperor intervened to attempt to oblige Jews to celebrate the Passover in accordance with the imperial Church's dating of Easter (*Anecdota* 28.16–18). In the present law, he intervenes to oblige Jewish religious leaders to permit readings from the *Torah* or Jewish Bible to be made in any language current among the congregation. Justinian claims that attempts were being made to keep the divine truths of the holy text from congregations by only permitting readings in Hebrew, which the emperor presents as effectively being a dead language, suggesting a proper understanding of the texts would lead Jews to the Christian faith. In fact, the evidence of sixth-century synagogue epigraphy and other devotional literature would suggest that the period was witnessing a growing use and understanding of Hebrew amongst Jewish congregations, a drift away from Greek (which had served many as a liturgical language), and thus a progressive disengagement on the part of many Jews from the empire's largely Hellenophone high culture. Justinian here thus attempts to lend support to Hellenising Jews (who appear to have petitioned him) against those who were encouraging the revival of Hebrew and, by inference, cultural separatism (see discussion in de Lange (2005)). By the early seventh century, the on-going Christianisation of imperial ideology, and the re-assertion of Jewish religious, ethnic, and cultural identity would lead to a fundamental breakdown in relations between emperors and their Jewish subjects which can be traced back to Justinian's reign (see Horowitz (1998) and Sivertsev (2011)). For further discussion of this law, see Irmscher (1990), Klingenberg (1998), Veltri (1994) and Lanata (1984b), pp. 100–24.

they are in dispute with each other, we could not bear to leave their imbroglio unresolved.

From the actual petitions that have been brought to us, we have learnt that they have been at odds with each other for a long time over the fact that one party holds to the Hebrew language alone, and wants to use that in the reading of the sacred books, while the other thinks that they should adopt Greek as well. On learning of this situation, we have decided that for the reading of the holy books, those who also want to adopt Greek and, in short, any language that the area renders more appropriate and intelligible to the hearers, are preferable.

1

Accordingly, we decree that in an area where there are any Hebrews at all, those who so wish should have licence to read the sacred books to the congregations of their synagogues in the Greek language, perhaps also in the ancestral one (by which we mean that of Italy),² or quite simply in any others, the language and the readings in it varying to correspond with the region, for what is said to be intelligible to every single member of the congregation, and for them to live and behave in accordance with it; their exegetes are not to have permission to take Hebrew as their only language and distort it however they like, veiling their own malign purpose under most people's ignorance.

Those reading in Greek will use the version of the Seventy, which is a more accurate rendering than all others, and has been preferred to the rest, in particular because of the circumstances of its translation:³ divided into pairs, and translating in different places, they have all nevertheless produced a single concordant text.

1. There is also something else about them at which, surely, everybody must marvel: they lived long before the salvific appearance on earth of our great God and Saviour Jesus Christ, but still made their version of the sacred text as if they could actually see that it was going to happen, as it were with the grace of prophecy illuminating them. That, then, is the version which, for preference, all will use; but so that we should not be thought to be excluding the use of all other versions, we also give licence for

² By 'ancestral' language Justinian thus means Latin.

³ 'The version of the Seventy' = the 'Septuagint' – a translation of the Hebrew Bible made in Alexandria into the common Greek (κοινή) of the Hellenistic period, traditionally ascribed to the reign of the Macedonian king of Egypt Ptolemy II Philadelphus (283–246 BC). See Wasserstein (2006).

the use of Aquila's, despite his being not of our race, and differing considerably from the Seventy in some readings.⁴

2. As for what they term *deuterosis*,⁵ however, we forbid it absolutely; it does not form part of the sacred books, nor has it been handed down from the prophets of old, but it is an invention of men who have only earthly speech, with nothing of the divine in them. This is what they will do: open the actual sacred books, and read the actual sacred utterances, without concealing what is said in them and introducing extraneous unwritten babblings of their own invention, with disastrous effect on the simpler folk.

Now that we have given this licence, absolutely no penalties will be inflicted on those adopting Greek and the other languages, nor will they be prevented from doing so by anyone whatever. Their *archipherekítai*,⁶ their elders, or those addressed as 'teachers', whichever it may be, will have no licence to stop this by any circumventions or anathematisations – unless they should wish to be chastised by actual corporal punishments, to be deprived of their property, and then reluctantly to give in to us, who desire and command what is better and more pleasing to God.

2

Should any of them attempt to introduce ungodly babblings in denial of either resurrection or judgment, or of the fact that angels are God's work and creation,⁷ we wish them to be driven out of every region, and not to utter such blasphemous talk, which falls right outside the real conception of God. If they do attempt to talk any such nonsense, we cleanse the

⁴ Aquila of Sinope had produced a highly accomplished Greek translation of the Hebrew Bible in the second century AD, only fragments of which now survive.

⁵ 'δευτέρωσις': although the law is usually taken here to refer to the *Mishnah* (i.e. Talmudic study), Justinian may in fact be referring to the practice of the *targumim*: because many people could not understand Hebrew by this period, the Bible was read in Hebrew for ritual purposes, but a phrase by phrase translation into Aramaic would be offered by a *targum*. Many of these translations survive as texts and were used as commentaries and exegesis. This would have been a familiar practice, hence the reference to the ordinary people. The authors are grateful to Professor Simon Goldhill for his assistance on this matter, and the next.

⁶ 'ἀρχιφερεκίται' may mean 'heads of academies' or *yeshivot*. More specifically, it may be a reference to those who held the otherwise obscure title of *Resh Pirka* mentioned in a sixth-century context by a medieval Jewish chronicle, where it appears to have been used as an honorific for the rabbinic heads of the pre-eminent academy of Tiberias in Galilee (see de Lange (2005), p. 414). 'Teachers' = *rabbis*.

⁷ For sixth-century scepticism with respect to the resurrection of the dead at Judgment and the created nature of angels (which are also themes encountered within Christian and ultimately Islamic texts), see Dal Santo (2012) *passim*.

Hebrew race of the error thus introduced by subjecting them to the most extreme of all penalties.

3

We pray that as they listen to the sacred books, in this or that language, they will guard against the maleficence of the interpreters, and that they will not attend to the bare words of the text, but will enter into the realities, and grasp a more truly divine sense; and that they will thus reach a new understanding of the better way, and, one day, give up their error and their mistaken view of what is the most important thing of all: that is, hope in God. That is why we have opened up every language for them for the reading of the sacred books, so that all without exception may gain knowledge of them, and be quicker to learn better ways. It is an accepted fact that one who has been brought up on the sacred books, and has little left to correct, is far readier to discern, and choose, the better course than one who knows nothing of them, being equipped with religion in name alone – to which he clings, as if to a sacred anchor, in the belief that the mere appellation of his heresy is religious knowledge.

Conclusion

[Greek only]

Accordingly, your excellency and the staff under you will observe our decisions, manifested by means of this divine law, as will eventual future appointees to the same position; you will absolutely not permit Hebrews to act in contravention of them. As for those who resist, or try to block them altogether, you will first subject them to corporal punishments, and then force them to live in exile after being deprived of their property, so as to prevent their brash defiance of God and the Sovereignty alike. You will also deploy instructions to provincial governors, sending our law to them in advance, so that on being informed of it they too will post it up in each city, and know that they must observe it, for fear of our wrath.

Given at Constantinople, February 8th in the 26th year of the reign of the Lord Justinian, pious princeps, Augustus, 12th year after consulship of the Most Distinguished Basilius

147 | **Arrears in any kind owed to governors, the *largitiones*, the *privata* or the divine *patrimonium*, up to and including the past seventh indiction, are to be remitted¹**

The same Sovereign to Areobindus, Most Illustrious prefect of the sacred praetoria of the East, ex-prefect of this fortunate city and general

Preamble

Even though the state needs heavy expenditure, now of all times, when by God's favour it has received such a great increase in extent, and when its wars with the surrounding barbarians are commensurate with that increase,² we nevertheless devise every way in which supply may be unimpeded without omitting any form of beneficence towards our taxpayers. It is not for us to speak of all the occasions when we have been readily generous towards those who petition us, bringing to our notice tax-indebtedness and lack of means to pay, and of how no-one who has petitioned for lenience has ever left our presence unsuccessfully; the rescripts issued on the subject, and the recipients of our generosity themselves, are our witnesses. However, we regard it as petty, and unworthy of Sovereignty, to be making particular individual acts of generosity in connection with successive petitions, or even to extend our beneficence only to lands or cities, or indeed whole provinces, rather than taking some action on a large scale for the common good of all subjects;³ . . .

¹ In the *Anecdota*, Procopius accuses Justinian of having failed to remit his subjects' tax debts (see *Anecdota* 23.1–8). In this law, dating from 553 (thus after the likely date of composition of Procopius' text), the emperor remits taxes for the period from 538–544 (see discussion in Bonini (1985), pp. 160–1). Whilst the date of the law might suggest that Procopius' statement was not necessarily untrue at the point of writing, the law indicates that this remission complemented an earlier one that had covered the period from 522–537/8, in which case Procopius' accusation may already have been unfounded when he made it. The remission of taxes that had proved to be uncollectable was a relatively straightforward way for emperors to curry favour with the wealthy, who were best placed to evade taxation or take their time in meeting tax demands, and thus to benefit from such fiscal amnesties (see discussion in Ziche (2006) and Sarris (2006), p. 223).

² By 553 the re-conquest of Italy was effectively complete (see Procopius, *Wars* 8.32 and Sarris (2011a), pp. 119–20).

³ The preface repeats the common *topos* of imperial philanthropy (on which see Lanata (1989), p. 40).

1

... and for that reason, we have arrived at our present divine acts of bounty. By means of them, we decree that all our taxpayers shall be released from outstanding debts owed by them, in any form, from and including the first indiction of the last cycle, at which we concluded our previous act of bounty, up to and including the seventh indiction just past.⁴ Thus our munificence covers twenty-two consecutive years, and there is to be no exaction of outstanding debts relating to that period. We mean this to apply not just to payments in gold, but also to any that may be in silver, grain or other kind; and whether the taxpayers' indebtedness be to your high office, to the prefecture of Illyria or to our divine treasuries, whether imposed on them as taxes or under any other titles. This is because we are offering this munificence of ours to all our taxpayers in common, without exception. Thus no-one will now be tolerated in making any kind of exaction of outstanding debts in respect of that period, whether he is commissioned by governors themselves, or is any kind of personal representative of the public treasury, or is the bearer of any instructions or deputed authority. When people take on any such duty, but have made no exaction over such a long continuous period, we are cancelling their demand against our taxpayers, and also against the public treasury itself, because it follows that someone with such long-standing debts owing to him, who has either been negligent or preferred to be a <receiver*> of *sportulae*⁵ rather than of the proper payments, and has received nothing either from the taxpayers or from the public treasury, is now too late in remembering the tasks deputed to him, or in trying to impose the demand concerned. On the contrary, we set our face against one who makes any such attempt, as being a wrecker of our acts of bounty. Thus, without exception, every occasion for demand against both taxpayer and treasury, and all fraud, is done away with; that is another way in which our taxpayers will be freer from trouble.

* Some such necessary word must have been omitted from the Greek text at the outset, as Auth. has failed to make sense of this clause at all [S/K, p. 720, line 1].

⁴ Justinian here suggests he had remitted taxes for the period from 538–544, having already written off debts from the period from 522.

⁵ '*Sportulae*' = fees: in this instance effectively bribes not to collect taxes owed.

Another point universally agreed is that all holdings belonging to our divine *privata* and our divine *patrimonium*⁶ will also benefit from these acts of bounty; and that there will be no exaction, in respect of the periods we have stated, against agricultural workers, tenants or emphyteutic tenants, on the part of either those collecting the public taxes or of the *palatini* themselves.⁷

We mean this for sums still outstanding, and in the hands of our taxpayers. If they have already paid them, and the takings are in the hands of city councillors (it may be), provincial officials, receivers or collectors, or of the administrators⁸ of the provinces, we are not including those, or making them part of our present acts of bounty; instead, they will be reserved to the public treasury, as it is entirely unacceptable for what has been paid by taxpayers to become a private gain for others, rather than going to the treasury.⁹

2

We also exclude from this generous concession of ours moneys that may have been promised, or are under bond,¹⁰ to the public treasury by administrators or *scriniarii* or *arcarii*.¹¹ The reason for our not also

⁶ The *res privata* and *sacrum patrimonium* comprised two different types of imperial estate broadly similar in terms of their administration and internal structure: see *J. Nov.* 69, note 11.

⁷ ‘*Palatini*’ = employees of the palatine bureaux, especially those of the financial departments of the *res privata* and *sacrae largitiones*. It is conceivable, however, that the law here may also include in this designation members of the palace guard involved in the administration of estates assigned to the imperial household (*domus divina*): see *J. Nov.* 30, notes 33 and 36, *J. Nov.* 117, note 35 and Delmaire (1989), pp. 126–69. It is worth noting that the Greek text distinguishes between agricultural workers (γεωργοί) working on imperial estates and those who worked imperial land under lease, implying that the former were labourers rather than tenant farmers (see further discussion in Sarris (2011b) and Delmaire (1989), p. 700).

⁸ ‘Receivers’ = Greek ὑποδέκται; ‘collectors’ = Greek ἐκλήπτορες; ‘administrators’ = Greek τρακτευταί. The differences between these three posts are not clear and may not have been significant (see *J. Nov.* 163, note 8).

⁹ This phenomenon of taxes being collected but then not transmitted to the central government is also a cause of complaint on the part of the emperor in *J. Edict* 13, and likewise on the part of taxpayers as recorded in the documentary papyri from the Egyptian village of Aphrodito (discussed in Sarris (2006), pp. 96–114).

¹⁰ ‘Under bond’ (Greek ἀντιπεφωνημένα): the language of the novel is reflected in a sixth-century document from the Apion archive (*P.Oxy.* XVI 1829) referring to the division of the fiscal responsibilities held by members of the Apion family and the guarantees or indemnities (ἀντιφωνήσεις) for tax revenues provided by their representatives to local tax officials.

¹¹ ‘Administrators’ = Greek τρακτευταί; ‘*scriniarii*’ = officials employed in the bureau of the imperial chancery: see *Codex* 12.49; ‘*arcarii*’ = officials of the *arca* or treasury (in this instance that of the Praetorian Prefecture): see *Codex* 10.72.

including those in the corresponding act of bounty is that the public treasury has already made them its own, and has practically taken possession of them. We also exclude the expenses for soldiers and *foederati*,¹² which have nothing to do with our taxpayers, from this divine concession; collectors are justified in making exactions from those who have received payment from the public treasury improperly, in that they have actually received it for payment to soldiers or *foederati*, but have nevertheless profited from it personally. Much more do we except from this bounty of ours the requirements for civic funds, and expenses for public works, both in this fortunate city and in the provinces; it is unjust, when so much gold has been laid out by us on the defence of the state, that administrative staff should make an unjustified profit while the regions are deprived of our beneficence or of the security that they need, or that cities should be deprived of the funds set aside for keeping them in good order.¹³

Although we roundly detest malefactors, we cannot at any time forget our own beneficence. That is why we are decreeing that the exception made by us under certain heads is to apply to the period from the recently ended first indiction – that is, the one that started sixteen years ago –, whereas for the preceding period we are offering our beneficence to all without exception, individually and generally, so that all people alike may enjoy a release, and that no exaction of arrears relating to that time is to proceed, on any ground whatever.

We have thought that we should bestow this munificence on our subjects, and make an offering of the action to the great God, so that everyone enjoying its benefits should render thanks for our reign to the great God, who put this action into our mind.

Conclusion

Accordingly, your excellency is to take pains for our decisions, manifested by this divine law, to be put into effect, and is to ensure that they are observed.

Given at Constantinople, April 15th in the 27th year of the Lord Justinian, pius princeps, Augustus, 12th year after consulship of the Most Distinguished Basilius

553

¹² *Foederati* = originally barbarian troops in imperial service fighting in their own formations and under their own leadership (see Southern and Dixon (1996), pp. 38–40). Over the course of the 530s, however, such units had become more ethnically mixed (see *J. Nov.* 103, note 22).

¹³ The emperor here excludes civic charges and civic and provincial *munera* from the tax remission.

<Edict. Justin Augustus> [Supplied from Athanasius]

Preamble

By the actions that we have already taken, right from the start of our reign, we have made clear to all how painstaking is the care that we have taken over public affairs, in our concern for the realm that has been put into our hands by God. For instance, on finding the public treasury burdened with numerous debts, and heading towards utter destitution, we freed it from the burden of this severe difficulty by taking the debt upon ourselves.² Also, as far as it has been possible for us, we have been

¹ Upon his succession to the throne in 565, the Emperor Justin II sought to distinguish his regime from that of his uncle Justinian, and in this constitution (dating from 566) he can be seen to adopt a highly critical tone with respect to the state in which his predecessor had left imperial finances. Notwithstanding the fiscal exhaustion he describes, however (probably the cumulative result of warfare and plague), the new emperor here remits all unpaid taxes up to the year 560. Justin II was especially keen to improve relations with those elements of the Constantinopolitan elite and the imperial aristocracy with whom Justinian had often found himself in conflict. As is alluded to in the preface to this constitution, Justin II had already reached out to the banking community in the imperial capital by repaying to them the forced loans that Justinian had exacted. Here he now extends the hand of friendship to great landowners and others by remitting taxes. As the present law already indicates, Justin II's reign would witness a concerted drawing together of the court and the aristocracy, with the emperor responding to the policy demands of senatorial interests. As part of this, and responding to conservative criticism of Justinian's foreign policy, Justin II would disengage from Justinian's policy of subsidy diplomacy, refusing to spend money on buying peace with the Persians, or securing the support of the newly arrived power of the Avars in the Balkans, or of the Arabs of the Jafnid phylarchy along the empire's eastern frontier. The result would be military catastrophe when, in 573, the Jafnids failed to assist the emperor in his assault on the Persian held city of Nisibis. In response to the humiliating defeat of the imperial army that ensued, Justin II is reported to have gone mad, and was replaced in the day-to-day governance of empire by his wife Sophia and the general Tiberius, who would succeed him to the throne (see Sarris (2006), pp. 222–7, Sarris (2011a), pp. 226–31 and Cameron (1975)). For a further discussion of this law and the regime of Justin II, see also Puliatti (1984) I, pp. 59–132.

² 'Taking the debt upon ourselves': Justin II is here referring to his decision, upon his accession to the throne, to pay back to the bankers of Constantinople the forced loans that the Emperor Justinian had exacted from them late in his reign. This repayment is described by the Latin poet Corippus, who writes of how the emperor personally wrote off public debts with private gold ('*publica privato cum debita redderet auro*', Corippus *In Laudem* 2.401). The phrase 'private gold' (*privato auro*) is carefully chosen: although presented in both the poem and here as an act of private munificence, what this probably meant was that the source of the repayment was the treasury (*fiscus*) of the crown estates or

giving the army the benefit of the reform it needs: for lack of necessities it had reached the point of collapse, with the result that the state was suffering from innumerable attacks and incursions by barbarians.³ We did not, however, think that our assistance to our subjects should stop at those actions alone; we have also concluded that we must let taxpayers share in another example of our humane disposition, by freeing them from their outstanding debts to the public treasury.

1

Accordingly, this is a further benefaction that we are extending to all for the common good: we are remitting outstanding debts owed by taxpayers to the public treasury for the past, up to and including the eighth indiction of the present cycle.⁴ We decree that there is to be no exaction of debts in arrears up to the indiction stated, whether they are in respect of the general or the special exchequer of your distinction,⁵ or the office of the sacred *praetoria* of Illyria or that of the Most Illustrious Justinianic prefect of military units in Moesia and Scythia,⁶ or even our divine treasuries,⁷ our

res privata, which emperors had long regarded as their own (see Jones (1964), p. 426 and Zuckerman (2004), pp. 91–2).

³ ‘Incursions’: By virtue of the peace treaty with Persia of 562, the empire’s military condition at the end of Justinian’s reign had in fact been relatively stable, with the Balkans representing the arena of greatest military disturbance, by virtue of the recent migration to the region to the north of the Danube of the Avars (on whom see Sarris (2011a), pp. 176–7 and Pohl (2002)). There is no legal evidence for the reform of systems of military supply to which Justin II here appears to be alluding.

⁴ ‘Eighth indiction of the present cycle’ = the year 560.

⁵ The treasury (*arca*) of the Praetorian Prefecture of the East was divided into two sections: the ‘general’ (Greek γενική) and the ‘special’ (Greek ιδική). It is unclear what this division signified. Until it was abolished by the Emperor Anastasius, revenues from the tax on mercantile profits (known as the *collatio lustralis* or χρυσάργυρον) had accrued to the special treasury. It may be that proceeds from the tax on land and persons went to the general account and other miscellaneous charges to the special. This hypothesis would appear to be confirmed by the Middle Byzantine evidence, for by the middle of the eighth century the activities of the praetorian prefecture of old had been hived off into three separate departments each under its own official or λογοθέτης: the logothete of the general finance office (γενικόν λογοθέσιον), who handled the land tax and associated charges; the military finance office (στρατιωτικόν λογοθέσιον) concerned with military recruitment and supply; and the special department (ιδικόν λογοθέσιον) concerned with other miscellaneous imposts (see Jones (1964), p. 450, Hendy (1985), pp. 424–9 and 619–62 and Haldon (1990), pp. 180–207).

⁶ The Praetorian Prefecture of Illyricum appears to have been structured along the same lines as the Praetorian Prefecture of the East (see Jones (1964), p. 450). The ‘Justinianic Prefect’ of the troubled Balkan frontier territories of Moesia and Scythia was also known as the ‘military quaestor’ or *quaestor exercitus*: see *J. Nov.* 50.

⁷ ‘Our divine treasuries’ = those overseeing imperial estates.

most sacred treasury or our divine *patrimonium*, or the Most Magnificent *curator* of the estates.⁸ Instead, whatever may be owing, in gold, in silver and in other kinds, is to be remitted to all debtors, so that neither agricultural workers nor lessees nor emphyteutic tenants, nor yet the landowners, will have their tax debts outstanding for the period up to and including the eighth indiction exacted from them.

2

We except from this benefaction of ours the expenses for soldiers and *foederati*,⁹ which do not in fact have any connection at all with taxpayers, but only with those supplied with money from the public treasury who have abstracted for their own profit what has been paid out by the treasury for units of the army and of *foederati*. Also, should any payments made by taxpayers be found with those called receivers, collectors or administrators¹⁰ in either gold, silver or goods taxed in kind, these too will be exacted, and paid to the stated governors of ours to whom they are due. In the same way, we also except all others who have received gold or anything else for the stated indictions from taxpayers, but have not paid

⁸ Justin II here refers to three categories of imperial estate: those of the *res privata*; the *sacrum patrimonium*; and a third group of estates or households (Greek οἴκοι) that formed part of the 'Sacred Household' (*domus divina*). For the distinction between these estates, see *J. Nov.* 30, note 36 and *J. Nov.* 69, note 11. In this novel, the estates of the *domus divina* are described as being under the supervision of a central official known as the *curator*, who appears to have acted on behalf of the chamberlain of the imperial household (see *J. Nov.* 30, note 24) and oversaw the activities of provincial-level *curatores* who managed regional concentrations of imperial estates (as established by Delmaire (1989), pp. 228–33; see also, for Egypt, Azzarello (2012), pp. 9–28) As seen with respect to *J. Nov.* 117 c. 13, it would appear that since the late 530s the estates of the *domus divina* administered by the *curator* had come to include properties which had been bequeathed to or seized by the crown via the *res privata* (on which see Procopius, *Anecdota* 12.3–11). Certainly, in the Middle Byzantine period, territory that was conquered from the Arabs on Byzantium's eastern frontier was claimed by the emperor and organized into crown lands styled in Greek the κουρατουρία (= Latin *curatoria*) under κουράτορες (Howard-Johnston (1995)). Like private landowners, those administering imperial properties were expected to collect taxes from the tenants and employees, thus the mention of such estates here.

⁹ Chapter 2 of this constitution largely repeats the provisions of Justinian's remission of taxes in *J. Nov.* 147. '*Foederati*' were originally barbarian troops fighting under Roman banners but generally under their own leaders and in their own units. Over the course of the 530s, however, these detachments had become more ethnically mixed (see *J. Nov.* 103, note 22).

¹⁰ 'Receivers' = (Greek) ὑποδέκται; 'collectors' = ἐκλήπτορες; 'administrators' = τρακτευταί. The differences between these three posts are not clear and may not have been significant: see *J. Nov.* 163, note 8.

them into the public treasury as they should have been paid. It is to taxpayers that we have given the benefit of this present benevolence, out of compassion for them; it is certainly not to those – to whatever duty they have been assigned – who have already received taxes from them and who intend to defraud them, or the public treasury.

Clearly, if there are any who, in anticipation of this beneficence of ours over remission of outstanding debts, have in a dishonest manner received promises or guarantees from taxpayers,¹¹ or have commuted them into personal debts,¹² or who should prove to have planned or carried out any other fraudulent action, they will gain nothing by it, but will return the promissory notes to those from whom they have received them.

Everyone will render thanks both to God and to us: those with debts outstanding, for having been given the benefit of the generous remission of them, and those with no debts outstanding, for being relieved of worry over retaining the documentation, because they will have an amnesty up to the eighth indiction, and will not be being harried (as frequently occurs) a second time for the same period, while others *⁻ evade their land-tax dishonestly*⁻. Thus we are rightly distributing our present act of bounty among all.

*⁻ ζυγοκλήπησαντες [S/K, p. 723, line 14]: the translation, following Kroll's suggested emendations, is conjectural, as this word is otherwise unexampled.

Conclusion

Accordingly, your distinction will make our decisions, manifested by this divine pragmatic law of ours, public to all in this sovereign city, by the use of proclamations.

Given Year 1 of Justinus, pius princeps, Augustus

566

¹¹ 'Guarantees': see *P.Oxy.* XVI 1829 and *J. Nov.* 147, note 10.

¹² 'Commutated them into personal debts': Justin II here alludes to the role of credit in providing taxpayers with the wherewithal to meet their taxes (see discussion in Sirks (2001)).

149 | **Provincial governors to be appointed without charge, on petition to the most pious Sovereign from the most God-beloved bishops, landowners and inhabitants of the provinces; the nominee to give surety to the treasury. If they delay in doing so, no-one to proceed against the governor for any action of his over taxes¹** [Greek only]

[No heading]

Preamble

In our concern for the realm that has been given to us by God, and in our earnest desire for our subjects to live amid complete justice, we have made

¹ As noted with respect to *J. Nov.* 148, the accession to the throne of Justin II in 565 heralded a *rapprochement* between the imperial government and members of the imperial and provincial aristocracy whose activities had been the target of much of Justinian's reform legislation. As part of this political realignment, the new emperor pressed ahead with policies which reflected the political attitudes of members of the senatorial aristocracy (by disengaging, for example, from subsidy diplomacy with the empire's neighbours), and which materially advanced the interests of the magnate elite. In *J. Nov.* 148 he had already rewarded landowners with a tax rebate, whilst in this law (dating from 569) we witness a major concession to aristocratic interests, with the emperor decreeing that henceforth all provincial governors were to be elected by the leading landowners and bishops of the provinces concerned. This procedure had already been introduced in Italy, where, by virtue of the Gothic King Totila's attempts to mobilise slaves and *coloni* against their Roman masters, the Byzantine campaign of re-conquest had effectively taken on the character of a social war. As a result of Justin II's measure, provincial governorships became the preserve of the locally dominant aristocratic families, a situation recorded in Egypt from the papyri that survive from Aphrodito. Accordingly, by the late sixth century, from the perspective of the peasantry, the urban poor and other more humble members of society, the private authority of the great landowner and the public authority of the Roman state would become essentially indistinguishable. This was a situation that was, arguably, to cost the empire dear, and may explain the large-scale indifference to the fate of the empire discernible on the part of subaltern elements within East Roman society amid the warfare that would beset it in the early seventh century (see discussion in Sarris (2006), pp. 222–34, Liebeschuetz (2001), pp. 122–3 and Pieler (1990)). Jones (1964), p. 395 infers on the basis of *J. Nov.* 161 of 574 that this law was repealed by Tiberius II, although that suggestion has been contested by Laniado (2002), p. 232. See also discussion of this law in Puliatti (1984) I, pp. 140–62.

it our sole aim, from the outset, to correct and bring to perfection anything previously imperfect and disordered.² Accordingly, after deep thought as to how both the public treasury and the subject population should remain free from detriment and loss, we have come to the conclusion that we shall achieve this easily, should we bring it about that provincial governors treat everyone with due legality, taking their offices without charge, giving surety to the public treasury, and refraining from all injustice, for one thing, and from every form of gain that is discreditable and anyhow forbidden, for another.³

1

Accordingly, to spare the provinces from unlawful actions by intruders from abroad, and ourselves from the trouble of frequent suits against them, we enjoin the most holy bishops of each province, and those among its landowners and inhabitants who play the leading roles,⁴ to submit to our Majesty, by means of a joint petition, those whom they deem suitable for the governorship of their province. We shall then provide them with their codicils of office, free of payment, on their giving surety to the public treasury for the bringing in of the tax-assessment, and shall give them their orders: to do nothing contrary to law; not to enforce any extortion from the taxpayers, but to rest content with their stipends; to be vigilant over the exaction of the public taxes; to behave both mildly and paternally⁵ towards those who are forthcoming with their dutiful contributions, but be more vigorous with their exactions from those who are non-compliant; and not to take away any gain for themselves at all over this. No less will they have to administer equitable justice to all litigants, and give them rapid

² Justin II here deploys a rhetorical trope common to Justinian's novels: the bringing of order to chaos and completion to the unfinished condition of the world.

³ Justinian had already forbidden office holders from purchasing their posts by means of *suffragia* in *J. Nov.* 8, whilst in *J. Nov.* 134 c. 2 he had ordained that in those provinces where *vindices* or agents of the praetorian prefecture were not permanently stationed, governors were obliged to make down-payments in advance by way of security for the tax revenues they were expected to collect. This law (combined with *J. Nov.* 167) would suggest that by Justin II's day, the latter arrangement had become the norm (see Van Der Wal (1998), p. 29, note 14).

⁴ 'The leading roles': Justin II here refers both to the provincial notables, including the leading city councillors, and locally based senatorial landowners (see Sarris (2006), pp. 155–9).

⁵ 'Mildly and paternally': it was a common feature of late antique *encomia* addressed to governors to invite them to follow the Homeric example of Odysseus as king of Ithaca and rule 'gently as a father': see *Odyssey* 2.233, Libanius *Oratio* 46.3 and Brown (1988), p. 40.

deliverance, with respect to the law, so that they are not afflicted with costs and long waits; and to proceed firmly against malefactors, imposing punishments on them according to law, and displaying full justice.

2

Nor is it to them alone that we are addressing these instructions, but also to the assessors⁶ for each office, and those who serve under them in other ways. If any of them either behaves negligently over exaction of the taxes, or involves our taxpayers in over-charging or maltreatment, he will forfeit his property, and will be subjected to the most severe punishments. Under God's guidance, it is our one earnest object that the provinces should be well-ordered and safe to live in, enjoying justice on the part of their governors, and that the public tax should be brought in irreproachably, because there is no other way that the state can survive than by the bringing in of the dutiful tax-payments. It is out of these that its allocations are paid to the army, which stands in the way of our enemies, saving taxpayers from the damage done by incursion of barbarians, and guards both lands and cities against aggression and assault by bandits and those who have taken up other forms of lawless life. Then there are the other bodies who also receive the benefit of their allocations: repairs are done to walls and cities, and the heating of public baths is kept up, as is maintenance of theatres and of all the other amenities that have been devised for the welfare of our subjects. Thus part of their tax-contribution is spent and conferred on them directly, and part for their benefit; and what falls to us out of it is absolutely nothing but anxieties on their behalf.⁷ Not that even those go unrewarded, because our great God and Saviour Jesus Christ, in his abundant beneficence, repays us for that, as well, with many blessings.

3

By our proclaiming all this to those in the provinces, and thus showing how great is our beneficence towards our subjects, the more propitious is the

⁶ Here, as elsewhere, 'assessors' signifies legal officers appointed to advise the governor: see *J. Nov.* 60.

⁷ Justin II here explains how certain of their tax revenues were hypothecated to specific local purposes, elsewhere termed *so(l)lemnia*: see *J. Nov.* 128 c. 16.

favour that we shall have from God for taking such care over keeping our taxpayers from harm. And should the recipients of this generosity of ours err in their choice of governors, they will have no-one at all to blame but themselves; while should they be dilatory in selecting them and submitting them to us, they would no longer have any right to complain of any action that those sent out from here to the provinces choose to take for the tax-collection.⁸ Nor, in future, shall we tolerate any petition from them with accusations against our emissaries; as they have been given authority from us to select their governors, with the purpose that those should take office without charge and bring in the public taxes without the taxpayers suffering any injustice from them, it will be quite intolerable for them to criticise our emissaries and vex us with petitions against them, when they have been negligent over making their selection.⁹

No-one at all – not a divine household,¹⁰ not a most holy church, not a holy charitable foundation or monastery, nor any person high or low – will resort to delay over payment of the public tax imposed on them; nor do we exempt from consequent jeopardy either city councillors or those called ‘collectors’,¹¹ nor yet any of the others on whom is imposed the responsibility for the public taxes. We give precedence to the common advantage of all over inequitable conduct on the part of those unwilling to comply with the public treasury.

Conclusion

So that our valuable decisions are publicised to all, we command your excellency to post up the present divine edict in this fortunate city and also in the provinces, in conspicuous places in each city, so that no-one may be unaware of the act of benignity that has been devised by our Serenity for the protection of both treasury and taxpayers from harm.

⁸ The emperor here decrees that should the provincial notables fail to appoint a governor, he reserved the right to send one out from Constantinople.

⁹ The provision of the law set out here, that the emperor would not receive representations complaining against governors who were locally appointed, effectively signalled Justin II’s abdication of any responsibility for provincial affairs, which he was content to simply hand over to the provincial establishment and aristocracy. This policy represented a clear rejection of the Emperor Justinian’s interventionist approach and reveals the extent to which the figure of the governor was progressively becoming reduced to a mere collector of taxes. See also *J. Nov.* 167 (where governors are treated as synonymous with tax-collectors) and Sarris (2006), pp. 222–7.

¹⁰ ‘Divine household’ = an imperial estate (typically by this period belonging to the imperial household or *domus divina*: see *J. Nov.* 30, note 36).

¹¹ ‘Collectors’ = Greek ἐκλήπτορες (= Latin, *susceptores*).

*Given at Constantinople, January 18th <in the 4th year> of the Lord Justinus,
pius princeps, Augustus, <3rd year> after consulship of the same [Biener's
supplements]*

569

PROOF

Apart from a few minor differences in wording, which do not affect the sense in any way, the only differences between this and *J. Nov.* 143 are as given below.

150 | Women raped; those who marry the rapists

[Latin only]

In the name of our Lord Jesus Christ. Emperor Caesar Flavius Justinianus Alamannicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africus, pious fortunate glorious victor triumphator, ever Augustus, to Leo

At foot

For 'Areobindus, most dear and affectionate father' this has 'Leo, most dear and affectionate parent'; and adds just before the date-line (which is identical) the words: 'Farewell, Leo, most dear and affectionate parent.'¹

563

¹ The Leo addressed here may be identical to Leo the *referendarius* whom Procopius accuses of selling legal decisions in return for bribes. If so, he would end up as Praetorian Prefect: see Procopius, *Anecdota* 14.16–23 and *PLREIIIB*, pp. 767–8 (treating Leo 1 and Leo 4 as the same person). The style of address used was that deemed appropriate according to the rules of imperial epistolary etiquette.

151 | **Summons or transfer to court of a city councillor or civil servant not to be without a sovereign command notified to prefects¹**

The same Sovereign to John, Most Illustrious prefect of praetoria

Preamble

A minute of your excellency's has been sent to us, stating that city councillors or civil servants must neither be brought from other courts to this fortunate city for trial, nor transferred to a different one; but that in point of fact divine commands of ours have frequently been issued with that intention. You were requesting that this should be stopped, by a divine pragmatic directive, so that no official or councillor be either transferred from one region to another, or compulsorily brought over to this fortunate city; but that, if there are any divine missives on that subject, they should be notified to your excellency's court, and receive appropriate decisions.

1

We are indeed against all summons with transfer; and should there be a necessity for any such action to be taken, we do not permit any of our office-holders apart from your high office² to cause a civil servant³ or councillor to be transferred to this fortunate city, unless there should be a divine command specifically authorising this. It is proper that your excellency should be informed of that; and the person is not to be subject to transfer against your decision. This is in the public treasury's interest, to avoid the possible result that those working on the taxes might take their forced transfer as an opportunity for damage to the tax-system.

¹ In this constitution, Justinian legislates to limit the occasions on which city councillors and those on the staff of provincial governors could be summonsed to appear in legal proceedings outside of their native province, declaring that this could only occur if sanctioned by the praetorian prefect or by the emperor via the prefect (see Van Der Wal (1998), p. 166 (entry 1088)). The emperor's primary concern, as made clear in c. 1, is that such individuals should not be distracted from their official duties – above all the collection of taxes – or be given any opportunity to abscond with tax-revenues. For the date of this novel, see Lounggis, Blysidu and Lampakes (2005), p. 255 (entry 1016).

² 'Your high office', i.e. the Praetorian Prefect.

³ 'Civil servant' (Greek ταξιώτης) = Latin *cohortalis* (see *J. Nov.* 6, note 6).

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine pragmatic directive of ours, into practical effect.

[Date fragmentary; between 534 and 541.]

PROOF

152 | **Divine directives issued relating to taxation not to be valid unless they have been, or should be, made known officially to the Most Distinguished prefects of *praetoria*, and confirmed by them¹** [Greek only]

The same Sovereign to John, Most Illustrious prefect of praetoria

Preamble

In our earnest desire to administer conscientiously, with God's help, the affairs of the realm entrusted to us by the Lord God, we command that a divine directive relating to taxation issued to the Most Magnificent *dux* or *augustalis*, or to the Most Distinguished governors of provinces,² is not to be valid unless it has first been registered in your excellency's court; those that have not been officially published are to have no validity. It is unacceptable that when a divine directive is issued relating to taxation it should not first be registered in your excellency's high office, and only then despatched to the Most Magnificent *dux* or *augustalis*, or to the other governors of provinces. It is only after registration of such divine directives

¹ In this interesting directive, Justinian decrees that henceforth (and, unusually, with possible retrospective effect too) any decree from the emperor granting a tax exemption or remission or in any way injurious to public finances was only to be valid if it was ratified by the Praetorian Prefect, with whom it had to be registered, and who was obliged to query and confirm it with the emperor. On face value, this looks like an unusual example of Justinian agreeing to impose limits on his own freedom of action, which would be out of character (although perhaps indicative of John the Cappadocian's political clout at the height of his authority). Alternatively, this measure might make sense as an attempt to prevent the circulation of spurious imperial letters granting tax exemptions and other such privileges, in which case it should be understood in the context of the emperor's other measures against forgery (on which see *J. Nov.* 44 and Feissel (2010), pp. 503–16). The measure may have been promulgated primarily with a view to conditions within Egypt, which was the wealthiest and thus fiscally most important region of the empire (see *J. Edict* 13 and Sarris (2006), pp. 10–28).

² Prior to the promulgation of *J. Edict* 13 in 539, the administration of Egypt had been shared between the chief civil governor known as the Augustal Prefect or *augustalis*, and the chief military governor or *dux*. Justinian here distinguishes, therefore, between instructions sent to the governors of Egypt and those sent to other provinces subsumed within the praetorian prefecture of the East (see Van Der Wal (1998), p. 21, note 43, Sarris (2006), pp. 10–28 and *J. Edict* 13).

in your excellency's high office that they must be despatched to the provinces and put into effect.

1

We command, accordingly, that anything prejudicial to the public treasury that has taken place hitherto is to be void; and we decree that in future each divine pragmatic directive relating to taxation, as stated, whether it be issued to the *augustalis* or the *dux*, or to the other governors of provinces, is without fail to be registered in your excellency's court, and only then to be sent to the provinces, prefixed, as stated, with your excellency's instructions. Thus should there be divine directives issued that are not prejudicial to the public treasury, they are all to be sent to the provinces to be put into effect after being received by your excellency, and prefixed with* your instructions; whereas for all issued that are harmful to the treasury, by obreption,³ your excellency is to receive them, but is not to act on their contents before making prior reference to us, so that anything possibly harmful to the public treasury may be rectified.

* Accepting Kroll's insertion of μετά, without which the genitive προσαγμάτων [S/K, p. 728, line 6] seems inexplicable. But the switch from active infinitives δέχεσθαι, προτάττειν, to the passive construction πέμπεσθαι . . . may suggest worse corruption, unless it is simply careless drafting.

Thus we wish no kind of divine pragmatic directive whatsoever that is issued on matters of taxation to be valid, at any time, unless it has been registered in your excellency's high office.

*Given at Constantinople, June 1st in the < fourth > consulship of the Lord Justinian, pius princeps, Augustus, and Paulinus*⁴ 534?

[Zachariae's supplement]

³ 'Obreption' (Greek συναρπαγή): 'the surreptitious concealing of true facts in order to obtain an advantage' (Berger (1953), p. 605). It can also mean 'plunder'.

⁴ For Paulinus, see *PLREIII*, pp. 973–4 (Decius Paulinus I). A member of the distinguished western senatorial lineage of the Decii, Paulinus' appointment as western consul was announced by the Ostrogothic King Athalaric in 533.

*The same Sovereign to Elias, Most Illustrious prefect of Illyricum*²

Preamble

An offence alien to human conscience, and unbelievable even of any barbarians, has been reported to us by Andreas, most God-beloved presbyter and *apocrisiarius*³ of the most holy church of Thessalonica. It is that there are people abandoning babies the moment that they emerge from the womb, leaving them in holy churches, and then, after nourishment and an upbringing have been bestowed on them by pious folk, lodging a claim to them, and calling them slaves.⁴ They have left them to die at the very beginning of their lives; and once they are bigger, they want to add to their cruelty by depriving them of their liberty! Such a disgraceful act combines several offences in one: murder, chicanery, and a whole list that one could easily compile for such behaviour. The perpetrators of such deeds ought not to have escaped the law's retribution; by the shamelessness of their legal action they have denounced their own offences, and should have been subjected to the most extreme punishments, to ensure better behaviour by others – and that is what we decree is to be observed in future.

¹ In this constitution (issued in response to reports from the archbishop of Thessalonica), Justinian prohibits those who abandon infants from later claiming them back, declaring that those born into servitude are automatically freed by their abandonment. As noted below, the main target of this legislation appears to have been slave owners from the city eager to avoid the cost of raising newborns, rather than parents of servile status. The law also alludes to the role of the Church in caring for abandoned children. Although generally alert to the legal interests of children, by insisting in *J. Nov.* 89 that the children of incestuous unions should not be raised by their natural parents, Justinian had effectively encouraged the exposure or abandonment of at least some infants. On abandonment, see Evans Grubbs (2011b) and Fossati Vanzetti (1983). For the charitable role of the church with respect to children, see Miller (2003). For the enslavement of foundlings in late Roman law, see Harper (2011), pp. 407–8 and Melluso (2000), pp. 33–46. For social and political conditions in late antique Thessalonica and its environs, see Sarantis (2016), pp. 215–18 and Sarris (2006), p. 231.

² On Elias, see *PLREIII*A, p. 438 (Elias 4).

³ '*Apocrisiarius*' = representative or ambassador (see *J. Nov.* 123, note 51).

⁴ The implication is that the children of slaves were being abandoned by their legal owners so as to avoid the cost of raising them, but were then claimed back by their original owners when old enough to work.

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Accordingly, we order that all who are shown to have been thus abandoned, in churches, streets or elsewhere, are under all circumstances to be free, even should a definite proof exist for the bringer of an action to show that such person belongs in his ownership. It is prescribed in our laws⁵ that sick slaves who have been spurned by their masters and have not been thought worth their proprietors' care, because their health has been despaired of, are without fail to be seized into freedom; how, then, shall we tolerate the dragging off, into an unjust slavery, of those who at the very outset of life have been abandoned to the charity of other people, by whom they have been reared? No! We decree that the most holy archbishop of Thessalonica, the holy church of God under him, and your excellency, are to come to their aid and claim their freedom for them; and that those who act thus, replete as they are with utterly inhuman cruelty – worse than any murder, inasmuch as it is inflicted on those so helpless – are not to escape the penalties of our laws.

Conclusion

Your excellency, and also every eventual successor to the same office, with the staff under you all, is accordingly to take pains to put our decisions, manifested by means of this divine directive, into practical effect and observance; a penalty of 5 pounds of gold will be imposed on those who attempt to contravene them, or who permit contravention of them.

Given at Constantinople, December 12th <in the 15th year> of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Basiliius [Supplemented from Athanasius]

541

⁵ See *Codex* 7.6.1.3 and *Digest* 40.8.2.

154 | Osrhoene; those contracting illicit marriages¹

[Greek only]

*Emperor Justinian Augustus to Florus, comes of the divine privata*²

Preamble

An extraordinary account has reached us to the effect that people in Mesopotamia and the province of Osrhoene have been daring to enter into illicit marriages; by their adherence to the laws of neighbouring countries,³ and their contravention of Roman laws with the penalties contained in them, both ancient and modern, they fall into sinful, prohibited marriages. We were absolutely incredulous about any of this, because we did not think that people who form part of our realm had the temerity to act in any such way, putting their offspring to shame and making it unclear what to call them.

¹ In *J. Nov.* 139, Justinian had accorded to certain Jewish populations the right to buy themselves out of the imperial prohibition on incestuous marriages (meaning endogamous marriages, typically to a first cousin), partly by way of recognition of the important economic contribution they made to the textile industry. In this undated law, the emperor ordains that the populations of the eastern frontier territories of Osrhoene and Mesopotamia were to be spared from prosecution for similar endogamous marriages, which were common not only amongst Jewish but also Armenian, Persian and other communities well represented in these regions. The emperor justifies his leniency on the grounds that many of the offenders were peasants, who, presumably, could not be expected to know better and whose prosecution would be agriculturally disruptive. The proximity of these regions to Persia, however, and thus the need to avoid alienating the subject population and to prevent them from co-operation with the enemy, also appears to have informed the emperor's thinking. The amnesty introduced here for those guilty of illicit marriages would be further extended by Justin II (see Van Der Wal (1998), p. 71, note 12 and, on incestuous marriages in Roman law in general, Clark (1993), pp. 43–6). The present law thus reminds one of the extent to which the imperial authorities were obliged to wrestle with the fact that the Roman–Persian frontier bisected a Mesopotamian world which effectively continued to form a social, cultural and even religious whole. On marriage customs in the Armenian and broader Persian world, see Adontz (1970), pp. 145–54 and Payne (2015), pp. 108–17; for epigraphic evidence for endogamous marriage in early Byzantine Mesopotamia, see Feissel (1998b).

² As with other laws detailing the confiscation of estates, this law is addressed to the head of the crown estates or *res privata* to which such sequestered properties accrued. This Florus may have been the grandfather of the distinguished poet Paul the Silentiary, who produced pro-Justinianic verse. See *PLREIII*A, p. 490 (Florus 1) and Bell (2009), pp. 189–212.

³ 'Neighbouring countries' = Persia and Armenia. Armenian marriage customs had been legislated against in *J. Nov.* 21.

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We therefore wished both to investigate this, and, if anything of the kind had been happening at all, to bring the miscreants to extreme punishment. However, it was a long time ago, and we do not even feel sure that any such offence has actually taken place; so even if anything of the kind has actually happened, we are pardoning the inhabitants of the provinces of Mesopotamia and Osrhoene for the past, whatever the situation might be. In view of the various invasions of them that there have been, and particularly because it is mainly a number of workers on the land who are said to be guilty in this way, we are in fact letting the situation remain as it is, and are not troubling with any offences that may well have been committed prior to our divine novel constitution on the subject; our decree is that all such enquiry on this matter against various persons or actions pertaining to inhabitants of the said provinces is forbidden.

However, if anyone has dared to take any such action since our recently enacted law on the subject,⁴ or should he so dare, we wish him to be subjected to extreme penalties, and to be aware that we shall not stop at financial ones. Instead, we shall pursue both man and wife, and children born of sinful marriages subsequent to our divine constitution, as stated; we shall impose on them jeopardy of capital punishment as well as penalty to their estate, and spare no-one, whether he be of high or low position, status or priesthood (something that is yet more objectionable), but proceed against all alike, preserving the accepted standard of good conduct that befits Roman law. We shall deprive them of not just part of their property, but the whole of it, and of a part of their body; and, if we find that their sinful marriage is a particularly objectionable one, perhaps of their very life. No-one will be able to escape by saying that he is following the adjoining population in their offences; they must have a correct and proper attitude, and incite others to the same kind of determination, not break the law themselves and try to take refuge in mutual imitation.

That, then, is what we wish to be observed in the aforesaid provinces. Both civil and military authorities are to observe it, and take steps to impose penalties on offenders; and we wish that same fact to be publicised, on an order from you, to the local populations, by means of proclamations on the part of their governors – unless they too want to be subjected to

⁴ The emperor is probably here referring to *J. Nov.* 12 c. 1–3 of 535, giving a *terminus post quem* for the present law.

extreme penalties, and forfeiture of their offices and properties, should they neglect any part of it.

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine pragmatic directive, into practical effect.

[Date missing: probably 535–536.]⁵

⁵ Like *J. Nov.* 139, this law probably dates to 535/536 (see Lounghis, Blysidu and Lampakis (2005), p. 272 (under entry 1087)).

155 | Mothers must be liable for accounts for guardianship¹

[Greek only]

*Emperor Justinian Augustus to Belisarius <general>*² [Supplement from Athanasius]

Preamble

The contents of a supplication presented to our Majesty by the Most Distinguished Martha are that she was left very young indeed at the death of her late father Sergius,³ of magnificent memory, and that her mother, the Most Distinguished Auxentia, undertook her guardianship, deposing on the records that she would not enter a second marriage, and taking the oath on this that is prescribed in our laws for her administration of the property.⁴ Despite those actions of hers, it was just as if no oath had been taken by her, and as if the estate bequeathed was insignificant: only

¹ In this detailed but condensed constitution, Justinian responds to a petition from a certain Martha, apparently from the city of Antioch (on which see Todt and West (2014) 1, pp. 539–63). Upon the death of her father, Martha’s mother had taken up her guardianship, but had falsified the inventory of property pertaining to the estate, had re-married despite having taken an oath promising not to do so, and had failed to protect Martha’s interests, favouring her children by her second marriage. Martha’s mother had sought to prevent her from suing for restitution of the property that was rightly hers on the basis of *Codex* 2.41.2, where Justinian had sought to resolve a long-standing jurisprudential controversy by declaring that minors could not sue their parents for the restitution of a property or inheritance (*in integrum restitutio*). The emperor hereby intervenes to protect the interests of Martha and those who found themselves in a similar situation, by decreeing that minors could in fact sue their mothers for *in integrum restitutio* if they had been obliged to release their mother from the role of *tutor* without the mother first settling the account of the guardianship (see Van Der Wal (1998), p. 65 (entry 496) including note 58, Cervenca (1972), p. 268, and Berger (1953), p. 682). The constitution thus provides a further example of a legal reform introduced in response to an actual legal case.

² ‘General’ (Greek στρατηγός) = Latin *magister militum*, used of the highest-ranking military commanders with regional responsibilities (see Lee (2005), p. 117). Belisarius (whose title at this point was the honorary one of supreme commander or *magister utriusque militiae*) was Justinian’s greatest general, responsible for the emperor’s initial campaigns against the Persians, the re-conquest of Africa, and the opening stages of the Italian campaign. In 562, however, two members of his staff would be implicated in a plot to assassinate the emperor and he was placed under house arrest. For full details, see *PLREIIIA*, pp. 181–224 (Fl. Belisarius 1).

³ For Martha and her family, see *PLREIIIB*, p. 835 (Martha 1). The epithet used with respect to her makes it clear that she was a *femina clarissima* (i.e. of senatorial rank).

⁴ For the oath, see *Codex* 5.35.2.

some items of moderate value were shown in the list made by her, and she subsequently chose to make a second marriage, appointing a different guardian for her daughter, one Peter. She had two children by the second union, and her attitude towards Martha became unwholesome: when Martha was only just entering her thirteenth year, her mother dismissed from his administration the guardian whom she had appointed, and urged Martha to request a supervisor of her second age;⁵ then immediately urged her to make out settlements of claim for her mother, and in such settlements to renounce all claim applicable to herself by law with reference to accounts for the guardianship – and this despite the fact that Martha, being still in the nursery at the time, had no understanding of what was going on. She was with her mother, and there was no-one to whom she could tell anything about what was being done to her disadvantage; nor, even if she had realised the injurious effect this was going to have on her, was there anything she could do that would have been able to prevent the plot being made to defraud her. Time, however, brought it about that Martha did realise the plot against her. She then tried some appeals to her mother not to take advantage of what had been done against her daughter's interests, but to show proper maternal feeling for her, and make restitution of her paternal property, as the law sees fit. Her mother, though, had become totally devoted to the children of her second marriage, and refused to accept such pleas; on the contrary, she put forward the divine legislation of ours⁶ whereby Martha was unable to make use of her rights of restitution against her mother, although it decreed nothing of the kind about mothers who had taken on guardianship of their children and were indulging in a second marriage, but was promulgated by our Piety for different purposes and situations.

Martha's aim in presenting this supplication to us was that we should make the intention of the divine legislation clear and incontrovertible, and that Auxentia, her mother, should not make use of its contents to appropriate to her own profit the property left to Martha by her father.

⁵ 'Supervisor of her second age', i.e. a guardian to look after her interests for the period between puberty and adulthood (between the years of twelve and twenty-five). In this constitution the Greek words ἐπίτροπος and κηδεμών seem mainly to be used indiscriminately for 'guardian', but here κηδεμών has the more precise meaning of the Latin *curator*, a guardian appointed for a particular reason after the task of the *tutor* has ended with the ward's puberty. For the Greek translation of the legal Latin terms *tutor* and *curator*, see Van Der Wal (1999a), pp. 128–30.

⁶ Martha's mother appears to have attempted to make use of *Codex* 2.41.2.

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That being the purport of the supplication, we have accordingly, with good reason, looked towards the following pragmatic directive. By means of it, we decree that as our divine legislation makes no mention of women who undertake a second marriage after having accepted guardianship of their children, the Most Distinguished Auxentia is not to be allowed to make use of our said divine legislation. As well as for the reasons stated, this is because her statement on record, by which she took on the guardianship of her daughter Martha, shows that she had taken the oath, directed by law, that she would not enter on a second marriage; whereas, in contempt of her oath, she had married a second husband, and after having had children by him, had caused the Most Distinguished Martha, her daughter, to issue settlements of claim over restitution of the property to her. We also decree that the Most Distinguished Martha may have full licence to use her right of restitution, as she says that she has still not yet reached the twenty-fifth year of her age;⁷ and that there is no respect in which the divine legislation enacted by us is an obstacle to her by reason of its decree that children cannot use the right of restitution against their parents, nor freedmen against their patrons, because there is nothing said in that law about women who have accepted guardianship of their children. On the contrary, another piece of our divine legislation was issued later on, which decreed both that those being made guardians were only to accept guardianship of minors after deposing at the time of their appointment that they would not leave the minors as *indefensi*,⁸ and also that in the event of a mother's taking on the guardianship of her children, she was to make that deposition, and be liable for all the accounts of her guardianship; also, that should she wish to appoint another person for her children, she should do so at her own risk, and at that of the property belonging to her.

Thus, on that ground also, it is by all means appropriate for the Most Distinguished Martha, provided that she shows that the period during which the conditions for restitution apply for her has not elapsed, to make use of restitution, and of every other freedom and recourse that our laws give to those of full age. Admittedly, our Majesty does also decree that there is to be observance of the respect, and all honour and attention, that are owed to parents, so long as the children should suffer no

⁷ Twenty-five was the age of full legal majority (see *J. Nov.* 72, note 3).

⁸ See *Codex* 5.37.28.4. '*Indefensi*' = 'undefended', i.e. those not properly represented at court. The Greek text uses a garbled version of the Latin term (ἀδεφένδευτοι). For the mangling of Latin legal terms in Greek scribal transmission, see Van Der Wal (1983).

injury from them; but to pass over the children of a previous marriage is, in our judgment, impious. Nor, in any case, is it appropriate that such mothers should be able to make property coming down to those children from their father into a personal gain for themselves, or for their spouses in a subsequent marriage and the children born to such marriages.

Conclusion

Accordingly your excellency, together with the most blessed archbishop of Theoupolis,⁹ is to take pains for our decisions, manifested by means of this divine pragmatic directive, to be put into practical effect.

Given at Constantinople, February 1st, < third > consulship of the Lord Justinian, pius princeps, Augustus

533

[Zachariae's supplement]

⁹ Theoupolis = Antioch (where Martha presumably lived).

156 | Agricultural workers: apportionment of progeny¹

[Greek only]

[No heading]

Preamble

Those conducting the business of the most holy church of Apamea² have given information that agricultural workers³ belonging to other masters have formed unions with female agricultural workers of their own, and had children by them; they have requested to have the male agricultural workers rendered to them, and also the children, as going with the maternal womb. It appears from their making this request

¹ The institution of the colonate, whereby nominally free agricultural workers were bound by law to work the estates of their employers and pass on their legal status to their children, had been modelled on the template of Roman law concerning slavery, with the landowner described as the 'owner' (*possessor*) or 'master' (*dominus*) of the agricultural labourer (*colonus*). This necessarily raised the issue of the legal status of children born to parents of mixed social status. Justinian had legislated that, in accordance with the long standing Roman law precept that children inherited the free or unfree status of their mother, the offspring of women bearing the legal status of *coloni* were to be bound by the laws that applied to *coloni* and could be claimed by the master, irrespective of the legal status of the father. Similarly, in *J. Nov. 22 c. 17 pr.* Justinian had forbidden male *coloni* from marrying free women and allowed the owners of those who did so to beat them, as this act threatened to diminish the supply of estate labour. In the present constitution, Justinian responds to a petition from the managers of ecclesiastical property in Syria concerning the question of who had the right to claim the lives and labour services of children born to parents who were *coloni* from different estates belonging to different masters. Justinian decides to give preference to the claims of the owner of the mother, but divides the peasant family if there is more than one child. This issue would be returned to by both Justin II and Tiberius II (see Lemerle (1979), pp. 21–4). The fact that landowners brought petitions to the emperor concerning this matter establishes what has sometimes been denied by historians, namely that the institution of the colonate was an important social and legal reality at the grass roots of East Roman society, which landowners were determined to use to their maximum advantage (see Sarris (2011b)).

² On Apamea, see Foss (1997), Athanassiadi (2005) and Todt and West (2014) 2, pp. 841–61. The city was a major (and prosperous) centre of ecclesiastical and intellectual life. For large estates in the vicinity of the city, see Sarris (2006), pp. 123–6.

³ 'Agricultural worker' (Greek γεωργός) = either a *colonus adscripticius* or a *colonus liber* tied to an estate (see Sarris 2011b). 'Female agricultural worker' = a woman bearing the same hereditary legal status as a *colonus adscripticius* or *colonus liber*. For the ownership of such *coloni* by the Church, see also *J. Nov. 7*.

that they do not know the purport of our constitution that came out recently.⁴

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Should the men who have cohabited with female agricultural workers be free, the babies, by the reasoning contained in the constitution, go with the mother, in which case they do not attain freedom; but should they be agricultural workers, that constitution no longer has any applicability at all. Instead, the progeny is divided, in accordance with the judgment that we recently delivered and put into law. If the number of those born is even, it is divided by two; but if it is an odd number, or there is only one born, then the womb has the larger number, because of also having had the greater burden. If it is one child, it goes with the mother, but if three are born, two (males or females) will be the mother's and one will pass into the ownership of its father's master. Thus, as we have just said, it is always the womb that will have the additional one.

Even Apameans are to realise that that is how the progeny is to be apportioned, so that they may learn that a matter long disputed has come under our legislation.

[Date missing]

⁴ An apparent reference to *J. Nov.* 162 c. 2, issued in 539 (thereby providing a *terminus post quem* for the present constitution).

157 | **Agricultural workers marrying on estate properties of other proprietors¹** [Greek only]

Emperor Justinian Augustus to Lazarus, comes of the East²

Preamble

From various reports presented to us, we have learnt that there is an offence, unworthy of our times, that is being committed in Mesopotamia, and also in the province of Osrhoene. It had become normal among them for people from different estate properties to contract marriages with each other; but what is happening now is that owners are trying to break up marriages already made, or to drag the children born to them away from their parents. As a result, the whole population of agricultural workers in these regions is suffering from the forcible separation of husbands from wives and the abstraction of offspring from those who have brought them into the world; and the situation calls for attention from no-one but ourselves.

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Accordingly, we decree that whereas proprietors of estate properties may in future, in whatever way they wish, keep all agricultural workers legally

¹ If the previous constitution provided evidence for the colonate as an important social and economic institution at the grass roots of East Roman society in the region around Apamea in Syria, the present novel establishes its significance in the frontier territories of Mesopotamia and Osrhoene where, in *J. Nov.* 154, we also see the emperor seeking to appease the sensibilities of the peasantry so as not to encourage sedition amongst them. In *J. Nov.* 156, Justinian had decreed that children born to parents who bore the status of *coloni* were to be divided between the owners of the properties concerned. In this law, however, Justinian directly criticises the splitting up of peasant families that would have been the natural outcome of his own legislation and the physical separation of husband from wife that it pre-supposed. Instead, so as to prevent such circumstances from arising in the future, he decrees that *coloni* were not to be allowed to marry beyond the estate without the owner's permission (see Sarris (2011b) and Lemerle (1979), p. 23). For peasant sedition in the late sixth and early seventh centuries, see also Sarris (2006), pp. 222–34.

² The Count of the East (*comes orientis*) had his official residence in Antioch (see Jones (1964), p. 281). The Syrian/Antiochene focus of the three chronologically disjointed novels *J. Novs.* 155, 156, 157 and the following 158 might be read to suggest that the Greek Collection of 168 novels was possibly of Antiochene or Syrian origin (see discussion in the Introduction). On Lazarus, see *PLREIIIB*, p. 767 (Lazarus 1).

pertaining to them from contracting marriages with those born on other estate properties, marriages that have taken place hitherto are to be valid; no-one can separate those who have been united according to the custom previously prevailing, nor are they to be compelled to work land belonging to him, nor yet are children to be taken away from their parents on the ground of their status as agricultural workers.

Should something of the kind have in fact already happened, you will rectify it, whether it is a case of children's having been taken away, or wives, and you will cause them to be returned to parents and husbands respectively. In time to come, anyone having the temerity to do anything of the kind will be jeopardising his estate property itself. Cohabitants will be liberated from the fear to which they are subject at present: as a result of this command of ours, parents are to keep their offspring, and proprietors of estate properties will not be able to drag apart either couples or children, by pettifogging. Certainly, anyone who tries to do so will be in jeopardy of the very estate property for which he is vainly trying to claim agricultural workers.

Conclusion

Accordingly, your magnificence, with the staff under you, and an eventual future head of the said office, is to see to the bringing into effect and observance of our decisions, manifested by means of this divine pragmatic directive. A fine of three pounds of gold will be imposed on anyone who attempts to contravene them.

Given at Constantinople, May 1st, 16th year of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Basilius

158 | Right of decision to be passed on even to minors¹

[Greek only]

[No heading]

Preamble

A petition has been read out to us from Thekla,² also known as Mano, informing us that a woman called Thekla departed this life leaving a daughter Sergia,³ still under the age of puberty, and that the child died in the recent epidemic of plague, after outliving her mother by only just

¹ The present constitution concerns a disputed inheritance contested by the male (agnatic) and female (cognatic) kin of a recently orphaned girl (Sergia) who had died of plague. The girl's paternal aunt had received legal advice to the effect that her claim was stronger than that of the deceased's maternal uncle, who was also claiming the inheritance. The lawyer who had provided the advice, however, then presided over the court case and granted the inheritance to the uncle. Justinian here responds to an appeal from the aunt, whose claim he upholds. The uncle's claim rested upon a Theodosian constitution (*Codex* 6.30.18.4) to the effect that an infant (i.e. a child under the age of seven) to whom a guardian (*tutor*) had not been appointed could not inherit from her mother. Sergia, of course, had died too soon after her mother for any such appointment to be made. The appellant's representatives, however, argued that under a Justinianic constitution (*Codex* 6.30.19), an inheritance could be claimed (or rejected) either by an heir or the heirs to an heir at any time within a year of death, and that under that provision the aunt had inherited her niece's claim. Justinian decrees that the provisions of *Codex* 6.30.18.4 should only apply in such cases where the infant had died more than a year after becoming able to inherit from the initial deceased (the period of the year after death was known as the *spatium deliberandi* or period in which one had to choose) without acceptance of the inheritance. Under *J. Nov.* 118 (which had established equality between the claims of cognates and agnates), the estate should have been shared equally between the uncle and aunt. Justinian further decrees, however, that this dispute pre-dated that constitution and that precedence should thus be given to the agnatic claims of the aunt. The constitution thus provides an interesting example of imperial constitutions in action and the role of the imperial court as a court of appeal. For further discussion of this law, see Van Der Wal (1998), p. 147 (entry 984). The bubonic plague is recorded to have reached Antioch (where the original case seems to have been heard) in 542. The period between the death of the girl, the judgment given at the court of first instance, and the hearing of the present appeal is unlikely, therefore, to have been more than two years given that this rescript was issued in 544. The workings of justice thus appear to have been relatively swift (and, at the time of writing, would bear favourable comparison with the length of time it would take a case to reach and obtain judgment at the UK Supreme Court). On the chronology of plague, see Sarris (2002) and Stathakopoulos (2004).

² None of the individuals mentioned in this law is otherwise attested.

³ Sergia's mother had clearly not left a will, hence the legal difficulties that ensued.

sixteen days.⁴ Our petitioner says that she is the sister of Sergia's father, whereas Thekla's brother Cosmas has counterclaimed Sergia's inheritance, and has obtained an action against her over this.⁵ To avoid contesting a possibly unsound case, the petitioner went to a local public advocate, John, and consulted him about the laws regarding this case; he provided her with a written opinion in which he declared that Sergia's inheritance went to her, and on that basis she chose John himself as judge of the case. Acting for Cosmas was one Asclepius, a *scriniarius*⁶ of the office of the military commander of the East. The judgment handed down by John was contrary to that in his written opinion: for it, he applied the law⁷ of Theodosius of divine destiny, which states that no-one under the age of seven years could lay claim to the maternal inheritance if he had no guardian; instead, it would go to those who would have been entitled if the deceased pre-pubescent person had not been called by law to the inheritance. Nor was that all; apart from what he said in his judgment, he also caused our petitioner to enter into a covenant pursuant to the judgment, and himself suggested that, in turn, to Asclepius, who had fought the opposing case for Cosmas.

She has requested us not to let her suffer this injustice. Her principal ground is that there is a law,⁸ contained in the Codex bearing our name, commanding that one able to speak⁹ can properly also lay claim to a maternal inheritance; and secondly, that there is another law,¹⁰ of our enactment, whose purport is that when someone loses his life before coming into ownership of an inheritance that has come down to him, or if he declares a decision not to do so, the right of making a decision¹¹ on

⁴ A reference to the bubonic plague that arrived in the empire in 541. See Sarris (2002), Meier (2016) and *J. Nov.* 122.

⁵ The inheritance is thus contested between the deceased child's maternal uncle (= a cognate) and her paternal aunt (= an agnate).

⁶ '*Scriniarius*' = an employee of the *scrinia* or governmental bureau. See *Codex* 12.49. 'Office of the military commander of the East' = on the staff of the supreme military commander in the East, known as the *magister militum per orientem*, who was based at Antioch, indicating that is where this original case unfolded.

⁷ See *Codex* 6.30.18.4.

⁸ See *Codex* 6.30.18.4.

⁹ 'Able to speak', i.e. no longer an infant (Latin *infans* = incapable of speech). In Roman law, one ceased to be classified as *infans* at the age of seven. The advocate for the appellant, however, appears to have argued on the basis of *Codex* 6.56.1 that a child below the age of seven who was indeed able to speak should not be classified as *infans*. Justinian sidesteps this interesting line of argument (see Van Der Wal (1998), p. 147, note 92).

¹⁰ See *Codex* 6.30.19.

¹¹ 'The right of making a decision' = the *ius deliberandi* or *deliberatio de adeunda hereditate*: an heir who was not obliged to accept an inheritance (= *heres voluntarius*) was permitted

that inheritance is to pass to his heirs. She argued that our recent law,¹² which provides that *agnati* and *cognati* rank equally as to inheritance, had no applicability to this case, which preceded the date at which that law was commanded to come into force.

1

Accordingly, we decree that your distinction, should you find these to be the facts, is to come to the petitioner's aid, and to uphold for her the law that provides her with the right of making the decision, thus awarding to her Sergia's mother's inheritance, because she wishes to claim it as hers, and because Sergia's death followed that of her mother in less than a year. No-one could say that the law of Theodosius, of pious destiny, is in conflict with our own; they are enshrined in the same book, and we have confirmed that there is nothing contradictory contained in it as a result of the constitution that we enacted on the subject:¹³ our law is to apply in the present case and in cases similar to the one in question, while the law of Theodosius of divine destiny is to apply in cases where a year has already gone by, and the period for decision has passed.¹⁴

Documents drawn up after the judgment, with a free person who was not even able to acquire, have clearly not given Cosmas any right of action over what was agreed in them.

Given at Constantinople, July 14th in the 18th year of the Lord Justinian, pious princeps, Augustus, 3rd year from consulship of the Most Distinguished Basilus 544

a certain amount of time to consider whether or not he wished to enter into it: see *Digest* 28.8, *Codex* 6.30 and Berger (1953), p. 430.

¹² A reference to *J. Nov.* 118: '*agnati* and *cognati*' = agnates and cognates (or relatives on the paternal and maternal side, respectively).

¹³ A reference to the constitution *C. Cordi* which promulgated the second recension of the *Codex*.

¹⁴ 'The period for decision' = the period granted under the *ius deliberandi*.

159 | Substitute heirs to be limited to one degree¹

The same Sovereign to Peter, for the second time Most Illustrious prefect of the sacred praetoria

Preamble

So abundant is our beneficence that we do not even disdain to settle all private cases that we regard as being beyond the level of a trial before a judge, so that a case does not commit the disputants to long delay by being taken to court when it is beyond the reach of a private hearing.

In that context, the Most Illustrious Alexander has frequently called our attention to the terms used in the will of his father Hierius, of glorious memory.² This is what he wrote:

¹ The present constitution was issued in response to a disputed inheritance at the highest levels of Byzantine landed society. An aristocrat by the name of Hierius, whose properties stretched, it would appear, from Italy to Syria via Constantinople, and sections from whose will are cited *verbatim* in the law, had sought through codicils and *fideicommissa* to prevent his heirs from alienating certain named properties outside of the family. A dispute then arose concerning these properties between his great-grandchildren, which Justinian adjudicates here. The use of such *fideicommissa* to attempt to achieve a form of perpetual entail appears to have grown more common as early Byzantine society had become increasingly dominated by great magnate families and aristocratic dynasties. The desire of testators to bind the hands of future generations of heirs, however, so as to ensure the future economic prosperity of their progeny, ran contrary to a central tenet of Roman inheritance law that one could not name unknown persons (*incertae personae*) as heirs. The tension between the demands of Roman legal tradition and the increasingly dynastic ambitions of testators had already obliged Justinian to issue a number of important laws concerning the dynastic manipulation of fideicommissary settlements. In particular, between 529 and 531, Justinian had established a clear legal framework within which to adjudicate fideicommissary disputes. Importantly, in the present constitution, he sets a four-generational limit on fideicommissary settlements, in an attempt to uphold something of the spirit of the classical law (see Johnston (1988), pp. 250–4, Sarris (2006), pp. 194–5, Van Der Wal (1998), p. 154 (entries 1021–3 with notes 128–30)). The novel thus casts important light on the legal consequences of the rise of the early Byzantine aristocracy. The inclusion in the text of a section of the original will of Hierius, along with the novel's official publication decree and an appended *encomium* to the emperor and the law written by two imperial officials (*ab actis*) to whom it was conveyed for advertisement, thus marking its official receipt, also renders the law noteworthy for its blending of documentary types. For further discussion of this novel, see especially Lokin (1990), whilst for the response of later Byzantine testators to the limits placed on them by Justinian's fideicommissary legislation, see Sarris (2016), pp. 19–21.

² The timeline covered by the dispute is difficult to pin down, making the individuals named within the constitution hard to identify. An individual by the name of Hierius (possibly the original testator in this case) had served as Praetorian Prefect of the East in the 420s and

I wish and command my heirs not to alienate by sale, gift, exchange, or in any other way whatsoever, the following properties.

The Most Distinguished Constantinus: the house designated for him, together with all the rights attached to it as detailed previously, the suburban estate in Coparia, with all the rights belonging to it as detailed previously, and the house in Antioch in the possession of Mammianus.

My dearest Anthemius: the suburban estate in Blachernae <sometime> in the possession of Eugenius and Julianus of glorious memory, and the suburban estate at the head of the inlet of Sosthenius, sometime in the possession of Ardaburius of glorious memory.³

The Most Distinguished Calliopius: the suburban estate Bytharium, or 'of Philotheus'.

The Most Distinguished Alexander: the suburban estate in Venetia.⁴

They are not to alienate by sale, gift or exchange, the said houses, or the five suburban estates detailed above, from my name and my *familia*,⁵ nor to reject them or transfer their ownership. If, as I pray, they should have children, and if they should die leaving legitimate or natural⁶ children or grandchildren, each of them is to bequeath the suburban estate and the houses designated for him, both that situated in this sovereign city and that in Antioch, to their respective children or grandchildren, legitimate, or also natural, as I trust that they will not fail to give effect to my disposition and intention in the case of natural children, either. If all or some of them die entirely childless – may it not be so! –, I wish and command the childless one or ones, when near death, to make restitution to their surviving brothers, or brother, of the houses stated above, both here and in Antioch, and the previously specified five suburban estates, with all their rights and the complete contents without exception, with the proviso that security between them as to *fideicommissa* or *legata*⁷ is to be inoperative, because I wish and command them not to make demands

430s, and had held the consulship in 427, when he had restored and dedicated the so-called 'Baths of Constantine' in Constantinople (see *PLREII*, p. 557 (Hierius 2)).

³ The inlet of Sosthenius is probably the inlet in the modern suburb of Istanbul known as Istinye; Blachernae was a northwestern district of Constantinople; Coparia: another district of Constantinople located on or near the coast: see Janin (1964), pp. 237, 324 and 374, respectively.

⁴ This would appear to be an early reference to Venice which, according to Venetian tradition, had been founded in the early 420s (Nicol (1992), pp. 1–2).

⁵ '*Familia*' = the family in the broadest sense (i.e. embracing all those under paternal authority): see Berger (1953), pp. 467–8.

⁶ 'Natural' = illegitimate (Berger (1953), p. 473). 'This sovereign city' = Constantinople.

⁷ '*Fideicommissa*' and '*legata*' = legacies and trusts. 'Security' (Greek *ικανοδοσία*) = Latin *satisdatio*: a security given to a creditor by means of a personal guarantee provided by a surety (Berger (1953), p. 690). The inference is that it would be unbrotherly to demand such securities, and that, in dealings between relatives, a simple promise or pledge should suffice.

on each other for such securities. One who does, or those who do, attempt to make a demand for security from their brothers or brother concerning the properties forbidden to be alienated, in contravention of my paternal, loving purpose for them, is, or are, to suffer complete forfeiture of the *fideicommissum*.

That, we are told, is what he said in the will. He also wrote a codicil, couched in the following terms:

I declare that I have already made a written will, with the dispositions in it made as I saw fit; and I wish and command that all that is contained in the will should without fail be enforced, with the sole exceptions of any of the bequeathed *legata* that I shall alter or remove in this codicil of mine.

Accordingly, I wish and command that the suburban estate of mine called Coparia, which in my will aforesaid I left to my Most Magnificent son Constantinus, is to be given and to belong, in full right of possession and ownership, to my Most Distinguished and most noble grandson Hierius, son of my Most Magnificent son Constantinus;⁸ that is, the said suburban estate in its entirety, with the mansions on it, all the quays,⁹ the tenanted buildings either inside or outside the gate, the workshops, the bath-house, the gardens both inside and outside the wall, the hippodrome and the garden it contains, the cistern and, in a word, every right that in any way appertains to me over the said suburban estate.¹⁰ However, I wish the said suburban estate to be given to my grandson aforesaid, the Most Distinguished Hierius, when he becomes independent by *emancipatio*¹¹ from his father after my death. Neither my said most noble grandson, nor any of the successors to the said rights either under this will of mine or under the will of my said Most Distinguished grandson, is to be given any

⁸ There are thus two individuals named Hierius in the constitution: the original testator (possibly the early fifth-century Praetorian Prefect) and his grandson. This tradition of 'papyponymy' was characteristic of the early Byzantine aristocracy, and is evident from the documentary record, for example, with respect to the Apion family recorded in the Oxyrhynchus papyri (see Sarris (2006), p. 17 and note 40). The second Hierius is perhaps to be identified with a late fifth-century Praetorian Prefect of the East of that name, who issued an important edict in the 490s on officials known as ζυγοστάρται (see Delmaire (1989), pp. 256–7, *J. Edict* 11 and *PLREII*, p. 558 (Hierius 6: note that Martindale regards this Hierius to have possibly been the original testator in this case)). The appointment of heirs to specific things or properties (known as *heredis institutio ex re certa*), such as is set out here, was increasingly common practice in late antiquity, and is recorded papyrologically, for example, in *P. Oxy.* XVI 1901 (see Nowak (2015), pp. 140–1).

⁹ For such quays or landing stages, see Magdalino (2007) section I, pp. 99 and 101.

¹⁰ The section of the will detailed at this point in the novel provides a vivid picture of the contents and amenities of a large suburban estate or προάστειον.

¹¹ 'Independent' or 'autonomous' (Greek ἀνεξοφύσιος) = *sui iuris*. 'Emancipatio' = emancipation: the voluntary release of a son or daughter from paternal power by the father (Berger (1953), p. 451).

licence to sell off, exchange or give to anyone, or in any way whatsoever to alienate, the said suburban estate or any part or right from it, because it is my wish that the said suburban estate or house, situated within the gate in the wall of Sycae¹² that leads to the holy shrine of Saint Thekla, should remain for ever continuously in my *familia*, and never go out of my name. And I wish and command that, in the event that my aforesaid most noble grandson Hierius dies before puberty – or also after puberty but without children born to him by legitimate marriage – possession, ownership or restitution of the said suburban estate or house is to come to his Most Magnificent father Constantinus, on the same condition of its never being alienated from my *familia* or my name.

We are told, then, that those were his dispositions on passing away; but that Hierius of glorious memory sold off to other persons the house situated in Theoupolis¹³ which had come down to him from his paternal succession, but passed on the house in this fortunate city, and also the suburban estate given him under the codicil, on all of which alienation has been forbidden, to his son Constantinus, of glorious memory. When the latter, in turn, reached the end of his life, he left his wife pregnant, after writing a will in which he disposed that if no child came to birth, or one were born but died before puberty, his mother, the Most Illustrious Maria, and his consort, the most renowned Maria, were to be called jointly to his succession. A daughter was in fact born, but at a tender age she too departed this world, while still in infancy. Thus the house in this great city, and also the suburban estate – that is, the one specifically bequeathed in the codicil of Hierius of glorious memory – devolved, as well as everything else in his estate, on the said most renowned ladies Maria; and Alexander himself, as the only one of the children of Hierius of glorious memory to survive, and as holding the first degree in the name of the *familia*, came into a plausible position from which to claim both the house and the suburban estate, under the will and the wording of the codicil.

However, those putting the case for the two Most Illustrious ladies Maria argued that the wording of the will had no relevance, because Constantinus of glorious memory had not departed this life childless, so as to give ground for restitution of the two houses; and that the Most Illustrious Alexander could not proceed against them over the suburban

¹² 'Sycae' = the Constantinopolitan district of Galata (see Janin (1964), pp. 466–7). For the cult and shrine of St Thekla, see Davis (2001).

¹³ 'Theoupolis' = Antioch (on which see Foss (2001) and Todt and Vest (2014) 1, pp. 539–663). This is the only point in the text of this law where the Justinianic name for Antioch is used.

estate with the law on his side, either, because he had himself previously alienated the suburban estate that had been left to him, alienation of which, along with the other properties, had actually been forbidden by the brothers' father. They also pointed out that all the other brothers had done exactly the same thing; and that when all those to whom anything of the kind had been assigned have, without exception, contravened the deceased's intention, our laws deprive them all alike of the right of restitution, so that they should not be taken through court after court in reciprocal actions against each other over a single issue – and they brought to our attention the laws that have been laid down on this.¹⁴

The Most Illustrious Alexander argued that even the case he was bringing over the two houses was certainly correct, because the departed had made his intention clear in his codicil: he wished them, and the rest of the property, to be kept in the *familia*. But, he said, he also had a more justifiable claim to the suburban estate, in that they were wrong to bring up the alienation against him, because it was by sovereign command that he had been compelled to do that.

Each side deployed numerous arguments on all this, partly in interpreting the testator's intention and partly in making use of those of our laws which they regarded as being to their advantage.

1

Aware, therefore, that the case before us is one involving interpretation both of laws and of a will, we have concluded that we must incorporate the decision on it not in a mere judgment, but in a law, so as to preclude strife over such questions for others, as well as deciding the present controversy.

Hence, on more detailed and exact scrutiny of the terms of the will, we have found that alienation has been forbidden to the actual sons who were going to succeed to the inheritance, when they were about to die childless, but not, further, to those who would eventually succeed them: it was enough for the departed to confine the prohibition to his children. Should they, too, pass away leaving children, he had not wished to interfere with what was being bequeathed, nor to extend his ban on alienation further than his children's lifetime; it was only the codicil made for the suburban estate that forbade also those who would succeed to the property under the will of Hierius of glorious memory (the younger Hierius, that is)

¹⁴ The laws referred to appear to be *Codex* 6.42.11 and *Digest* 31.77.27.

to alienate the suburban estate, with the addition of the wish of the departed that it should remain permanently in the family.

Such, then, are the points that have been in controversy.

2

On consideration of the whole case with the exactitude that it required, we concluded that, as far as concerned the rest of the property of which Constantinus of glorious memory, son of the elder Hierius, came into secure possession, there was no good ground for even the slightest problem: not merely the Most Illustrious Alexander, but also the whole of the rest of the *familia*, were disbarred from taking action with reference to it. The wording of the will confined the prohibition to the children only; and the actual sons of Hierius of glorious memory, through whom the subsequent members of the *familia* entitle themselves to Hierius' rights, have alienated some of what was in their possession, and have, unanimously as it were, excluded themselves entirely from the substitution.¹⁵

As for the suburban estate, of which the codicil designated Hierius of glorious memory as master, it seemed to us that to call this issue into question four generations later is complete and utter pettifogging. As it is, the Most Illustrious ladies Maria are still alive, and they too are surely to be included in the *familia*, because our laws consider women who marry into it as entitled to that name; so it is incorrect and improper for the Most Illustrious Alexander to have initiated the case put forward by him.¹⁶ When they too pass away, moreover, so that four generations will be seen to have gone by, we would not tolerate the bringing into court of such an out-of-date case, particularly as Constantinus' daughter lost her life while still so young that, even had he not in fact made a will, and even if none of the successors of Hierius of glorious memory had been at fault in respect of his will, the suburban estate would have gone to her mother, the reason being not the girl herself but the law, as having brought it about; and even though Constantinus, in writing his will, made some substitutions for his daughter in the case of her death before reaching puberty, that makes no great difference: on her passing away intestate, the law would still, on its own, have been going to give the property to the girl's mother.

¹⁵ 'Substitution' (Greek ὑποκατάστασις) = substitution of heirs (Berger (1953), p. 721).

¹⁶ Justinian here appears to be enjoying the opportunity to slap down this rich aristocrat, who has been pestering him; see Preamble: 'Alexander has frequently called our attention . . .' For the varying senatorial grades attributed to members of the family throughout this novel, see Jones (1964), pp. 529–30.

3

Accordingly, we decree that neither the Most Illustrious Alexander nor his children, nor the successors of the other children of the elder Hierius of glorious memory, nor anyone else of all those belonging to the said *familia*, are to proceed either against the Most Illustrious ladies Maria for the property in their possession on which Hierius of glorious memory did actually prevent alienation, or against others in whose possession the property now is, or to whom it may go in time to come. Furthermore, there is to be no mention at all of the prohibition and of the name of the *familia*, or any construction of a right on that basis, given that the other sons of Hierius of glorious memory have also alienated their property and have virtually consented to alienations by the rest of them, thus forestalling, both for themselves and their successors, actions that could have lain over those. There are also the other considerations that we have previously mentioned, which gave us sufficient ground for such judgment and legislation.

That is to be the decision, not just for the present case but also for others in which so many successions have passed since such a prohibition had been imposed, should the last heir have succeeded to an inheritance through an intermediary who did not reach puberty. In that situation, he will have licence, under the present law, to pass on the property even to those outside the *familia* of the first person to impose the prohibition, because we have made this law, in general, both for the present case and for prohibitions made in this way in future. We are both settling the present dispute and precluding those likely to occur in future.

Conclusion

Accordingly, your excellency is to give orders for the posting up of our decisions, manifested by the present law, in this all-fortunate city, and for its being put into practical effect and observance.

The most mighty Sovereign's realm now enjoys strict precision on the subject of lawful share. He has put into clear order, as is here contained under the bright light of the law, the substitutions <of heirs> arising in childlessness; and by this, he has given, to decedents, confidence that no-one would upset their intentions, and to survivors, settlement of such matters between each other without disputes and litigation. By rectifying one case while extending the reasoning to all in common, he has bestowed his beneficence not on specific persons, but on all subjects as one. We do not need to urge you, citizens of our realm, to offer prayer for his victory, for

you have already been shown to be doing so; and it is clear that the great God, who has accepted such pious and just proceedings on our part, will, even before our prayers, grant that the lord of us all alike joins victories to victories for an even longer span of time.

[In Latin] We, P.P. Fl. John and Curicus, *ab actis*, have made this tribute.¹⁷

Given at Constantinople, June 1st in the 29th year of the Lord Justinian, 14th year after consulship of the Most Distinguished Basilius, indiction 3¹⁸

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¹⁷ 'P.P.': the meaning of this is unclear. It most probably represents the official publication decree whereby the measure was signed off by the Praetorian Prefecture, which the two named individuals served (see Lokin (1990), pp. 132–3). 'Fl.' = the honorific *Flavii* characteristic of members of the imperial aristocracy of service, on which see Keenan (1973), (1974). '*Ab actis*' = officials concerned with the drawing up of official records or reports (*acta* or *gesta*) (Berger (1953), p. 340). This appears to be a panegyric or encomiastic note appended to the novel by the officials charged with its advertisement. See also *PLREIII*A, pp. 365 (Curicus) and 667 (Fl. Ioannes 65).

¹⁸ 'Indiction 3' = the third year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311.

160 | Copy of divine pragmatic directive¹

[Greek only]

*Emperor Justinian Augustus to Papius*²

Preamble

Aristokrates, most eloquent father of the city³ of Aphrodisias, and the property-owners there,⁴ have become suppliants to us, saying that the said city . . .

Further on:

For a start, our view is that there are some who take and understand our laws in the last sense that they ought: the one from which they afford themselves opportunities for criminal acts.

¹ This fragmentary rescript, issued in response to a complaint from the city of Aphrodisias in western Anatolia, records a practice whereby locally powerful individuals would effectively have civic funds deposited with them to invest, in return for which they guaranteed the city council concerned an agreed income. The present law recounts how certain such characters were attempting to take advantage of Justinian's recent legislation on usury, to the effect that once the annual payments made to the city had equalled twice the sum deposited with them, they were no longer obliged to make such payments and acquired ownership of the original funds. The emperor here decrees that such deposited funds were not to be thought of as a loan. Instead, rather than representing interest on a putative loan, the payments made to the city with respect to them were effectively to be thought of as a rent paid in return for detention or possession of the funds. Just as someone renting land from a council should continue to pay rent for so long as he enjoyed or used the property, so too should such fund managers continue to pay the charges to the city for so long as they held the funds. Although this novel has been criticised on jurisprudential grounds (see Van Der Wal (1998), p. 108, note 9), the emperor's determination to prevent cities and city councils from being asset-stripped by unscrupulous private interests is both understandable and clear. The individuals who were trying to assert ownership of the civic funds probably held the office of *zygostates* (ζυγοστάτης) on which see *J. Edict* 11.

² Papius is otherwise unattested. He was perhaps governor of the province of Caria in which the city of Aphrodisias was located. See *PLREIIIB*, p. 966 (Papius).

³ 'Father of the city' = the civic office of *pater civitatis* (see Liebeschuetz (2001), pp. 110–12 and, with respect to Aphrodisias, Roueché (1979)). On Aphrodisias in late antiquity, see Roueché (1989). The petitioner Aristokrates is otherwise unknown, but the epithet applied to him is consistent with his having possibly been a practising lawyer by background (see *PLREIIIA*, p. 117 (Aristocrates)).

⁴ 'Property-owners' (Greek κερτημένοι = Latin *possessores*) = the local landowners to whom civic responsibilities were entrusted. The term comprised city councillors (*curiales*) as well as other notables (such as landowners of senatorial rank) charged with civic obligations: see discussion in Sarris (2006), pp. 155–9 and Laniado (2002) *passim* and esp. p. 38.

We have been informed by the father of the city that the city of Aphrodisias has amassed a very large amount of money from bequests left to it by certain people; and so that it should not be wasted, some with powerful positions in the city hold the money in possession, on condition of contributing to the city, in return for it, an annual provision, revenue or interest – whatever one may wish to call it –, that payment being due to the city for as long as the money remains with the recipient.⁵ However, since we laid down a constitution⁶ to the effect that creditors were not to be permitted to make demands for payment in excess of twice the amount loaned, but were to rest content with that and no more, the recipients of the money are claiming that when they have paid more than twice the amount, the city must lose the bequest. The reported result is that heating of the public baths, funded from that source, is being impaired, public works are being reduced, and, on these people's interpretation, our law is ruining their city.

1

To eliminate all this from our realm entirely, we decree that those who have received money on condition of paying the city a kind of rent, in return, are to be obliged to go on paying in the sum agreed for that money annually, for as long as they hold it; they are absolutely not to have the use of our divine constitution over it. It was for moneylenders that we enacted that, and for the cases specifically mentioned in it; the present case has nothing to do with it, given that the analogy is with an annual income rather than an interest-payment, and that we must be as solicitous for cities as we are for taxes.

If, even after this present directive of ours, anyone should understand our legislation in a different sense, and should wish to withhold from the city the money that he has received, he will both reimburse the city with the additional amount for the whole time for which he owes it, and repay it twice over, so as to receive a just requital for his criminal interpretation; he

⁵ Leading local citizens (possibly holding the civic office of *ζυγοστάτης*, on which see *J. Edict* 11) appear to have borrowed the money to invest, guaranteeing the civic authorities a share of the profits by way of an agreed annual income. They were, therefore, effectively acting as fund managers.

⁶ See *J. Novs.* 121, 138 and *J. Edict* 9. Legislation issued primarily with a view to protecting poor or vulnerable debtors is here thus being taken advantage of by wealthy investors to attempt to claim ownership of civic funds. These laws provide a *terminus post quem* for the present novel of post-535.

could have proved himself a good citizen, but instead is so wicked as to commit a crime against his birthplace.

[date missing]⁷

⁷ Roueché (1989) suggests that this law was issued shortly after 529; Lounghis, Blysidu and Lampakes (2005), p. 273 (under entry 1094), by contrast, indicate a date-range of c. 535–565.

[No heading]

Preamble

Appropriate legislation is a very great good, but not by itself: so are the meticulous observance of the decrees and the carrying of them into effect, and the subjection of contraveners to fitting penalties. What, after all, will be the use of laws if they should consist of nothing but writing, and produce no actual, practical effect for the good of the ruled? In this connection, we know that the Sovereignty, in its deep solicitude for its subjects, has more than once directed² that provincial governors should take up their offices free of charge, so that they, in turn, by discharging them cleanly, would administer justice and equity to those under our rule, and so that the public treasury would be well supplied without injury to the taxpayers; but all this has gradually fallen into oblivion, defeated by the acquisitiveness of men who have bought, rather than received, their offices.

1

We are renewing the laws on this, and we decree that offices are to be held by men who are recognised as being of good repute, with justice as their prime concern; and that these are to take up their offices without gifts and without any payment. They are to keep the taxpayers free from harm and over-charging, and collect the public taxes fully and conscientiously; and neither they nor their assessors, *cancellarii*, *domestici*³ or any of their staff are to receive anything from those under their rule – unless, that is,

¹ In this constitution, dating from 574, the Emperor Tiberius II re-iterates and attempts to re-invigorate imperial prohibitions against purchase of office. As well as banning bribes for nomination or appointment, he also prohibits the payment of entry-fees from which the state had hitherto profited. The analysis of this law in Jones (1964), p. 395 needs to be revised in the light of Laniado (2002), pp. 225–32.

² See *J. Novs.* 8, 13, 17, 24, 25, 26, 27, 28, 29, 30, 102, 149 and *J. Edict* 4.

³ ‘Assessors’ = legal secretaries or advisers: see *J. Nov.* 60; ‘*cancellarii*’ = auxiliary officers charged with secretarial duties: see *Codex* 1.51 and Berger (1953), p. 379; ‘*domestici*’ = *domestici iudices* or the staff in the office of a provincial governor: see *Codex* 1.51 and Berger (1953), p. 441. It is perhaps significant that the only gubernatorial responsibilities mentioned here relate to the collection of taxes. It seems that the governor was now primarily regarded as a tax-collector.

they want to repay four times what they have received from them, as the laws say – but they are to rest content with what is allotted to them from the public treasury and the law.

1. When about to leave office, they are to remain in attendance, and publicly available, for the statutory fifty days, and defend themselves against those wishing to bring an action. If the case is not concluded within the fifty days, if it is a financial one he is to appoint a *procurator*,⁴ but if a criminal one, he is to stay there until the conclusion of the case. If the judges (whether they are governors, or have been appointed by the prefects⁵) do not conclude the case within twenty days from its commencement, they are to pay an extra fine of ten pounds of gold, but the case is to proceed as aforesaid.

2. Should any of them, smitten with a bad conscience, slip away covertly and take refuge in holy houses,⁶ they will forfeit their property, which will be distributed among the victims of injustice in conformity with the law and with the degree of the injustices suffered; this is to be done even unilaterally, as the record issued on the case may warrant, in accordance with previous legislation.

3. Be it noted that all the other sound legislation on governors that has been enacted by the Sovereignty, for the advantage of taxpayers, is to stay unaffected. Just as we punish those who commit these offences, so also do we subject to a quadruple repayment those who receive any forbidden payment from them as accessories.

2

It is the great importance that we attach to the prosperity and support of our subjects – it is certainly not for that of the revenue collected from them for the Sovereignty! – which has given us the idea for the following further legislation: along with payments by governors, we are also abolishing the *suffragia*⁷ accruing from them to the Sovereignty's account, which have amounted to a very heavy burden. This is another possible way for the commonwealth to thrive and to return to a more prosperous condition,

⁴ *Procurator* = representative.

⁵ *Prefects* = praetorian prefects.

⁶ *Holy houses* = religious institutions or monasteries. For ecclesiastical asylum, see Rapp (2005), pp. 253–60.

⁷ *Suffragia* = fees or bribes paid to be nominated to a post, on which see discussion in de Ste Croix (1954). Significantly, Tiberius II here appears to be subsuming under the term *suffragia* the entry-fees or *sportulae* paid to the government upon taking up a post, which had remained licit under Justinian.

having got rid of the dues devised by some, over time, to its detriment. Our Majesty's sole aim is that the provinces shall be well governed and safe to live in, enjoying justice from their governors, while the taxes are brought in irreproachably;⁸ there is no other way for the state to survive, if the dutiful tax-payments, out of which the armed forces are supported that withstand our enemies and guard our lands and cities, are not brought in. It is also out of those payments that the other services enjoy their apportionments, that repairs are made to walls and cities, and that everything else goes forward with regard to what will be to the common benefit of our subjects.

Conclusion

Accordingly, your distinction will put up these decisions of ours, manifested by means of this law, in the usual places in the fortunate city, and will despatch them to the provinces by the use of the customary proclamations, so that all may know the extent of our concern for freedom of our subjects from harm, as well as for the public treasury.

<Promulgated in December, indiction 8 in the reign of Tiberius>[Dated as in Theodorus] 574

⁸ From here to the end of the section there is a strong resemblance of wording and sentiment between this constitution and *J. Nov.* 149 c. 2 (see discussion in the Introduction).

162 | Divine directive sent to the Most Illustrious prefect Domnicus; various heads¹

[Greek only]

[No heading]

Preamble

Your distinction has asked us about some questions at issue between the most eloquent² advocates at law of the Illyrian court; to avoid perpetual strife, you said, these needed a decision from us.

1

The first head was as follows. Some property had been presented to a wife by her consort, but had not actually been delivered; and when her husband died without having said anything about the gift, she wished to lay claim to the property, as having become its secure owner, by virtue both of the gift and of her husband's silence.³ Those in possession argued against this that,

¹ In this constitution, dating from 539, Justinian responds to a number of legal queries that have been raised by lawyers from the region of Illyricum. The first concerned a gift which a husband had promised his wife but had failed to deliver to her prior to his death, and which thus pitted her claim of ownership (*dominium*) against the claims of those who were in possession or detention of the property (*possessio*). The other queries concerned rights of ownership and control over children born to the *coloni adscripticii* of different masters and how they were to be shared between the respective estates, and whether children whose father was an *adscripticius* but whose mother was free acquired the status of 'free *coloni*' (a category of tied labourer similar to but distinct from the *adscripticiate* that had been legislated on by the Emperor Anastasius – see *Codex* 11.48.19). That such issues were raised with Justinian by practising lawyers in the region provides evidence for the existence of the *adscript colonate* as a social and economic reality at the grass roots of East Roman society in the Balkan provinces of the empire as well as elsewhere at this time. Related issues are raised in *J. Nov.* 156 (undated), and *J. Nov.* 157 (542), and this novel may have been included here in order to make sense of those laws. For a further discussion, see Sarris (2011b). For Domnicus see *PLREIIIA*, p. 415 (Domnicus 2). For legal culture in sixth-century Illyricum, see Lokin (2001b).

² 'Most eloquent' = akin to the phrase 'my learned friend'.

³ Gifts between husbands and wives (*donationes inter virum et uxorem*) had been banned under Augustus, but their legitimacy had been restored in 206 AD in cases such as this, where the donor had died before the other spouse and both were still married to each other at the time of death (see *Digest* 24.1, *Codex* 5.16 and Berger (1953), p. 443).

if taken to court, she would only have an admissible claim if she were in possession; she could certainly not claim it from another.⁴

Such, then, was the point at issue; but we recalled a constitution of ours⁵ saying that one who had made a gift was obliged to deliver that gift, even if there had not been a stipulation for its delivery, because a contract should not be made for deception, nor for the transaction to consist of nothing but writing. We also called to mind the legislation of the ancient Cincian law⁶ – which our realm rightly dropped some time ago from its own legislation – on points of law similar to those that have now been in controversy.

1. We decree that should she have every detail to do with such gift, in full, as to both value and registration, under our constitution, as we have said previously, it is without fail to be valid immediately from the outset of its being made, in virtue of the husband's silence. Thus, even should the husband have subsequently put the property in hypothec, or given it as security, one who has made no further statement in his lifetime is to be regarded as having previously alienated it. If the delivery has taken place, that gives her a defence; or if it has not taken place, it also gives her a right of demand, so that she receives what was gifted. Should there have been a stipulation, that will be by *ex stipulato*; if not, then by *ex lege conducticii*.⁷

2. A further point that we have considered it just to determine is that should gifts have been registered in the records⁸ from the outset, they are by all means to be confirmed by silence; but should they have remained unregistered, despite being of value higher than that for which registration

⁴ The widow was claiming ownership (*dominium*) of a piece of property which was not in her possession (*possessio*).

⁵ *Codex* 8.53.35. 'Stipulation' = Latin *stipulatio*: in Justinianic law a contractual promise set out in a written act (Berger (1953), p. 716).

⁶ A reference to the *Lex Cincia* on donations, of 204 BC, which limited the size of gifts and to whom they could be granted (see Berger (1953), p. 549). The *Lex* appears to have been superseded by later imperial enactments, as a result of which it was only partly contained and alluded to in the codified law of Justinian. It is interesting, therefore, that knowledge of it could still inform imperial legal thinking: see Roby (1886), p. cxxxvii, note 21.

⁷ '*Ex stipulato*', i.e. if a written act setting out the promissory contract (*stipulatio*) had been made, then the widow had a claim on the basis of it (see Berger (1953), p. 716). Otherwise, she had a right '*ex lege conducticii*' (*condictio ex lege*): a general action employed for any claim which the law regarded as actionable (see *Digest* 13.2, *Codex* 4.9 and Berger (1953), p. 405). Through this measure, Justinian (perhaps unwittingly) subsumes these contractual or delictual claims (*actiones personales*) under claims to property (*actiones in rem*) from which Roman law had traditionally sought to separate them (see Berger (1953), p. 346 and Van Der Wal (1998), p. 116, note 36).

⁸ 'Registered in the records': officially recorded (via *insinuatio apud acta*) in the local gubernatorial, civic, or public archive (*archivum publicum* or *gesta municipalia*): see Berger (1953), p. 340 and Liebeschuetz (2001), pp.131 and 121–2. Justinian had noted in *J. Nov.* 15 pr. that such civic archives, however, were struggling to be maintained.

is required, they are to be in force only up to what has been legislated by us as the value up to which gifts are to be valid even when unregistered.⁹ We wish this legislation to be applicable notwithstanding that we have made it retrospectively; we do not wish a claim potentially correct to fail because of excess value, just as a law of ours on gifts in general already states.

This is all to apply not only as between wife and husband, but also as between other persons in whose case gifts during marriage have been prohibited.¹⁰

2

Then the second head of your excellency's enquiry was whether – after our constitution with intention that any born of a free woman and a registered <estate worker>¹¹ should thus be considered as free, as a result of the mother's status – such offspring, even if they have not become registered in the original sense, nevertheless do in any case become *coloni*, as a result of our other constitution by which children of *coloni* are also not permitted to leave the land, but are required to remain as *coloni*, that being all the more necessary because such persons include the offspring of such workers.

That, then, was the subject of your excellency's question on the said head; but what those who are scrutinising our intention must recognise is that we never permit the issue of a free woman's womb to be such a registered worker. For one who has been born after the law then enacted, it must be signed and sealed that, in all cases, those born of a free mother are unmistakably free.

⁹ I.e. in the absence of registration such gifts are to be permitted up to the value of 500 *solidi*. If the original size of the gift exceeded that sum, 500 *solidi* could still be received.

¹⁰ So as to protect the interests of the husband's agnatic kin, a husband once married could not make gifts to his wife's family of origin (see Johnston (1999), p. 34).

¹¹ 'Registered <estate worker>' (Greek ἐναπόγραφος <γεωργός>) = (Latin <*colonus*> *adscripticius*. 'Colonus' = Greek γεωργός = agricultural labourer or farmer; throughout this novel, the Greek text uses the Latin word *colonus* rather than γεωργός, perhaps because the region of Illyricum, whence the representations Justinian is here responding to originated, was a primarily Latin-speaking province. The basis of the query is whether children born of a free mother but whose father bore the status of a *colonus adscripticius* became totally free and thus at liberty to leave the estate on which the father worked, or whether instead the child acquired the status of a 'free *colonus*' (*colonus liber*). Such 'free *coloni*' remained bound to reside on and cultivate the estate, but unlike the *colonus adscripticius* had ownership and control over their own personal fund or property (*peculium*): see Sirks (2008) and Sarris (2011b). The earlier laws referred to are to be found at *Codex* 11.48.19 and 11.48.23. See also *J. Nov.* 22 c. 17 and Sirks (2008), pp. 127–8.

1. Accordingly, should someone be born of a free mother and such a registered worker he remains free, never losing his maternal free birth in any way; but the constitution laid down on that by us demonstrates its intention that such people are to remain living on the estate properties as field-workers, because of having been born there: for that indeed is what the appellation of *colonus* means.¹² We do not, therefore, allow them licence to leave the estate property and move over to others. Whenever certain people are born on a certain estate property, if they are born to a mother who is registered, they will certainly be registered workers in any case, but if to a free mother, they will remain free: what they acquire will be their own and not become the *peculium*¹³ of their master, but they will not go off the estate property. They will work on that, and will have no licence to leave it and travel about on others' holdings; that is, unless they should become secure possessors of a holding of their own and move onto that, if the work there is an adequate occupation for them, and permits them not to work on other holdings as well.¹⁴ Otherwise, we decree that they are without fail to remain on the estate property, as being free, but tied to the domicile.

That, then, is to be the ruling on that head.

3

There is also another question which it seemed to us not unreasonable to consider as deserving a decision from us. It was a question about the offspring, in a situation where a woman who is registered might have entered cohabitation with someone else's registered agricultural worker: if they have children, to which master should that issue belong, the man's or the woman's? Accordingly, we decree that in any such case of a union between such registered workers belonging to different masters, those born to it are to be registered as such, because it is uncontroversial that the

¹² Justinian here confirms that such children are to be deemed 'free *coloni*'. The definition of the term provided here by the emperor is highly significant, as it defines *coloni* in terms of their residence on estate properties or labour settlements (Greek *χωρία*) and the labour they provide as part of a directed workforce. The novel thus indicates that large estates in the sixth century which employed *coloni* were primarily directly managed, with such *coloni* effectively forming part of a proletarianised peasantry, rather than being primarily employed as tenant farmers (see discussion in Banaji (1999) and Sarris (2011b)).

¹³ '*Peculium*' = personal fund or property.

¹⁴ Justinian here decrees that should a free *colonus* acquire sufficient landed property (presumably primarily by inheritance or purchase) that cultivating it would not leave him any time to work elsewhere, he acquires the right to leave his native estate and no longer provide his old master with labour services (see also *Codex* 11.68.6).

womb is unfree; yet we shall not award everything to the mother, nor to her master. Should there be just one child, it is the womb that gave birth which is to have precedence over the seed, and the issue is to belong to the mother's master. If there are perhaps two children, they are to be shared, the selection between the two being by lot. If there is an odd number of children, the maternal bosom is to keep the larger number: thus, if there are three, two are the mother's and one is the father's; if five, again, three of the issue belong to the mother's master and two to the father's, with the calculation going up like that and assigning equality when the number is divisible equally, but assigning any extra one to the mother, as is in fact more pleasing.¹⁵ She must be taken to deserve the greater consideration, as she has had the pangs, the birth and the nurture, in comparison with him, for whom the procreation of the child was incidental to his pleasure.

Conclusion

Accordingly, your excellency is to take pains for the observance of the contents of this divine pragmatic directive in similar cases. We shall also be laying down a general law¹⁶ on this subject, including these and other provisions that we believe to require legislation.

Given at Constantinople, June 9th in the 13th year of the Lord Justinian, pious princeps, Augustus, consulship of the Most Distinguished Apion 539

¹⁵ The division of the offspring of the *coloni adscripticii* of different masters set out here parallels the provisions set out in the (undated) *J. Nov.* 156. They appear to be revised, however (with respect to the frontier territories of Mesopotamia and Osrhoene) in *J. Nov.* 157 (dating from 542) where the emperor prohibits such callous division of peasant families.

¹⁶ No such law survives.

[No heading]

Preamble

Mankind's highest goods are justice and clemency, the one because it assigns to each what is fair without coveting what belongs to others, and the other because it is quick to pity, and frees the needy from intractable debts; they are qualities that have the power to adorn the Sovereignty, preserve the state, and guide human life aright. Hence, it becomes a great aim of ours, having received the sceptre from God, to be conspicuous for these beneficial actions in particular, so that by doing what is helpful for our subjects we may be requited from on high for our virtue and renown.

As to this, we are aware that various successive epidemics² have reduced estates³ to such an unproductive condition that they can neither yield

¹ The Emperor Tiberius II became co-regent with the Empress Sophia in 574, taking over from the Emperor Justin II, who is reported to have suffered a mental breakdown in the wake of his disastrous Persian campaign (see below). Tiberius formally became emperor upon Justin II's death in 578. The present law is dated to the first year of his reign, in the eighth indiction. Jones (1964), p. 307 accordingly dated this law to the year 578, but the eighth indiction fell in 575. John of Ephesus *HE* 3.14 refers to the provisions of this law having been put into effect prior to Tiberius' becoming sole emperor. The date of 575 is thus to be preferred. In this constitution, the new emperor attempts to buy up support for the new regime by writing off tax debts owed for the years up to 571, and reducing money taxes (and certain commuted taxes) by one-quarter for the four years from 575–579. As well as being referred to in the writings of John of Ephesus, this measure is also recorded in the *Ecclesiastical History* of Evagrius Scholasticus (*HE* 5.13), where the author further reports the emperor's legislation against *suffragia* (*J. Nov.* 161). The documentary sources record that the tax cut introduced by Tiberius II was put into effect in Egypt (see *P.Oxy.* XVI 1907). As well as reducing the overall burden of taxation, Tiberius II is further recorded to have issued generous donatives to the army, to lawyers, physicians, bankers and the population of Constantinople, and to have abolished charges on the bread and wine dole of Constantinople that had been introduced by Justin II. So potentially fiscally destabilising were these measures feared to be, that it is claimed that the Empress Sophia and her mad husband Justin II took away from Tiberius the keys to the Treasury (see John of Ephesus, *HE* 3.11 and 14).

² The bubonic plague (that had first reached the empire in 541–542) was recurrent in nature, and a renewed outbreak had occurred across much of the Eastern Empire the previous year (573–574). For source references, see Stathakopoulos (2004), p. 315.

³ 'Estates' (Greek κτήσεις) = a dispersed property as opposed to a nucleated property or estate settlement (Greek χωρίον) (see Lemerle (1979), p. 18). That Tiberius' generosity was primarily targeted at the wealthy (i.e. landowners) is expressly stated by John of Ephesus, whose account of his reign, one should note, unlike that of Evagrius, was largely critical (see John of Ephesus, *HE* 3.14 and Evagrius, *HE* 5.13). The military situation for the empire in the mid 570s was dire: in 572–573, the Emperor Justin II had attempted to take

income to the landowners nor, indeed, bring in adequate tax-payments, just at a time when the burden of military and other unavoidably incurred expenditure is very heavy, and is compelling us, beset as we are by numerous wars, to make frequent financial outlays. We have therefore thought very hard how it could come about that we meet that need, while also relieving our subjects' impoverishment. Our ideas on this have been on several divergent lines, but that which prevailed in the end was to look rather towards clemency, and towards imparting to our taxpayers assistance pleasing to God, while defraying the shortfall to general expenditures from the Sovereignty's treasuries instead.

1

Therefore, as we carry out the functions proper to the present days of the great festival of the Saviour's passion and his holy resurrection, we also dedicate to the Lord Jesus Christ this considerate act of ours, duly offering him this further present gift, on behalf of our state. By it, spread over a *quadrennium*,⁴ we *concede* to all agricultural workers and tax-contributors (in other words, the owners of estate properties) *one entire annual fixed sum*⁵ of public tax-payments – that is to say, one-quarter of it

advantage of an uprising against the Persians on the part of the Christian nobility of Persarmenia to strike at Persian positions in the Caucasus and Upper Mesopotamia and seize the prestige target of the city of Nisibis, which had been ceded to the Sasanians in 363. Delays in the mobilisation of the East Roman field army, however, combined with the refusal of the Romans' Arab allies to assist in the campaign due to Justin II's withholding of diplomatic subsidies, meant that the assault on Nisibis ended in catastrophe. The Romans were not only driven back from Sasanian territory, but lost to the Persians the strategically vital stronghold of Dara. In response, the Emperor Justin II is reported to have gone mad. The new Emperor Tiberius II was thus obliged to try to contain a collapse of the empire's position on its major front to the East (see Sarris (2011c), pp. 230–2).

⁴ The emperor here remits one year's worth of taxes, by reducing taxes by 25 per cent for four years. The operative words and key details given in italics appear in the Greek text in Latin, thereby revealing the on-going prestige and special aura of Latin as a language of power within the East Roman state.

⁵ 'Annual fixed sum' (of either rent or tax) = late Latin *canon* (see Berger (1953), p. 379). The distinction this section of the law draws between agricultural labourers (*γεωργοί*) and tax-contributors (*συντελεσταί*) who are described as the owners (*δεσπόται*) of estate properties is open to various interpretations. It is probable that the emperor is seeking to distinguish between largely landless *coloni adscripticii* who were liable to a tax on their persons through their landowning employers, and such landowners who also paid the tax on land (see Jones (1964), pp. 453–6 and *Codex* 11.48.4). Certainly, the documentary papyri from the sixth century appear to record Egyptian estate workers to have paid the former as a free-standing charge: see, for example, *P.Oxy.* LV 3804, line 30 with the editor's note and Hickey (2012), pp. 82–3 (although note the objections of Laniado (2015), pp. 164–72). For this interpretation of the term *συντελεσταί*, see Liebeschuetz (2001), pp. 182–3, note 75 and Laniado (1996). For alternative suggestions, see Lemerle (1979), p. 18 and Mirkovic (2008).

for the forthcoming ninth indiction, a further corresponding portion for the tenth that follows, and similarly at the rate of one-quarter for the eleventh and the twelfth indiction –, while simultaneously reducing also the customary fees payable in this connection, in whatever way, to certain persons.

2

We also let them off past arrears, up to the end of the recently past fifth indiction;⁶ and we decree that there is to be no demand for the dutiful payments that we have forgiven, whether they relate to the most high office of the sacred *praetoria* of the East, or to the prefecture of Illyria, or to the command of the Islands⁷ or of the military units of Scythia and Moesia, or to our sacred *largitiones* or other office. We forbid city councillors, collectors, *scriniarii* and civil servants, *palatini* and administrators, and also receivers,⁸ and anyone who has made, or makes, a demand or collection of taxes, to cheat agricultural workers and tax contributors, or owners of estate properties, by pretending* that they have paid taxes in advance on their behalf from the arrears that have been remitted, or have received promises to pay,⁹ sureties and contracts of

* Accepting the suggested *ὡς δὴ φόρους* for the text's *ὡς διαφόρους* [S/K, p. 750, line 21], and deleting the lacuna.

⁶ The emperor here remits all tax debts up to the year 571 (which was the fifth year of the then current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p. 311).

⁷ 'Command of the Islands' = the *quaestura exercitus* (on which see *J. Nov.* 50); 'Sacred *largitiones*' = taxes owed to the *comes sacrarum largitionum*. The reference to the advance payment of taxes on behalf of taxpayers in the present c. 2 reveals yet again the important role of credit arrangements and patronage in the Roman fiscal system (on which see Sirks (2001)).

⁸ 'Collector' = Greek ἐκλήπτωρ = Latin *susceptor* or a general tax-collector (see *J. Nov.* 123 c. 6); '*scriniarius*' = an administrative official sent out for fiscal purposes from the Praetorian Prefecture (synonymous with λογοθέτης: see Stein (1949) 2, p. 444); '*palatinus*' = a functionary of the palatine bureaux (primarily of the financial departments of the *res privata* and *sacrae largitiones*, but also possibly including, in this instance, members of the household guard or *schola palatini* posted to an estate of the imperial household or *domus divina*: see *J. Nov.* 30, notes 33 and 36 and Delmaire (1989), pp. 126–69); 'administrator' = Greek ἀντιτής (synonymous with τρακτευτής) = Latin *tractator* (see *J. Nov.* 28, note 2); 'receiver' (or 'conveyancer') = Greek ὑποδέκτης (see *J. Nov.* 128, note 11). For the differences between these posts (which are not always clear), see also Van Der Wal (1998), pp. 30–1.

⁹ 'Promises to pay' = ἀντιφωνήσεις (on which see *J. Nov.* 147 c. 2 and note 10 and *P.Oxy.* XVI 1829).

agreement¹⁰ with intent to deceive; and we annul any fraudulent action that has taken place, or will take place, against our munificence. It is, however, to be noted that if anyone, before our act of bounty, has exacted any arrears up to the fifth indiction, and is found not to have paid them in, they will without fail bring them in to the public tax-accounts. It is for the taxpayers' benefit that we have bestowed this beneficence on them; we have certainly not made this concession of the stated current annual fixed sum of taxes with the intention that public tax-receivers should purloin it as profit for themselves.

The annual shipment will not be in any way reduced, because the whole amount of grain and other taxes in kind must be both contributed and brought in, up to the usual statutory level.¹¹ The value of the quarter annually that has been remitted by us over the four-year period is to be credited, in the public exchequer, to the other taxpayers who pay in cash on their own account, or rather is to be met by the public treasury. For the sake of those who pay taxes in kind, this same action will also be taken in Osrhoene and Mesopotamia for stores and military expenditure, and similarly in the province of Lazica,¹² and of Bosphorus and Cherson, for the payments in kind known as 'maritime':¹³ they will receive the value of these from the public treasury in accordance with the instructions given to the prefects' exchequers, which are the source from which these payments are brought in, so that these peoples also enjoy our munificence in this matter. It is not safe for the collection of the said taxes in kind to lapse

¹⁰ 'Sureties and contracts of agreement' = ἐγγύαι and ὁμολογία: for papyrological examples of these documentary types, see Sarris (2006), pp. 50–70.

¹¹ 'The annual shipment' = the grain shipped from Egypt by way of taxation in kind: see *J. Edict* 13. This was used to feed the population of Alexandria, Constantinople and the other cities of the East (see Sarris (2006), p. 11). The emperor here makes it clear that only money taxes were affected by the present measure, with the sole exception of those frontier territories set out in the remainder of the chapter, where money taxes had been commuted into payment in kind in order to provide for the army. That, in Egypt, only money taxes were reduced in incidence by this measure is confirmed by the testimony of *P.Oxy* XVI 1907.

¹² Lazica was located on the eastern coast of the Black Sea (see Braund (1991) and (1994)), whilst the territories of the Bosphorus and Cherson were Crimean territories located on the northern coast (see Khazdan (1991) I, pp. 313 and 418–19). Justinian had made concerted efforts to extend and tighten imperial control over each of these regions. Like Egypt, the Crimea is recorded in the Middle Byzantine period to have been a source of grain (see Ignatius the Deacon, *Ep.* 21). It is possible that the Crimean grain trade was already significant in the sixth century.

¹³ 'Maritime' = Greek πλώμμα.

altogether, as the outlay is inexorable, and is what sustains the commonwealth, as one might put it.

We trust that there will also be great additions to our realm as a result of this gift of ours, and that in return for such acts God will grant that all will be auspicious for us. Those who dare to contravene what we have determined in the interests of those under our rule will be in jeopardy as to both their property and their very life.

Conclusion

Accordingly, your excellency will make our decisions, manifested by means of the present divine law, public to everyone, by the use of proclamations both in this fortunate city and also in the prefectures under it, so that no-one may be unaware of our generosity.

<Promulgated in April, indiction 8 in the reign of Tiberius >

[Dated as in Theodorus] 575

[No heading]

Preamble

>There is nothing greater than God and justice together. Without these, nothing essential could ever be achieved, above all in our state; and it is these that make it possible to reign uprightly, and to induce our subjects towards loyalty and full compliance. So it is from God and justice that, despite being immersed in numerous cares, we have received ways in which Romans shall grow in the virtues, and barbarians succumb to defeat; yet we have still not been careless about taking due thought for what should be to the advantage of our subjects individually. Thus, after rectifying much that was previously in confusion, we have thought it appropriate to bring a matter on successions, which has for the most part been neglected, into an order pleasing to God.

It has come to our knowledge that there are people going about unsettling decedents' estates, not allowing wills to have validity, or successions in intestacy to take place; they are putting seals on movable property, and placards on immovable property, in such a way as to * impede the decedents' successions, and defeat their proper course.*² As it is impossible to find out the circumstances of each case in detail, when there are so many, we have thought it right to rule on them by a general law.

- This depends on a conjecture of ἐμποδίζειν for ἐπαύξειν [S/K, p. 751, line 27], and accepting S/K's tentative conjecture ἐλαττοῦν in place of Haloander's λαβεῖν.

¹ In this interesting constitution, the new Emperor Tiberius II seeks to prevent the seizure of estates and other properties whose owners had just died. The period between the death of a landowner and the formal transmission of ownership to his heirs was one in which an estate was always vulnerable to encroachment or seizure, and Justinian had legislated in *J. Nov.* 17 c. 8 to prevent similar ruses on the part of covetous neighbours and powerful landowners, eager to take advantage of any temporary confusion as to who possessed title, to purloin an estate (see Sarris (2006), p. 210). It is perhaps significant that this law appears to have been primarily aimed at the managers of imperial estates and provincial officials, whom, by inference, it identifies as the primary culprits of such misdemeanours (see also Kaplan (1981)). As noted below, the constitution would suggest that Tiberius II was engaged in a deliberate programme of imperial emulation, seeking to re-connect to the age of Justinian so as to distinguish his regime from that of his disastrous predecessor Justin II. It is perhaps also significant that this law marks the last full imperial constitution proper in the Greek collection of the novels, and (as noted in the Introduction) that the collection may well originally have ended with this law.

² It was standard practice for those asserting ownership of a property to erect signs on it claiming it to be theirs: see *J. Nov.* 29 c. 4.

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We therefore decree that all are to enjoy their own property and rights in full, and to pass them on to their heirs. No-one else at all is to encroach on their property, to involve their successors in loss, or to put notices or seals on properties otherwise than as envisaged by our laws. We are also confirming calls to their successions in intestacy, and not abrogating their last wishes when those are lawfully issued. Given that we are constantly vigilant, and taking thought, to ensure well-regulated law for our subjects, and that our Majesty's preoccupation with caring for them is something so strong, how could we not also concern ourselves with this aspect of their affairs, and be active in imparting our beneficence to them? These actions, we are convinced, are what is pleasing to God; they are what we call justice; and we are sure that it is as a result of them that our reign will be secure, and free from disturbance.

This law, then, is to be numbered with the rest of our reforms.³ May the subject population acknowledge thanks to God, and after him to us, for having been freed from its previous causes of distress, and given the benefit of such concern on our Majesty's part; and may the Divinity be propitiated by prayers, so that we may also defeat our enemies and impart even more and stronger security to our subjects.

Conclusion

Accordingly, the Most Illustrious *curatores*⁴ of the divine estates, and those entrusted with the direction of offices both high and low, both in this fortunate city and also in the provinces, are to uphold our decisions, manifested by means of the present divine law; they are to have the

³ The wording of the novel would here seem to suggest that the new Emperor Tiberius II had a concerted programme of legal and provincial reform in mind, perhaps with a view to associating himself with the legacy of the Emperor Justinian which the now discredited Justin II had so disparaged. In this context, it is worth noting the similarity in focus and wording between Tiberius' *J. Nov.* 161 (dating from 574) and Justinianic legislation such as *J. Nov.* 8.

⁴ '*Curatores* (supervisors) of the divine estates' = *curatores domorum divinarum*. The management of imperial estates of the *domus divina* (on which see *J. Nov.* 30, note 36 and *J. Nov.* 148, note 8) was of major concern to Tiberius II: in another constitution (found in the *Codex Marcianus* but not the collection of 168 novels), he complained of how landowners from throughout the empire had petitioned him complaining of acts of illicit patronage on the part of the managers of such estates, who were seizing the property of others and making it their own. Such managers are likely to have been drawn from the ranks of the imperial aristocracy of service (see Kaplan (1981) and Sarris (2006),

prospect of both confiscation and capital punishment, if they contravene what we have decreed. Your distinction will therefore post up our present divine law in prominent places in this fortunate city, and will also send it to the provinces by making use of the customary orders on the subject.

<Promulgated in December, indiction 8⁵ in the reign of Tiberius >

[Dated as in Theodorus] 574

pp. 192–3). Tiberius' attack on such interests is, again, highly reminiscent of Justinian's reform programme.

⁵ 'Indiction 8' = the eighth year of the current fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014) p. 311.

165 | **Sea-view; general directive addressed to the
Most Illustrious prefect Domnicus¹**

[Greek only]

[No heading]

Demetrius has informed us . . .

The view seawards should not only be clear up to a hundred feet in front, but also to the side, with no new interference. This is an addition made by the present directive to the constitution of Zeno, which it upholds,² and is an interpretation of the novel.³

[No date]

¹ A highly fragmentary portion of a novel relating to the same subject as *J. Nov.* 63, to which it refers. The Domnicus to whom it is addressed may be the Praetorian Prefect of Illyricum addressed in *J. Nov.* 162 (= *PLREIIIA*, p. 415 (Domnicus 2)). For further discussion, see Saliou (1994), pp. 238–42.

² A reference to *Codex* 8.10.12.

³ See *J. Nov.* 63 of 538, which this fragmentary law evidently post-dates.

*Flavius Theodorus Petrus Demosthenes, Most Magnificent prefect of the sacred praetoria, ex-prefect of the sovereign city and ex-consul, Flavius Faustus and Flavius Stephanus, to Flavius Ortalinus, Most Distinguished consular of Lydia*²

¹ The wording of this prefectorial edict is far from clear, and, accordingly, it has often driven commentators to despair (see Van Der Wal (1998), p. 27, note 9 and Stein (1949) 2, p. 209). It concerns the legal mechanism of ἐπιβολή or *adiectio sterilium*, whereby land which, from the perspective of the state, was deemed unproductive (i.e. taxes on it were not being paid) was compulsorily assigned to other taxpayers, who thereby acquired ownership of it (see *Codex* 11.59, Monnier (1892–5) and Lemerle (1979), p. 8).

In a village community, such land would be assigned to the neighbours of its original owner. This edict begins to make sense, however, once one realises that it concerns not village properties (described in *J. Nov.* 128. c. 7 as ὁμόκησσα χωρία' or properties united by virtue of being placed on a single tax roster or *census*), but rather ὁμόδουλα χωρία or ὁμόδουλα κτήσεις, meaning properties that had originally formed part of a large estate and thus which had been subject to a single master, but which had then been alienated or sold off (for the distinction, see Lemerle (1979), p. 19). The edict sets out how, in the event of such land becoming unproductive, its fiscal liabilities were initially to be passed to the heirs of the owner; failing them, it was to revert to its previous owner or his heirs; or ultimately, if they could not pay the taxes incumbent on the property, it could be charged to anybody who had acquired land from the original estate at any time.

In practice, the net result would have been that if a landowner sold land to a farmer or peasant who then fell on hard times, he would be obliged by the state to take it back. Given that the original landowner or his estate would have been allowed to keep the proceeds of the initial sale, this could actually be to their advantage and would have facilitated the cohesion of estates over time by enabling households to sell off land in one generation but then retrieve it in the next (see also *J. Nov.* 168). The fiscal mechanism of the *adiectio sterilium*/ἐπιβολή would remain central to the workings of the medieval Byzantine state for so long as the central government made a concerted effort to collect such taxes (on which see Sarris (2012)). For a further discussion of this law and related issues, see Jones (1964), p. 815 with note 105.

² For 'Demosthenes', see *PLREIII*, p. 395 (Demosthenes 2) and *PLREII*, pp. 353–4 (Fl. Theodorus Petrus Demosthenes 4). According to Procopius' *Secret History*, he was a leading senator in Constantinople whose estates Justinian and Theodora ultimately acquired by means of a forged will (*Anecdota* 12.5). For the other officials named, see *PLREII*, pp. 452 (Faustus 6), 1032 (Fl. Stephanus 25) and 813 (Fl. Ortalinus). Lydia was a province in western Asia Minor. A vivid description of the sometimes brutal realities of tax-collection within the region in the early sixth century is provided by John Lydus (*De Magistratibus* 3.58).

Preamble

Wherever it may be necessary, provisions in laws and in directives of our high offices must be duly made clearer to taxpayers,³ so that no problem arises for them. Among other matters, this is particularly so over the impost⁴ of unproductive lands.

Some think it fair that such impost should be put onto the closer and contiguous holdings of those who possess productive lands from the same estate;⁵ others contend that they should be made to revert to the previous, older estate holdings;⁶ others, again, take proceedings against all the previous landowners together, indiscriminately. Impelled by actual experience in these matters, we have thought it right to arrive at the correct, just determination of them, and to render them clear and straightforward for taxpayers.

1

Accordingly, should anyone, for a reason recognised by law, ever alienate land, an estate property, plots or an entire holding and then later on, at his death, pass on his estate to outsiders⁷ or to children, and should they in the same way alienate an estate property, land, plots or an entire holding from the estate to which they have succeeded, and what was alienated by the successors falls into unproductivity, so that there is occasion for the impost of unproductive lands, we command that the burden of the unproductivity of estate lands is not to be imposed on all the previous owners at once, nor contrary to the order of succession. Instead, the impost is to be received first by the recipient – from the deceased's children, or extraneous successors – of the land that has now fallen into unproductivity, and by his immovable property.⁸ If he and his existing holding prove to be indigent, the burden is to be transferred to those who passed it on to him.⁹ If their holdings also are inadequate for the additional payment of tax-

³ 'Directives (Greek τύποι) . . . must be made clearer to taxpayers': typically of the taxman, what follows is only marginally clearer than mud.

⁴ 'Imposition': Greek ἐπιβολή.

⁵ I.e. neighbouring landowners who had also acquired land from the estate.

⁶ 'Estate holdings' = (Greek) ὁμόδουλοι κτήσεις (for which see Lemerle (1979), p. 19).

The inference seems to be that some favoured pursuing those who owned the estate from which the now unproductive land had been alienated.

⁷ 'Outsiders', i.e. persons unrelated or from outside the family: Latin *extranei* (see *J. Nov.* 1, note 1).

⁸ I.e. in the first instance the charge is to be imposed on the heirs of the person who had acquired the land now deemed unproductive.

⁹ If the heirs of the owner of the unproductive land are unable to bear the charge, it is to revert to the person who sold or transferred the land to him.

contribution,¹⁰ recourse must then be had to the first secure owner, the one who originally passed it on to his children or to outsiders and his immovable holding, should his estate be adequate for it; and finally, in consequence of their all being indigent, to the one who originally bought, or took over in any lawful way, the estate property, land or plots from the first owner.¹¹ It would be the same story even if there were several intervening successions; as long as the nearest one is solvent, it is inappropriate to cause any trouble for those who had acquired the holdings in earlier times, or for their property.

That, then, is how these issues are to be determined.

On anyone on whom they are imposed, whether there are several in the same succession-order or only a few, the impositions of unproductive land, however made, are to be in proportion to their existing holdings of productive land from the same estate; and the burden of tax-contributions for it is only to be imposed on them at the time when their proportion of the unproductive land has actually been transferred to them, or when they have refused its transfer to them: before that, it is quite unjust for anyone to be burdened with tax-contributions on it.

Conclusion

Thus your distinction must see to it that enquiries into these matters, and proceedings on them, are conducted in accordance with that principle. Should these provisions not be observed as we have determined, know that you, together with the staff under you, will pay a fine at ten pounds of gold, or probably also incur another, and heavier, penalty, while even so our decisions must still be enforced, all the same. Nicomedes¹² has also been despatched from our office for that purpose.

[No date: probably 521 or 529¹³]

¹⁰ 'Additional payment' (Greek ἐπιφορά) is consequent on ἐπιβολή, in that the imposition of unproductive land on another landowner carries with it the demand for payment of tax on that land as well as his own.

¹¹ If the original owner or his beneficiaries are unable to bear the impost, the tax-collectors are to seek out anybody else who acquired land from the original estate (by purchase or any other means) and assign it to them.

¹² The figure of Nicomedes is otherwise unattested.

¹³ For the possible dating of this edict, see the comments of Martindale *PLREII*, p. 354.

167 | **Method of installation in possession; highly important general directive of the Most Illustrious prefect Bassus¹** [Greek only]

*The Most Magnificent prefect Flavius Comitas Theodorus Bassus says:*²

Preamble

We wish all other regulations of our high offices that are manifested in public documents, or other general directives³ of our authority – dealing either with how local governors, personnel and tax-collectors in general must behave toward the subjects, or with the rectitude of the subjects themselves in their transactions, and their compliance over dutiful taxes – to retain their own force, by our present ordinance as well; but we have realised that there is one point on which we must make an even clearer determination, as follows.

1

Should anyone produce testimonials from an official with the aim of laying claim to an immovable property, in this sovereign city it will perhaps be enough for the office to attest that possession of this property is vacant, as long as the said office also states that it has been informed by neighbours that no-one has taken possession⁴ of these properties. For properties

¹ This edict sets out the nuts and bolts of how possession of a property, or ownership of it, was to be asserted. The latter part of the edict primarily concerns agricultural property, and reveals that peasants, neighbours and employees of the estate over which ownership was being claimed were accorded an important role in vouching for the legitimacy of a transfer of ownership. The important role played by the ‘defender of the city’ (*defensor civitatis*), the local bishop, and written instrument in such property transactions are also clearly attested.

² Flavius Comitas Theodorus Bassus served as a temporary Praetorian Prefect of the East in 541, and then held the post properly in 548. Unusually, he is praised by Procopius for his honesty (*Anecdota* 21.6–7). See *PLREIII*A, p. 178 (Fl. Comitas Theodorus Bassus 4). A copyist of the heading of the Greek text, evidently confused by the length of his full name, thought Bassus to be two people, and thus put both the verb and the noun for ‘prefects’ in the plural. The heading has been corrected here.

³ ‘Directives’ = Greek τύποι : see *P.Oxy.* XVI 1829.

⁴ ‘Possession’ (Greek νομή, Latin *possessio*) was distinct from ownership (Latin *dominium*), although possession could become ownership by virtue of *temporis praescriptio*: see Berger (1953), pp. 636–7.

situated in the provinces, it will similarly be requisite for records to be drawn up to the same effect under the defenders⁵ of the locality, also with attestation from neighbours; we then give those who have requested testimonials licence to take the properties in hand. We also consider attestations from the defenders in the provinces to be necessary for those intending to take a property as a result of any kind of agreements, and to put such possession or ownership into their own hands; thus, when records are drawn up under the defenders, the conveyance will be made manifest whether there may perhaps be written instructions, or whether the conveyance may be going to take place without instructions; in that case, the agricultural workers or overseers must additionally assent, on the records, that they know about the new possessor and owner, and have complied with the intention of the conveyor, who has told them to do this.⁶ Where there is no defender present, we direct that such records are to be drawn up by the Most Distinguished governor of the province, or else, if it happens that the provincial governor is a long way away from the area where the conveyance is taking place, by the most holy prelate⁷ of the city under which lies the holding for which such transaction is taking place. In this sovereign city we consider that what are called ‘enforcement orders’,⁸ as well as certifications drawn up for the conveyance, give the recipients sufficient weight.

Conclusion

Accordingly, we instruct your magnificence and the staff under you, and all who live in the province governed by you, to pay attention over one and all of those who have made conveyances in a similar manner.

[No date]

⁵ ‘Defenders’ = *defensores civitatum*. See *J. Nov.* 15.

⁶ It is interesting that the legitimacy of the transaction has to be agreed to and recognised by not only the estate’s neighbours, but also the resident employees of the late landowner. Such enquiries amongst peasants as to who was the true owner of the lands they worked or of neighbouring properties are also recorded in the Middle and Late Byzantine documentary sources from Athos: see, for example, the ‘Act of Judge Nicolas’ (dating from 996) (= document 10) in Lefort, Oikonomides and Papachryssanou (1985) 1, pp. 163–72.

⁷ ‘Prelate’ = bishop. It is interesting that the bishop here acts as deputy for the *defensor civitatis*, whom he would effectively supplant: see *J. Nov.* 128, note 44.

⁸ ‘Enforcement orders’ = Greek ἐκβασμοί or Latin *exsecutiones*.

[No heading]

... ‘We order that it is only <rural> estate properties that are to be entered onto the census or register, definitely not houses or other possessions.² The additional payment applies to village properties.³ The people’s chief will observe this,⁴ as will the staff under him and the

¹ This curious edict opens with a fragmentary instruction or rescript addressed to a specific locality, conceivably on the fringes of the empire or in recently acquired territory where Roman-style taxation may not have existed hitherto (see below). It appears to explain that only land belonging to an estate was to be entered onto the tax register, and not any other type of property belonging to the estate, and that lands which belonged to the members of a village community were liable to the compulsory re-assignment of taxes (ἐπιφορά = ἐπιβολή or *adiectio sterilium*), possibly referring to the re-assignment of the taxes of any neighbouring estate which happened to default (thus connecting the edict thematically to *J. Nov.* 166). This set of specific instructions in turn appears to have inspired a general edict which constitutes the rest of the text, clarifying that, both with respect to villages and estates, taxes incumbent on the land could only be compulsorily re-assigned to other peoples’ landholdings, and not to any other type of property (see also the similar regulation contained in *J. Nov. Appendix* 4 c. 1).

² ‘Rural estate properties’ = Greek χωρία. The inference would be that only land was to be registered for fiscal purposes, and not any other type of property.

³ ‘Village properties’ = ὀμόκηνα χωρία, in contrast to properties that formed part of an estate (see Lemerle (1979), p. 19). Alternatively, the phrase might signify other estates in the same tax district (see Jones (1964), p. 815 with note 105). However, Jones’ suggestion would appear to overlook the fact that many estates (as well as certain large villages) would have been regarded as possessing ‘autopract’ fiscal status (meaning the right to collect and transmit their own taxes to the imperial government). This effectively granted them extra-territorial status (see Sarris (2006), pp. 103–14 and 150–4 and Tedesco (2013)).

⁴ ‘The people’s chief’ = (Greek) τοῦ ἔθνους ἡγούμενος. This would be an unusual way of referring to a provincial governor, possibly suggesting that this fragmentary edict was meant to apply to a frontier territory, as the term ἔθνη was often used of ‘barbarians’. A very similar terminology, for example, is applied by a number of late antique ecclesiastical historians to the leaders of groups of Arabs living along the empire’s eastern frontier, and it is thus plausible that this law was addressed to Arab allies or semi-incorporated Arab subjects (see, for example, Sozomen *HE* 5.11). It is also worth noting in this context that the Latin of the *Authenticum* describes the Arab phylarch mentioned in *J. Nov.* 102 c. 1 as ‘the people’s judge’ (*gentis iudex*). For the empire’s dealings with its Arab clients at this time, see Fisher (2011) and Edwell et al. (2015). Alternatively, the term could apply to the official responsible for a fiscal community (i.e. an estate or village) enjoying privileged fiscal status. The word ἔθνος is attested in this sense, for example, in a sixth-century *scholion* to *Digest* 22.3.1 (see Laniado (2015), pp. 1–33 and 129–63). See also *J. Edict* 8, note 6. The authors are grateful to Professor Geoffrey Greatrex and Mr Christopher Lillington-Martin for discussion of aspects of this text.

agents⁵ for the public tax-contributions, with the prospect of a fine at thirty pounds of gold.’

Now, too, we are making general directives, in conformity with this mandate, that no-one is to pay an impost on houses, civic food-supplies or anything else with respect to estate properties or village properties,⁶ or anything else not inscribed in the *census*.⁷ This is to be observed: it is to be put into effect. Contraveners of it are to pay a fine of ten pounds of gold, inflicting a substantial loss on their property. Victims of this crime will have an action against the contraveners, their heirs and their property, for having suffered loss illegally. The Most Distinguished governors, the staff serving under them and defenders everywhere in the world will observe these general orders of ours, with the prospect of the penalties determined against them.

[No date]

⁵ ‘Agents’ (Greek πράκτορες, Latin *executores*) were officials sent out by the praetorian prefect, typically for the purposes of tax-collection: see also *J. Nov.* 26 c. 4.

⁶ ‘Estate properties or village properties’: see *J. Nov.* 128 c. 7 and Lemerle (1979), p. 19 (although note the possible alternative suggestion proposed by Jones (1964), p. 815 with note 105). For civic and other allowances conceived of as a form of real property, see *J. Nov.* 88 c. 2 and Jones (1964), p. 697. The implication appears to be that the tax on agricultural land could only be compulsory re-assigned to other peoples’ land tax.

⁷ ‘*Census*’ = the tax register.

PROOF

Edict 2 | **Governors not to grant a licence of immunity for fiscal matters¹**

[Greek only]

The same Sovereign to John, prefect of praetoria

Preamble

From what your distinction has referred to us orally, we have become aware that provincial governors have caused considerable difficulty to the gathering of the public taxes by granting the licence of immunity to whomever they wish; and that, under the pretext of protection by reason of that right, those receiving the public tax-payments are not sending out money that has been paid to them, but are embezzling the greater part of it, and, when money is due from them, are making use of the licence of immunity that has been wrongly granted to them.

1. Accordingly, we decree, by the use of this divine pragmatic directive to your excellency, that by means of orders of your own you are to forbid all Most Distinguished provincial governors to grant the licence of immunity in fiscal cases. For private matters, alone, they may grant licence of immunity to petitioners, for a specified period; they cannot constantly go on renewing it when the time-limit elapses.

All are to be aware that if they do receive such licence from governors, it will do them no good; anyone with orders to pay in the public taxes due

¹ 'Licence of immunity' or 'licence of asylum' = Greek λόγος ἀσυλίας. This appears to have originated as a letter of safe-conduct granting a form of 'portable asylum' that could be issued by either bishops or governors. Such *logoi* are attested in the papyrological record from Egypt in documents written in both Greek and Coptic, and were a major concern of Justinian's edict on Egypt (*J. Edict* 13): see Rapp (2005), p. 258 and, discussing the Coptic evidence, Libesney (1939). In this edict (dating from some time before April 535), Justinian responds to a number of issues that had been reported to him orally by the Praetorian Prefect John the Cappadocian: provincial governors, we are told, had been granting licences of immunity from prosecution to those charged with tax-collection (which would have included landowners), that certain of them had taken advantage of to embezzle tax revenues; officials sent out from Constantinople to crack down on heretics had been extorting bribes from tax-payers; and the gubernatorial office of *Phrygia Pacatiana* in central Asia Minor was under-staffed. The edict thus reports the process whereby information was relayed between prefect and emperor, and how such information initially elicited short-term measures (such as the present rescript) which acted as a precursor to more full-fledged and carefully considered legislation: it is instructive, for example, that *J. Edict* 1 and 2 can each be seen to anticipate, inform and underlie *J. Nov.* 8 of 535.

from them will have freedom to put them under arrest, and the licence given them locally will be of no advantage to them. Only those who receive licence of immunity by divine command from us, or by orders from your excellency, are to have protection.

1

We have also been informed by your excellency that there are people who have gone out to various provinces to search out those who have abandoned themselves to the error of the heretics, have arrested a large number of taxpayers on such a charge, and have taken a very great deal of money from them by way of *sportulae*.² Consequently, we decree that those who have dared to do any such thing are to be arrested and brought before the Most Distinguished governors of provinces; on conviction, they are to pay out what they have received, repaying the *simplum*³ to those who have suffered their depredations, while the *duplum* is to be taken into the public treasury.

1. According to another report put before our Piety by your excellency, numbers enrolled in the local staff of the province of Phrygia Pacatiana have fallen away, with very few indeed left in it, and for a long time the vicar of the diocese of Asiana has also taken over the office of the Most Distinguished governor.⁴ Consequently it is those assigned to the staff of the vicariate, serving under the Admirable vicar,⁵ who are to manage the bringing in of the public taxes, at their own peril and that of the property they own. Under the command of the vicar, present and eventual, those enrolled in the vicariate staff are to have licence to collect the public tax-contributions, and cause them to be paid over to the public treasury.

² '*Sportulae*' = payments or fees, in this instance akin to Italian *tangenti* or bribes. The practice of imperial officials taking bribes not to impose imperial law on heretical or non-Christian communities was still a cause of complaint at the end of the sixth century, when Pope Gregory the Great reported that the governor of Sardinia had received such bribes in return for casting a blind eye over the religious activities of members the surviving pagan communities on the island: see Gregory *Ep.* 5.38 and de Ste Croix (1954), p. 46.

³ '*Simplum*' = the simple amount; '*duplum*' = double. The offending official was to pay back to the taxpayers the sum he had extorted from them, and was to pay twice the amount to the government by way of fine.

⁴ The emperor here alludes to a shortage of officials serving in the province of Phrygia Pacatiana in central Asia Minor (on which see *J. Nov.* 8 c. 2).

⁵ The vicariate of Asia would be abolished by Justinian in *J. Nov.* 8 c. 2 of April 535, which this undated edict thus evidently pre-dates: see also *J. Nov.* 20 c. 6 of 536.

2. In the accounts that the present provincial receivers draw up in each province, we decree that they are to write down separate details of the money paid to them, making a distinction between that paid to them for what pertains to your excellency's exchequer and that for what pertains to our divine *largitiones*;⁶ by means of such accounts, they are also to show the total amount paid. No-one is to have licence to transfer money from one set of entries to others.

Conclusion

Accordingly, your excellency is to order our decisions, manifested by this divine pragmatic directive, to be put into effect.

[No date]⁷

⁶ The emperor here decrees that provincial tax-collectors or tax-receivers (ὑποδέκται) are to distinguish in their accounts between taxes collected for the praetorian prefecture and taxes collected for the *Sacrae Largitiones*. For the different nature of the taxes collected by each bureau, see Jones (1964), pp. 448–62 and 427–38, respectively. Essentially, the praetorian prefect was responsible for the tax on land and those who worked it and the *Comes Sacrarum Largitionum* was responsible for most other taxes and charges.

⁷ This edict was evidently issued before *J. Nov.* 8 and after John the Cappadocian's appointment as Praetorian Prefect (i.e. between April 531 and April 535). See Lounghis, Blysidu and Lampakes (2005), p. 218 (under entry 828).

[No heading]

Preamble

We wish to rid Armenians also of their former injustice, and bring them wholly under our laws, giving them the equality that they should have.

1

We have recently found out that there is a barbaric, impertinent law among them, unbecoming to Romans or to the justice of our realm, that inheritance from parents should extend only to males, not to females. For that reason, we decree, by means of the present divine law addressed to your magnificence,² that the successions are to be similar: everything that has been ordained concerning men and women in Roman law is also to apply in Armenia. After all, the reason that we despatched our laws over there was so that Armenians would conduct their lives with regard to them.

1. However, it is quite unacceptable to unsettle everything that has preceded. For that reason, we decree that this law is to be in force from the date of our pious reign;³ successions to those deceased from that date till now are to be conducted on this basis, unless it happens that the parties have already made settlements of claim with each other, or otherwise come to a mutually reconciled conclusion. If anything like that has taken place, we decree that it is to remain in its own force, and not be unsettled in any way.

2. From the stated date, we also wish daughters to share in successions to the estate properties known as 'patrimonial';⁴ in the event that any should

¹ In the same way that *J. Edict* 1 and 2 anticipate and inform *J. Nov.* 8, this law (dating from 535) anticipates *J. Nov.* 21 of 536. It extends Roman inheritance law to the recently more fully integrated regions of Armenia, where existing legal tradition had only permitted inheritance by males. See *J. Nov.* 21, note 1.

² The addressee was probably the Armenian governor Amasaspes (on whom see Procopius, *Wars* 2.3.5 and *PLREIIIA*, p. 8, under the entry for Acacius 1).

³ In *J. Nov.* 21 c. 2 Justinian would backtrack from this attempt to apply the reform of Armenian inheritance law retrospectively as it was clearly too legally and politically problematic: see *J. Nov.* 21, note 4 and Adontz (1970), pp. 144–5.

⁴ 'Patrimonial': a reference to the clan-held *nakharar* estates of Armenian custom: see Adontz (1970), pp. 151–4.

be found to have put down their daughters as heirs, despite their not being called to inheritance in intestacy,⁵ we wish both the daughters and their offspring to share in the succession to patrimonial properties.

Conclusion

Accordingly, your excellency is to take pains both to observe and to put into effect our decisions, manifested by means of this divine law, so that our laws are in force throughout, and paramount. This law is to begin, as we have just said, from the commencement of our reign, and is to be co-extensive with all time, being in future current in all respects, and observed by all.

Given July 23rd in the consulship of the Most Distinguished Belisarius

535

⁵ 'Intestacy': written wills do not appear to have been a feature of Armenian legal custom: rather rights were inherited according to a collectively understood order of succession determined by birth, blood kinship and seniority (see Adontz (1970), p. 152).

Edict 4 | Phoenice Libanensis: governorship¹

[Greek only]

The same Sovereign to John, for the second time Most Illustrious prefect of the sacred praetoria of the East, ex-consul, patrician

Preamble

There is already a law of ours² stating that offices must not be paid for, and we confirm that this is to prevail universally.

1

In our all-embracing consideration for both the compliance of our taxpayers and the protection of our regions, we have combined some governorships, divided some, and altered some into one or another form of

¹ As noted by Shahid (1995) 1, pp. 198–200, this edict was issued in May 536: that is, in the same month and year as *J. Nov.* 102 on Arabia, alongside which it should be read.

It concerns the administration of the frontier territory of inland Phoenicia or *Phoenice Libanensis*, which had its capital at the Syrian city of Emesa (Homs), where the governor resided: see Procopius, *Buildings* 2.11,10; Evagrius, *HE* 3.34 and Malalas 13.37.

The measures contained in the edict thus formed part both of the emperor's broader programme of provincial reform, and his specific upgrading of the administrative and military infrastructure of the eastern provinces that were most prone to Persian attack (see Sarris (2011a), pp. 145–53 and Greatrex (2007)). As in *J. Nov.* 102, in this edict, the emperor elevates the rank of the civil governor to *spectabilis*, places a military force directly at his disposal, and emphasises his autonomy from the local military commanders or *duces*. The edict also alludes to the role of Arab federates under the command of phylarchs in the defence of the province. In contrast to the arrangements for the province of Arabia, however, where the phylarch would appear to have been accorded the high social honorific and rank of *spectabilis* (Greek περίβλεπτος), the phylarchs of this province are only accorded the comparatively subordinate rank of *clarissimi* (Greek λαμπρότατοι) and thus, by inference, were subject to the commands of the *duces* as well as the civil governor.

The phylarchs appear to have been members of the Ghassan (or 'Jafnid') confederacy (see Shahid (1995) 1, p. 199, Fisher (2011) and Edwell et al. (2015)). The edict is also of interest in terms of revealing how the provincial administration was paid for and supported: the governor evidently had shares of the locally collected tax revenues directly assigned to his needs after a manner reminiscent of certain fiscal mechanisms also encountered in Middle Byzantine taxation: see Bartusis (2012), pp. 74–8 and Brandes (2002), p. 66. For a further discussion of this edict, see also Jones Hall (2004), pp. 113–16. For the history, climate and monuments of early Byzantine Syria, see Todt and West (2014) 1, esp. pp. 116–27, 141–59, 293–330 and 468–534.

² A reference to *J. Nov.* 8.

organisation, simultaneously making some of them higher, and furnishing them with titles more important than their currently existing ones, by introducing praetors, proconsuls, *moderatores* and *comites*, in line with ancient usage,³ into our realm; these actions have all been for its benefit. For this reason, we have also thought it necessary to raise the level of the governorship of Phoenice Libanensis from praesidial to that of *spectabilis*;⁴ to give it the status of *moderator*; and to assign it stipends at the rate of ten pounds of gold. The holder will have nothing to pay to the public treasury for this promotion. The administrative officer of the *scrinium* of Phoenice will disburse to the Admirable *primicerius* of the Most Distinguished *tribuni* of the *notarii*, at the time, the sum of just ten pounds of gold annually, out of the annual fixed tax payment of the said province, in respect of the gift, known also as *beneficium*, that was previously given him; and he is to rest content with that alone.⁵

The *moderator* will keep himself clean of all payments. He will have the assistance of other troops to the extent that our divine constitution gives him; . . .

2

. . . but at his own particular disposal, we are giving him the unit of most gallant *Tertiodalmatae*, which is stationed in Phoenice.⁶ It is to be under his command, act as his escort and obey all his orders issued both for the collection of the taxes and for the conduct of fiscal affairs, and also for keeping the cities free from hardships. We decree that your excellency, in the knowledge of all this, is to authorise the payment of the ten pounds of gold for stipends out of the revenues of the province, because an order has been given for codicils from us to be made out for the head of this office.

³ 'In line with ancient usage': Justinian's provincial reforms had been justified by means of the revival of ancient titles and by appealing to (largely spurious) antiquarian precedents: see discussion in Maas (1986).

⁴ '*Spectabilis*' = the second grade of senatorial rank.

⁵ The final sentence of this passage is a little obscure: the most likely meaning is that the *moderator* received his ten pounds' weight of gold from the financial officer of the administrative bureau (Latin *scrinium*) of the province, who deducted it from the fixed annual tax revenues (Latin *canon*). This payment, hypothecated from the tax revenues, was known as the 'benefice' (Latin *beneficium*). The payment was apparently transmitted by the senior officer or head (Latin *primicerius*) of the officers (*tribuni*) of the provincial bureau of notaries (*notarii*). 'Admirable' (Greek περίβλεπτος) = Latin *spectabilis* (the second senatorial grade). 'Most Distinguished' = Greek λαμπρότατοι (= Latin *clarissimi*: the third senatorial grade).

⁶ '*Tertiodalmatae*' = the third Dalmatian horse regiment, who were to serve as the *moderator's* personal escort, directly answerable to him rather than any other commander.

There is to be no reduction in what has been decreed as the annual sum to be disbursed from the person in charge of the tax-accounts, to the Admirable *primicerius* of the Most Distinguished *tribuni* of the *notarii*; nor is the *moderator* to have any further increase.⁷

1. The *moderator* is to give serious attention, first, to compliance over tax; secondly, to the good order of the cities; and thirdly, to justice towards individuals. All that we have included in the text of our divine constitution on the subject of appointment of *moderatores* and other governors is to be in place also for him.⁸

2. Should the said unit of loyal *Tertiotalmatae* move to other areas, on a command from us, it will be our care to appoint another unit for him instead, so that he in no way lacks the support that is accepted as adequate.

In the description that we have given, the Admirable *dux* has no role;⁹ we do not wish him to have anything to do with the soldiers specifically given to the Admirable *moderator*, nor with any civilian – neither with any occasion when they have lawsuits against each other, nor if a civilian should be prosecuted. We have given him no role in this matter, because there is a big difference between military responsibility and civil government, and they must be kept separate, just as the fathers of our realm ordained and established. The Admirable *duces*¹⁰ are to be aware that should they have the temerity to intervene in civil matters, they will lose even their control of military ones, and will be subordinated to this governorship. It is our intention that this office should be in no respect lower than that of the *dux*; as has been stated, it is to be in charge of the tax-exaction with full vigour, and also to be in charge of keeping ordinary people free from hardship; he is not to permit Admirable *duces* or Most Distinguished phylarchs,¹¹ nor any of the powerful

⁷ The emperor here re-iterates that the wages of the *moderator* and his staff were to be directly assigned from local tax revenues, in a fiscal procedure that would be referred to elsewhere and in the Middle Byzantine sources as the *solemnion*: see *J. Nov.* 128 c. 16, *J. Nov.* 149, Liebeschuetz (1996) and Bartusis (2012), pp. 74–8. The edict thus provides further evidence for the early Byzantine origins of certain key Middle Byzantine fiscal institutions and mechanisms.

⁸ A reference to *J. Nov.* 17.

⁹ The emperor here establishes the autonomy of the *moderator* with respect to any local military commander or *dux*, who also carried the rank of *spectabilis*.

¹⁰ There were two military commanders or *duces* stationed in the province: one at Damascus and the other at Palmyra (see discussion of such *duces* in Greatrex (2007)).

¹¹ The phylarchs were the commanders and leaders of local Arab troops. The Arab leaders of this province are here styled Most Distinguished (Greek λαμπρότατος, Latin *clarissimi*), and were thus presumably subject to the commands of the local *dux* who bore the higher rank of *spectabilis*. See discussion in Shahid (1995) 1, pp. 198–200.

households,¹² nor even our divine *patrimonium*, our divine *privata* or our divine household,¹³ to inflict any loss whatever on our taxpayers; he is neither to give way nor to falter, but is to be a courageous leader of our subjects, and to carry out every action associated with other *moderatores*.

That is how he is to administer affairs in general; . . .

3

. . . but there is something else that we wish to be done, and to be in force. It is that the Admirable *duces* are to have their stipends paid to them from whatever source the Admirable *moderator* of the province may authorise; doubtless their attention to business will not be so lax that they cannot even claim their own stipends.¹⁴ They are to know that if they should take any action in contravention of these provisions, they will pay a fine of twenty pounds of gold.¹⁵

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine law, into practical effect.

[536]¹⁶

Edicts 5, 6:

Edict 5 = *J. Nov.* 111

Edict 6 = *J. Nov.* 122

¹² 'Powerful households' (= Greek δυνατοὶ οἴκοι) = the households or estates of members of the local aristocracy.

¹³ 'Divine *patrimonium* . . . divine *privata*' = the crown and imperial estates of the *sacrum patrimonium* and the *res privata*, on which see *J. Nov.* 69, note 11 and *J. Nov.* 30, note 36, respectively; 'divine household' = the estates of the imperial household or *domus divina*, on which see *J. Nov.* 30, note 36.

¹⁴ For almost identically sarcastic criticism of such *duces*, see *J. Nov.* 102 c. 3.

¹⁵ Justinian here attempts to prevent the activities of military commanders or *duces* from destabilising frontier society in the province by declaring that they were to be paid according to instructions from the *moderator*, and thus were not free to simply source their own supplies by living off the land or engaging in compulsory requisition (for discussion of the disruptive consequences of which, see Sarris (2017)).

¹⁶ See note 1.

Edict 7

Pragmatic directive on contracts with bankers¹

[Greek only]

In the name of the Lord Jesus Christ, our God. Emperor Caesar Flavius Justinianus Alamanicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africus,² pious fortunate glorious victor triumphator, ever revered Augustus, to Julian³

Preamble

It is always in adverse circumstances that the effect of courage shows itself; so too it is when subjects are in difficulties that the Sovereign's careful administration is revealed. Our devout hope is that no adversity should ever befall our realm; but if either the mutability of human affairs, or the operation of the divine will, adds its impact to the troubles of mankind, the beneficent admonition imposed from above becomes an occasion for the exercise of beneficent concern by the Sovereignty.⁴ This is what has happened at the present time; it needs no telling, because the encircling

¹ In this important edict dating from 542 (and which thus appears to post-date *J. Edict* 9), Justinian responds to a series of petitions from the guild of bankers (Latin *argentarii*) of Constantinople (on whom see also *J. Nov.* 136 and *J. Edict.* 9). The edict reveals the great disruption and dislocation to financial and credit arrangements brought about by the advent of the bubonic plague (on which see Sarris (2002) and Meier (2016)) and the problems posed to members of the banking community by the sudden death of so many of their debtors. Accordingly, Justinian attempts to make it easier for the bankers to bring actions against the heirs and other beneficiaries of the deceased, and grants them fast-tracked access to a special court presided over by the Urban Prefect of Constantinople and the Count of the Sacred Largesses. In particular, the law allows greater credence to be given in legal proceedings to private documents which had not been subject to public registration or authentication. The edict thus provides further evidence for the growing emphasis in Justinianic law on written documentation (see the Introduction). At the same time, it alludes to the considerable use made of credit by even the highest ranking members of Constantinopolitan society, and the efforts they went to in order to keep such recourse to money-lenders private. On the importance of bankers in the sixth century, see Barnish (1985), Checkalova (1973) and Consentino (2015). For further discussion of this law, see Lokin (2001a), pp. 26–7, Luchetti (2004), pp. 151–76 and Consentino (2013).

² On Justinian's triumphant titlature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ On the basis of *J. Edict* 9, the Julian addressed by the emperor in this edict is likely to have been an Urban Prefect of Constantinople: see Consentino (2013), pp. 360–2.

⁴ The preface here repeats the trope common to Justinian's novels of imperial legislation being necessitated by the mutability of human affairs. See Lanata (1984b), pp. 165–88.

presence of death⁵ has spread to every region, making it unnecessary for anyone to hear about what everyone has undergone. Much, then, has happened that was unforeseen, which scarcely any other age could have brought about; and the enrolled members of the bankers' corporation have petitioned us, saying that this situation is seen, by some heirs and successors of some who have borrowed gold, silver or other specie from bankers,⁶ without a written contract, as an opening for refusing payment, in that the recipients of the loan are dead, and the heirs or successors themselves cannot be convicted on documentary evidence.

1

In our earnest desire to remedy this, we decree that those becoming liable in this way are, above all, to look towards clearing their conscience, by unequivocally avowing what has been paid by financiers to those into whose rights they have come; and any survivors are to do the same in respect of members of the association concerned. We order this to be done also by petitioners brought to court by their adversaries. Each side is to be aware that should it be proved to be in the wrong, either verbally by those who worked on the transaction,⁷ or by production on oath of the daily records, or by any other sufficient proof, those refusing payment will pay at double the amount which they fraudulently and intransigently denied, or about which they either concealed the truth or neglected to find it out.

2

A second head was referred to us by the said corporation of bankers: that when contracts of agreement, credit notes⁸ or statements of account,

⁵ 'The encircling presence of death': this appears to be a reference to the bubonic plague, which had just arrived in the empire. See Sarris (2002).

⁶ 'Bankers' = Greek ἀργυροπράται or Latin *argentarii*, on whom see *Codex* 8.13.27, *J. Nov.* 136, Checkalova (1973) and Consentino (2013). Theirs was one of the few guilds or corporations officially authorised by the imperial government (see *Digest* 3.4.1–2). Such officially recognised guilds were granted legal personality, including the right to bring collective legal actions and to hold property.

⁷ 'Those who worked on the transaction': the implication appears to be that the oral testimony of a banker's clerk is sufficient to overcome the claims to the contrary of the supposed debtor. Thurman (1964) suggests that this phrase may also refer to the slaves (οἰκέται) of either party through whom contracts were often agreed (see Van Der Wal (1998), p. 171 (entry 1117) with note 55, Thurman (1964), p. 111, citing *J. Nov.* 73 c. 7, and Sarris (2006), p. 161).

⁸ For papyrological examples of such 'credit notes' or 'cheques' (Greek πττάκια), see *CPR* VII 23 column II, VII 59, and Sarris (2006), pp. 92–3. They are also referred to in a fifth-century Constantinopolitan context by *De Cerimoniis* 1.91–415, where it is recorded how,

produced by the clients themselves and in their handwriting, subsequently become the subjects of dispute, the bankers should not be obliged to establish the trustworthiness of these by means of comparison with instruments drawn up publicly. Because their association gives credit to numerous people, especially well-born folk,⁹ who do not tolerate their own transactions being made public, and who presumably wish to enhance, rather than diminish, their importance in the eyes of outsiders, the bankers' claim that autograph documents¹⁰ made for these people must carry the same weight as instruments drawn up publicly.

1. Here, too, we take a middle course, which we wish to be adopted both by bankers against their opponents on such grounds and, conversely, by their adversaries against them. By this, we decree that if they are producing an autograph document of their clients' such that either the alleged author, or his heirs and successors, cannot deny on oath that they have been written by the person whose name they bear, and cannot enter a claim of non-payment;¹¹ and should the banker, in addition, be able to establish the genuineness of its contents from a public instrument – or else, should he have disdained to do that, but the adversary should be unable to prove it a forgery by comparison with another document, made publicly – autograph documents confirmed by what has been agreed and is not at issue, and by the witnesses' signatures, are then to be compared with autograph documents produced by the bankers, or by the clients against them; they are then to be confirmed as having no less weight than public instruments, on the ground that all they lack is the form, not the

in 457, as part of the ceremonial associated with his accession to the throne, the emperor Leo I was presented with a *pittakion* for 3,000 lb of silver by the Senate and Urban Prefect.

⁹ 'Well-born': the edict here casts interesting light on the extent to which even members of the upper classes in Constantinople drew upon such credit arrangements, but so as to preserve their reputation, preferred to do so through private instruments and arrangements, perhaps agreed through the intermediary persons of their slaves (see Sarris (2006), p. 161 for papyrological examples of the use of slaves in contractual contexts). Such borrowing and lending on the part of the politically powerful is also alluded to in certain of the sixth-century literary sources: Procopius, for example, relates how the Empress Theodora and her entourage mocked an unnamed aristocrat of patrician rank whose debtors were known to be causing him financial embarrassment by failing to repay what they owed him (*Anecdota* 15.28–35). Likewise, John Lydus relates how the Emperor Anastasius intervened to write off the debts owed by one senator to another: a sum which amounted to '1,000 lb of gold' (*De Magistratibus* 3.48).

¹⁰ 'Autograph documents' (Greek *ιδιόχειρα γράμματα*): as noted by Thurmann (1964), p. 111, this term appears to signify privately rather than publicly drafted documents: see *J. Nov.* 49 c. 2 and *J. Nov.* 73 c. 2.

¹¹ 'Claim of non-payment' = a defence of *non numeratae pecuniae*. See Berger (1953), p. 459.

reliability.¹² No prejudice against the suppliants is to arise from there being no hypothecs, nor any named heirs or successors, contained in the written agreements with them made by their clients.¹³

3

If any of the deceased, through poverty, have had no heirs but have left debtors, or if any property that had belonged to them is found either on deposit or under hypothec to anyone, members of the said corporation of bankers – and, equally, clients launching similar actions against them – will have licence to obtain satisfaction for themselves out of that property by launching the actions to which they are entitled.¹⁴ Similar rights will be upheld for bankers also in the case of clients still living, and in debt to them; thus even when there is no mention of hypothec in the agreements, it is open to the bankers, as plaintiffs or as defendants, if they wish, to launch hypothecary actions nevertheless, because these actions correspond in nature with the contracts between bankers and their clients. The bankers will, of course, take precedence over creditors of later date, because it is in fact unfair, and alien to the justice of our age, for those who do beneficial service to be deprived of what is theirs, while debtors luxuriate in what belongs to others.

4

We are adding a further point to our support for bankers. A serious obstacle to transactions made by them has been our novel constitution which orders these providers of a beneficial service not to proceed against those who have bought anything from their debtors, before the principal debtors have been proved insolvent as a result of cession;¹⁵ this has been

¹² Justinian here loosens the stringency of the existing law to allow private documents to be used to authenticate other private documents, and not just publicly or notarially produced ones (see Van Der Wal (1998), p. 172 (entry 1121) with note 61).

¹³ The emperor here clarifies that henceforth a banker who has lent money always has a general hypothec over the property of the debtor (i.e. can claim security from the entire estate or any part thereof). See Berger (1953), p. 490. Justinian here grants the bankers a right, therefore, which he had expressly denied them just seven years earlier in *J. Nov.* 136. See Van Der Wal (1998), p. 104 (entry 732).

¹⁴ The effect of this provision of the edict is that when the heirs to the debtor are found to be insolvent, the banker has a right to pursue any party that was indebted to his client or reclaim any property that had been pledged as security or by way of deposit. See Van Der Wal (1998), p. 104 (entry 733).

¹⁵ ‘Cession’ (Greek ἐκστρασις) = Latin *cessio (bonorum)*: the voluntary surrender of property in order to avoid the infamy that would have been associated with forced sale. See Berger (1953), p. 387. Justinian may here be referring to *J. Nov.* 4 c. 1, but Justinian had already

very onerous for them, because purchasers, more or less habitually, try to find sureties, and shield themselves with other cover, whereas neither custom, nor the speed with which transactions are executed, permit the bankers to do this. Therefore, by means of the present divine pragmatic directive, which is being granted to them as a special mark of favour to which absolutely no other person, business, corporation or occupation can be entitled, we decree that in demanding and pursuing property on which chronology gives them precedence, they, and their clients when launching actions against them, may enjoy such privilege as they had prior to our legislation. Thus, should they be unable to expect satisfaction from the principal, they can proceed without the burden of proving his cession against their debtors' property, both that which has been alienated by the principals and what is under either special or general hypothec to them, on which, as stated, they have rights prior to those of other creditors.

We think that what is being granted to the aforesaid corporation, and to their clients, tends to the common advantage, as they provide their services on transactions made almost throughout our realm, not just on a few.

5

At their request, we have also decided that when bankers bring suits against anyone, and are constrained to an agreement of one-tenth,¹⁶ sureties are not to be demanded from them; their own deposition¹⁷ for it is to suffice. Their credit is regarded as good enough on others' behalf, so they deserve to be trusted on their own behalf; but it is to be understood that if they do fall under the law, it will be of no help to them that they have not provided sureties: they will pay the one-tenth penalty nevertheless, just as those who sue them, and also those sued by them, will be subjected to similar penalties. The sole difference under this head is that, as has been stated above, a concession has been made to members of the bankers' association

protected the interests of bankers with respect to this law by means of c. 3 of the same constitution and *J. Nov.* 136 (see Thurman (1964), p. 113, note 160 and Van Der Wal (1998), p. 105, note 52). The effect of this section of the constitution is to confirm that bankers could act against third parties without having to prove that *cessio bonorum* had taken place.

¹⁶ 'An agreement of one-tenth' = obligation to pledge 10 per cent. Under *Institutes* 4.16.1 and *J. Nov.* 112 c. 2, those pursuing a claim were obliged to pledge 10 per cent of its value so as to prevent vexatious litigation (see Thurman (1964), p. 114, note 166 and Van Der Wal (1998), p. 163 (entry 1066) including note 15).

¹⁷ 'Deposition' = formal testimony. See *J. Nov.* 90 c. 3.

over the provision of sureties for their one-tenth when they bring suit, as a special mark of favour from us.

6

The fact that the petitioners are dragged before various courts – particularly because they have a large number of clients, of whom, in the event, few are compliant – is found to be not only detrimental to them, but also a hindrance to public business. In this regard also, therefore, we are reproducing our earlier provision for them: we order that they are to have two special judges, whether for actions that they bring or for those that are brought against them. These are to be your eloquence in person, and Peter, our Most Illustrious *comes* of the sacred *largitiones*, ex-consul and patrician.¹⁸ Thus any suits whatever that will be launched between bankers and others, or that have already had their preliminaries before judges previously assigned to them by us, who have since then departed this life, will be considered before one or other of these judges, and will receive a compendious termination in accordance with our laws. Freed from the delay of the *praetoria*,¹⁹ the suppliants will have time for their own business, and their treatment of the subjects' transactions will be all the more forthcoming in proportion as they themselves experience less intransigence, or as those who try to be intransigent are not permitted to cause them unjustified loss.

7

There is yet another form of double-dealing on the part of devious people, which the said association has revealed to us: it is that there are some who have taken out, or are taking out, loans from its members, and have bought, or are buying, an immovable property in the name of their wives or others close to them, for the purpose of fraud over their general hypothec on property that is theirs, or is to become theirs.²⁰ There are also some who

¹⁸ I.e. Peter Barsymes, *comes sacrarum largitionum*. See *PLREIIIB*, pp. 999–1002 (Petrus *qui et* Barsymes 9). The addressee (i.e. on the basis of *J. Edict* 9, the Urban Prefect of Constantinople) and the Count of the Sacred Largesses are thus appointed as special judges to hear cases brought by the bankers. See discussion in Consentino (2013).

According to Procopius, Peter was himself a banker by profession (*Anecdota* 22.3–4).

¹⁹ 'The delay of the *praetoria*', i.e. they are provided with fast-tracked access to justice, obviating the court of the praetorian prefect, at which it was evidently difficult to get a case listed due to the high volume of litigation that went before it.

²⁰ By using their money to buy property for a third party, the debtors are thus trying to place it beyond reach of their creditors.

collect what is owed them from their debtors, either in money or wholly in immovable property, and contrive that such payment, cession²¹ or sale should be made by the debtors not to them personally, but, as has been stated, either to their spouses or to relatives. By means of such dishonesty, they plead insolvency, while members of the said corporation of bankers, who have actually done them service, cannot bring an action against those who do not appear to be their clients.

Under this head also, we are providing an equal beneficence both to bankers and to those launching suits of this kind against them. We command that those taking a debtor of theirs to court, either by an *in rem*²² or other legal action, may proceed against the said property as if it were in fact the debtor's, should it be shown that the debtor has fraudulently contrived not to have possession of what belongs to him, by covertly transferring his rights to another. The scheme being thus comprehensively foiled, they will be able to secure indemnity for themselves, both for the debt and for the costs incurred over it. We know that your eloquence's acuity, and that of the aforementioned Most Illustrious personage, is such as to determine cases launched but not yet concluded, or to be launched hereafter, in such a way that neither will the petitioners suffer unjust detriment from the intransigence or guile of debtors, nor will the innocent be subjected to untoward extortions through unjustifiable harassment.

What we have previously granted to the petitioners is also to remain in force unshaken, and the marks of favour awarded by means of our present divine pragmatic directive are to take full effect, in accordance with our aim: it is our earnest object that all subjects should have an upright, guileless approach to their affairs, and that those who ought to enjoy a quiet life, in return for the service they provide to the realm's affairs, should not have to face courts, with their inconveniences and costs, as a result of the schemes of the intransigent.

8

As epilogue to this disquisition, we have decided to lay down, as a general rule, what we have put individually under each of the said heads: that in all

²¹ By persuading their own debtors not to make re-payment directly to themselves, those who were indebted to bankers again sought to place their property beyond the reach of the *argentarii*.

²² *In rem* = an *actio in rem*: an action brought asserting a right to a certain thing (*rei vindicatio*). Justinian may here also be referring, however, to the *actio Serviana* concerning hypothecs. See Berger (1953), p. 346 and Van Der Wal (1998), p. 98, note 29.

the foregoing, the privileges of members enrolled in the aforesaid bankers' corporation, and of their heirs and successors, should be on a par with <those of their clients, and of their clients' heirs and successors* >, in their suits against bankers. It is appropriate for each side to observe throughout, in its own transactions and affairs, the integrity which it seeks to be observed towards itself by the other side.

* Accepting the supplement of Agylaeus for the lacuna [S/K, p. 767, line 11].

1. Accordingly, while making these commands by means of this divine pragmatic directive, we also add that your eloquence, and all holders of high office, are to co-operate with those enrolled in the aforesaid association. Thus, by means of orders or official letters, or in any other customary manner whatsoever, they may obtain the necessary support, in conformity with the law, and be able to receive assistance against the intransigent, without themselves being compelled to seem intransigent to others, but instead showing goodwill and consideration towards their clients. That is what befits the probity of our age and our whole realm's transactions, the most important and necessary of which are being handled, all the time, through the aforesaid association.

Conclusion

Accordingly, your eloquence, and every other judge of our realm, is to uphold and confirm our decisions, manifested by means of this divine pragmatic directive. In every court, higher or lower, the petitioners have licence to put in this divine pragmatic directive, to receive it back and to receive its assistance. In the present case and under the heads previously stated, it has a force equal to that of our general laws in other matters.

Given at Constantinople, March 1st in the 15th year of the Lord Justinian, pius princeps, Augustus, after consulship of the Most Distinguished Basilius

Edict 8 | Pontica: vicar¹

The same Sovereign to Bassus, Most Illustrious prefect of sacred praetoria
[Auth.: to Eugenius]²

Preamble

Having ourselves come to the conclusion that civil governorships were adequate for the provinces in the diocese of Pontica, we discontinued, for the intervening period, the office of vicar which was devised for that region in the past, because we had not anticipated any of the criminal activities that have subsequently been occurring there.³ However, we have discovered, from actual events, that the population of these provinces includes men inured to banditry and murder, who are constantly raising armed bands which they use against each other, and who escape punitive measures for this by changing the sphere of their criminal activities to other provinces, as no local governor dares to go outside the territory assigned to him. Thus, though we have frequently sent men out to the province, burdening the public treasury with wage-payments, we have achieved nothing, because there is no authority there taking immediate action in suppressing such outbreaks of lawlessness.

1

We have therefore decided to reinstate the office of vicar, while the governor of the First Galatia is to be nothing but a mere civil governor, as he was formerly, before we abolished the office of vicar and honoured

¹ By this measure, Justinian reverses his earlier reform of the administration of the Black Sea province of Pontica, restoring the office of vicar which he had abolished in *J. Nov.* 8 c. 3 of 535. The emperor is obliged to admit that by creating smaller administrative units, his previous policy had made it easier for malefactors to evade justice by crossing jurisdictional and provincial boundaries. In this edict, the vicar is granted plenipotentiary powers over both civil and military personnel, extensive rights of legal audience, and is permitted to pursue criminals and law-breakers into neighbouring provinces from Bithynia to the West to the Persian frontier to the East. The clear impression is that, here at least, Justinian's reform programme of the 530s had failed to restore law and order (see Sarris (2006), pp. 219–22).

² Bassus only served as Praetorian Prefect for a few months (see *PLREIIIA*, p. 178 (Fl. Comitas Theodorus Bassus)). Accordingly, in the subsequent *Authenticum* version of the text, his name is replaced with that of his successor (on whom see *PLREIIIA*, p. 458 (Eugenius 1)). See also Stein (1949) 2, p. 785 and Thurman (1964), p. 116, note 176.

³ The post of vicar of the province of Pontica had been abolished by *J. Nov.* 8 c. 3.

the governor of the First Galatia with higher status and stipend. Once again, there is to be a vicar over all the provinces of the diocese of Pontica, discharging the offices, not merely of the prefecture, but also of our Most Illustrious *magister* of the divine *officia*, as well as of the Most Illustrious generals, and indeed of the Most Magnificent office-holders at the head of our divine *patrimonium*, and even of our treasury, and also of the *domestici* and *protectores*.⁴ He is to hold the same sort of licence and authority as each of these governors came to hold for himself, on reaching his area. Thus no-one is to be exempted from this jurisdiction by dint of rank, priesthood, office, position in the civil service or anything else at all. All alike are to be subjected to it, whether they are private persons, or holders of any office, rank, service-position or priesthood, not only on criminal charges – as this is not just a military office that we are creating – but also on any financial suit that anyone should in future wish to bring. We are creating this office as an all-embracing one, for every person and every kind of issue.

1. We are also restoring to it the <rights of> divine audience that it used to have before, so that cases up to five hundred *solidi* which are pending appeal, in any province of the diocese of Pontica, are not to be brought to this fortunate city, but are to be tried before the vicar, as representing the *sacra*,⁵ whether they were launched from the jurisdiction of the civil governors themselves or from a verdict of one of the high officials in this great city, or even from a command of ours. Should an appeal have once been launched, we give no-one freedom to launch a second appeal. However, if an appeal should have been granted on any action that was originally launched before the vicar, the appeal-procedures will be as previously, before we unified the office, as if no change had been made in the meantime. We also command that this should be so for the chief⁶ of the First Galatia, although we have made him into a mere governor again, as if nothing had been altered in his case in the meantime.

⁴ Justinian is here restoring the office of vicar, entrusting him not only with full civil authority, but also that of the *magister sacrorum officiorum*, the *magister militum*, the *comes sancti patrimonii* and the *comes rerum privatarum*, thereby emphasising his jurisdiction over all civil, military and palatine officials stationed in the province, including members of the household guard (the *domestici* and *protectores*: see *Codex* 12.17 and *J. Nov.* 30, notes 25 and 33). In other words, all military and civil power will be concentrated in his hands after a manner reminiscent of the plenipotentiary generals-cum-governors (Greek στρατηγοί) of the Middle Byzantine period, on whom see Brubaker and Haldon (2011), pp. 723–72.

⁵ ‘As representing the *sacra*’: see *J. Nov.* 26 c. 5. This means that the vicar sat *vice sacra* or in place of the emperor and the highest courts of appeal of Constantinople (see Van Der Wal (1998), p. 180 (entry 1169) and Berger (1953), p. 764).

⁶ ‘Chief’ = ἡγούμενος (= Latin *praeses*).

2

We are giving this vicar authority to visit any province he may wish in the diocese of Pontica, from our neighbouring Bithynia right over to Armenia, to Trapezus and to the frontiers of our realm with Persia, so that, first and foremost, he may pursue the criminal activities that have been occurring hitherto with the appropriate punitive measures – the authority we are giving him includes that of the sword – and, especially, so that he may deal with any soldiers who have deserted from their stations and abandoned themselves to such lawlessness. Should he find any soldier subject to criminal charges, he is to strip him of whatever rank he happens to have, without waiting to inform the commander of such troops; he himself holds that position, and is in complete authority over everyone without exception. We also give him authority to exercise control over all areas and estate properties, even should they belong to most holy churches, holy monasteries, our divine *privata*, our divine *patrimonium* of our household;⁷ in a word, there is nowhere that we are leaving outside his jurisdiction.

3

He will observe whether troop-movements⁸ are conducted with proper discipline, and will rectify any wrong he may find being committed during them, both chastising the soldiers themselves, and ensuring that our taxpayers are compensated for whatever injustice they may have suffered. We also give him freedom to disarm those who acquire weapons without military necessity, and to bring all these weapons into the public armouries of this great city.

⁷ '*Privata . . . patrimonium . . . household*', i.e. even imperial estates (belonging to the *res privata* and *sacrum patrimonium* as well as those of the *domus divina*, described as 'our household') are subject to his authority: see *J. Edict* 4, note 13, *J. Nov.* 30, note 36 and *J. Nov.* 69, notes 10 and 11). The region placed under his sway ran along the entirety of the Black Sea coast east to the Roman–Persian frontier.

⁸ 'Troop-movements': in 540 warfare had broken out between the Eastern Roman Empire and Persia, and was fought across an arc of territory running from southern Syria to the Caucasus. In 545 a truce had been agreed that applied to Syria and Upper Mesopotamia, but warfare continued and intensified in the central and western Caucasus, including Lazica and Armenia. An important Roman supply route for this Caucasian front ran eastwards from the Black Sea entrepôt of Trebizond (see Sarris (2011a), pp. 155–7 and Bryer and Winfield (1985), pp.19–20 and 182). The 'injustices' inflicted on taxpayers referred to would have related to the compulsory purchase of goods to supply the army. Such demands often served to heighten tensions between the military and the civilian population and poison relations between the latter and the government: see Procopius, *Anecdota* 23.12 and Sarris (2017).

1. He will put an end to crimes of adultery, murder, banditry and, above all, abduction of women, theft of property, assault, violence and the whole range of such crimes, that being the main point of the office conferred on him by us. He will also suppress wrongdoing, whether it may be on the part of priests, office-holders, landowners or private individuals, and will permit no conduct on anyone's part that is not accepted by our laws.

2. He will maintain the trial and judgment of cases at law. He will have a staff of his own, consisting of seventy *vicariani*⁹ who have joined the civil service by means of our divine *probatoriae*,¹⁰ provided by the *scrinium* from which they were provided when there was a vicar in the past. We are also restoring the same number of mules as were formerly given to the vicar, which the provincial chief has now, having received them for his service; use of such animals is no longer necessary for him, now that he is nothing but a civil governor, whereas the Admirable vicar has to travel about, so that their service is essential for him.

3. Every military unit stationed in that region will be under his orders, and the *domestici*, *protectores*, *scholarii*¹¹ and soldiers will serve at his behest. They will not require an official instruction, or a command from us, but will serve the office itself, in its own right. Each of them will serve in the area where he is based, unless some justifiable and unavoidable emergency, requiring a larger force, makes it necessary for the vicar to transfer them from one area to another.

4. He will have at his disposal a herald as crier, and four torches, as expenditure has been allocated for these by us; also of the other insignia associated with civil and military command. Hence we command that, on the model of our Most Illustrious generals,¹² he is also to be served by an *ad responsum*,¹³ through whose agency he will both inflict punishment on soldiers, if occasion calls for it, and detail them for the services required by the matter in hand.

As to the amount of stipends that we have assigned for him, his assessor and the staff under him, as also to what the governor of the First Galatia

⁹ 'Vicariani' = those who serve under a *vicarius*.

¹⁰ 'Probatoriae' = imperial letters of appointment; 'scrinium' = office or administrative bureau.

¹¹ 'Domestici, protectores, scholarii': these were detachments of the palace guard, in this instance stationed in the province (see *J. Nov.* 30, notes 25 and 33 and Haldon (1984), pp. 119–41).

¹² 'Generals' (Greek στρατηγοί) = *magistri militum*: high-ranking regional commanders (see Treadgold (1995), pp. 152–3 and Lee (2005), p. 117).

¹³ 'Ad responsum': a military aide de camp or liaison officer assisting the governor in carrying out his orders, or with the execution of writs and judgments (Jones (1964), p. 488; Avotins (1992), pp. 5–7).

must have for himself, his assessor and the staff under his orders, and as to what he is due to pay for his codicils of office, either in our divine Palace or in the *praetorium*¹⁴ of the Most Illustrious prefects, these will all be made clear to everyone by the appended transcript.¹⁵

Our purpose in re-instating this post for those regions is so that recourse is at hand for the victims of injustice, and so that all inhabitants of the region enjoy tranquillity and full rule of law, freed from the troubles that have been besetting them hitherto, now that we have set over the region an authority which can deal with all injustice and illegality, without exception.

Conclusion

Accordingly, we have decided to make all this manifest to your distinction, so that in the knowledge of it you will observe our present decisions on this in time to come, and provide the vicar with stipends as contained in the schedule appended by us.

Given September 17th in the 22nd year of the reign of the Lord, pius princeps, Augustus, 7th year after consulship of the Most Distinguished Basilius

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¹⁴ '*Praetorium*': the official office or residence of the Praetorian Prefect, located on the Acropolis to the north of the church of St Eirene (see Mango (1993), Addenda pp. 1–3).

¹⁵ The schedule referred to is missing.

*Emperor Justinian Augustus to Tribonian, urban prefect*²

Preamble

The association of bankers in this great city, as a body, has petitioned our Majesty to come to their assistance again now, in another way, in addition to all the other marks of favour that we have awarded them. They have informed us that some who have become indebted, or are becoming so, face demands for money or property which they do not have the resources to settle, and then request bankers to enter into unconditional promises to pay³ on their behalf for the demands, sometimes actually putting that request down in written agreements, but sometimes instructing the bankers to do this without written agreement, on account of the client's trustworthiness. Acceding to their requests, the bankers fix a definite date by which the guarantor⁴ will without fail pay the debt, to those putting pressure on the client; and they themselves act as guarantors to them. Then, when the due date comes round, they give satisfaction without demur to those in receipt of their promise to pay, and the debtors are

¹ In this edict (dated by Consentino (2013), pp. 359–60 to c. 539–540), the emperor responds to a series of requests from the guild of bankers or financiers of Constantinople (Latin *argentarii*: on whom see also *J. Nov.* 136). The emperor agrees to crack down on a number of ruses whereby debtors had hitherto sought to keep money out of the hands of their creditors (primarily by transferring property to their spouse or kin – on which see also *J. Edict* 7), and confirms that those professional financiers who also chose to pursue a career in the imperial government were to be allowed to continue to lend out money at the higher rates of interest that were only permitted to members of the banking community. However, a request that the bankers be exempted from the recent legislation against usury, which prohibited creditors from receiving back by way of repayments (including interest) more than twice the sum initially advanced, is firmly rejected for the future, while remaining allowed for contracts made before the change in legislation. For further discussion, see Luchetti (2004), pp. 151–76.

² If the addressee of this law was Justinian's *quaestor* Tribonian, then it would appear that he was appointed Urban Prefect of Constantinople c. 539–540: see Consentino (2013), pp. 352–60. Alternatively, the addressee may have been a relative of his appointed to that post (see *PLREIIIB*, pp. 1340–1 (Tribonianus 3)).

³ 'Unconditional promises to pay' (Greek καθαράς ἀντιφωνήσεις): two such agreements are preserved papyrologically on *P.Flor.* 280 and 343, without making it much clearer what the term actually meant (see Van Der Wal (1998), p. 125, note 68).

⁴ 'Guarantor' = Greek ἀντιφωνητής (= one who promises to pay on behalf of another). See discussion of this term in Van Der Wal (1998), p. 123, note 62.

perhaps given back their loan contracts and contracts of agreement, or receive settlements of claim, having given security by means of the promise to pay.⁵ They also encounter numerous people who desire, or have decided, to acquire a certain property, and instruct bankers to promise, by a promise to pay, transfers of certain sums of money, or properties, on their behalf; they gain their object, the bankers unhesitatingly make over the money or property, and thus the promise to pay is carried out without formality, there being no instruction from the principal not to pay over the money or property until the recipient of the promise to pay makes out a receipt for the money or property, or deposes that he has received it. The bankers provide the money or property; but they have disputes later on, if the principals require receipts for the payment of the money or property. This presents the bankers with a problem that is formidably intractable from every point of view, past and prospective alike – it is in fact an impossibility: after all, who would choose to take the step of certifying that he had received money or property, when it had been, or was being, guaranteed him by a promise to pay without the condition that he should make out a proof of payment, or a deposition on the records that he had received it? In this predicament, the bankers say, they often cede their rights of action to others; but they have this objection put up not only against them, when they do bring actions, but also against those to whom the rights of action have been, or are, ceded.

They have requested that they should be released from this difficulty, and that if the instruction for them to pay the money or property within a specified time-limit has been, or shall be, wholly unconditional, with no further requirement, the giver of the instruction should, on the elapsing of the time-limit, be liable for payment of the debt to the bankers and those to whom the actions have been, or shall be, ceded – and this not only if there should have been a written instruction, but also should the whole transaction have been made without one.⁶

1

Accordingly, in our desire to be of assistance over this – but with full equity and justice, and so that these transactions proceed safely for the future, in all respects –, we decree that bankers are not to accept the undertaking of

⁵ ‘Promise to pay’ = Greek ἀντιφώνησις. See *J. Nov.* 136, note 3.

⁶ The effect of this highly convoluted passage is that those who instruct a banker to guarantee or make a payment on their behalf should be obliged to repay the banker the ensuing debt (Van Der Wal (1998), p. 110 (entry 772)).

promises to pay until they have received a written instruction clearly determining just how the whole transaction must be conducted; they are not to let these arrangements based on good faith precipitate them straight into a clear disaster. Should there for some reason not be a written agreement, but should a date have been fixed, and when the date has passed, should the party on whose behalf the promise to pay is made not have spoken up during the entire period, nor made a complaint, and then after another two-month period has still not brought a complaint over it, the party who issued the instruction is, without fail, to pay the guarantor whatever debt may be proven to have been promised by the promise to pay, in accordance with his intention, by one of the directors of the bank. No such objection can be put up against the bankers themselves, their heirs or those to whom the action has been, or is being, ceded; whatever the evidence of the instructions shows, is to be in force. Should the instructions have been issued in writing, the judge is to follow their wording; should the agreement be unwritten, he is to go by the proofs that have been provided according to the law in that situation.

Those are the provisions that are to be in force, both for promises to pay that have already been made in this way, and for those that shall be made.

2

Should any consideration be, or have been, promised to bankers, with or without documentation, and should sufficient legal proof be presented, by means either of perusal of the documents or of confirmation from the witnesses, we wish that too to have its own force; the sum agreed is in all circumstances to be demanded, without obstruction from any law to the effect that the transaction ought to have been conducted without charge. This is because that is what constitutes the bankers' whole livelihood: it is not on purpose to suffer losses, or to remain entirely without a living, that they pay interest and rent-charges, and safeguard the common good; it is in order to have this consideration as recompense for their hard work.

1. Should accounts, either in duplicate or in autograph, have been set up, or be set up, either by them with any client of theirs, or by clients with them, on which income and expenditure have been recorded,⁷ bearing the signatures of the bank director himself and his secretary (those known as

⁷ For the structure and nature of private accounts in the sixth century, see Sarris (2006), pp. 29–49 and Rathbone (1994): they were typically divided into a receipt section (Greek *λόγος λημμάτων*) and an expenditure section (*λόγος ἀναλωμάτων*): see, for example, *P. Oxy.* XIX 2243(a).

armaritae,⁸ and, reciprocally, those of their clients – or else written throughout in the client’s hand, or bearing his signature –, clients cannot, on the one hand, agree on the money they have paid in, as recorded by the bankers in their duplicate copies or autograph summaries, and demand it from the bank directors on that basis, while, on the other hand, refusing to agree on what has been paid out to them. Nor, again, can bank directors demand what they have paid out without acknowledging what has been paid in.

2. Should the trustworthiness of the documented incomings and outgoings be attested by duplicate or autograph accounts produced by both sides, then both are to be regarded as definitely trustworthy; one against the bankers is not to prevail while one in their favour is invalidated. Demand is to be made for whatever amount is shown by the accounts, unless one side or the other should show that it has suffered as a result of an error in calculation, or of over-charging on interest. Should anything of that kind be clearly proven, we decree that it is to be given the benefit of correction at law, so that each side enjoys justice and equity.

3

The bankers have also informed us that some of them have received contracts of agreement from more than one party, whether by mutual guarantee⁹ or by *mandatum*,¹⁰ and have in due covered most of the debt; when a small amount remained outstanding, they have received contracts of agreement for the remainder of the debt from one or two of them separately, to the effect that they would pay it within a stated time, and have perhaps executed settlements of claim, or contracts of agreement,¹¹ with them all. But in the event, the one, or more, who had made that contract of agreement for the remainder had died, and the heirs chose not to pay the money that he, or they, had agreed on. We therefore decree that

⁸ ‘*Armaritae*’: an otherwise unexampled word; presumably ‘those at the head of the business’.

⁹ For a papyrological example of such a collective guarantee, see *P.Oxy.* LXII 4350, discussed in Sarris (2006), pp. 58–9.

¹⁰ ‘*Mandatum*’: a consensual contract whereby one assumes a duty to conclude a legal transaction in the interest of the mandatory or a third party. The *mandatum* was traditionally based on a personal relationship of confidence (hence the reference in the preamble to the client’s trustworthiness): see Berger (1953), p. 574, *Institutes* 3.26, *Digest* 17.1 and *Codex* 4.35. In English Common Law, the noun ‘mandate’ carries different connotations, and is thus avoided here.

¹¹ ‘Contract of agreement’ = Greek ὁμολογία. For papyrological examples, see Sarris (2006), pp. 51–60.

if that is the situation, the money contained in the contracts of agreement, and contracted in writing by the person or persons deceased, is to be exacted from their heirs, with the interest stated in the contract.

4

If any past or future borrowers from bankers have given securities, and in the loan contracts have then authorised, or should they authorise, the bankers to account against the debt the price of the securities realised, on their honour, from the sale warranted by the borrowers, the bankers, should they do so, are not to have trouble or difficulties over this. Their oath as to the price at which they have sold the securities is to be believed, and is to be sufficient to clear them of any evasion.

Any borrower on unwritten contract who has given securities, whether under his seal or without it, is obliged either to accept back his securities (acknowledging his seal, or on their own, if they have not been tampered with), and to pay off the full amount of the principal, plus the interest agreed in the contract; or else, if the debtor does not have money, he is to resign the securities, at the proper valuation, and make up the remainder. He cannot argue that the financier should rest satisfied with the securities even if they should be insufficiently valuable, but must by all means meet the whole debt, whatever it is calculated to be, with the contracted interest. Once securities have been given, sealed or not, and a term has been fixed for the loan, if satisfaction has not been obtained by that date, and an equal further period has elapsed, the bankers may then have the securities valued, by an accurate valuation made in the presence of *tabularii*,¹² with the divine scriptures on display, and with valuers engaged. They may then credit the securities to themselves, whether that satisfies the debt, or only part of the debt.

5

A further point on which they were requesting a remedy is that, as their livelihood consists in lending, borrowing, acting as guarantors for others and making interest payments,¹³ the constitution of ours which we laid down permitting no-one to make any more than double, when the borrower has paid an amount equal to the principal plus interest, should not

¹² '*Tabularii*' = notaries public (*Codex* 10.71).

¹³ Justinian here neatly delineates the core activities engaged in by members of the banking profession in the sixth century.

be put up against them. For the future, it is absolutely against our will for that constitution to be contravened; for the past, we decree, as a relief for them where there is no opening for trickery, that for genuine financial transactions made up to today, they have licence to exact from the debtors what is owed to them with the interest specified, even should interest payments on those debts in fact amount to more than the double; and they are not obliged to take into account, either as interest or as original debt, what has already been paid in excess of the principal.¹⁴

In that one respect alone, our constitution on the double is not to be put up against the bankers; they may make their demands in accordance with the nature of the contract. Nor, again, is the constitution laid down by us something they themselves can use against those with whom they themselves have already taken out loan-contracts; and they cannot account interest payments they have already made either against double the interest or against the original debt.

6

As we have permitted bank directors in this fortunate city to enlist in all services other than armed service, they have then charged interest at two-thirds on loans that they have made, or make, as being what we have allowed for bankers;¹⁵ but should there be* intransigent objectors who use the bankers' position in the service to oppose all this, arguing that they should be earning interest at the rate due to members of the service, not that due to bankers, we decree that this unreasonable and utterly intransigent objection of theirs is to be absolutely inoperative: what has been agreed, or is agreed, is to be in force.

* Accepting the reading of M: *ei* for *oi* [S/K, p. 775, line 11].

¹⁴ The emperor here reveals that the bankers had lobbied to be exempted from the recent provisions of the law against usury (*J. Novs.* 121 and 138), forbidding creditors from exacting more than double the sum initially borrowed. These laws thus help to provide a *terminus post quem* for the edict of post-535. Given that it was addressed to Tribonian (who died in 542), the edict must have been issued at some point between these dates. Consentino (2013), pp. 359–60 suggests that it was issued in 539–540. On this issue, Justinian holds firm, simply permitting that the measure should not be applied retrospectively.

¹⁵ I.e. these financiers, who have entered governmental service but have continued to lend money, have continued to do so at the rate of two-thirds of 1 per cent per month (or 8 per cent *per annum*) that was reserved for bankers, as opposed to the four per cent *per annum* at which other men of such rank would have been allowed to lend: see *Codex* 4.32.26 (2). For the financial reasons why bankers may have wished to combine their banking interests with other careers, see Consentino (2015), p. 246.

We also find displeasing certain people's request not to pay either principal or interest at all on financial transactions; or, still more unreasonably, for legitimate interest payments <not>* to be taken into account against the principal;¹⁶ that is something else that we wish to remain in force on transactions made, or being made, with bankers.¹⁷

* There seems no other way of making sense of Justinian's objection here than to suppose that the word *μή* was omitted from the draft [S/K, p. 775, line 16]. Similarly, in Latin, a missing *non* has had to be supplied in *J. Nov.* 62 c. 1.2 [S/K, p. 333, line 7].

7

There is also one further request from the bankers, as follows. Often, some of those liable to them have others, in turn, under liability; but instead of using money from that source to meet their obligations to the bankers, they contrive to pay it to their wives, on a pretext that it is for their dowry or *paraphernalia*¹⁸ or some other alleged debts; and they receive settlements of claim, or receipts, from their wives. The debtors have then died, having diminished their estate, or die in the process of diminishing it; and when the bankers wish to recover this loan, the wives, despite having surreptitiously acquired the money, or acquiring it subsequently, claim against the bankers that what is owed to themselves is still entirely unpaid, so that the bankers' expectations fall through. Their request was that if something of the kind has happened, or shall hereafter happen, as may be, the recipients of the settlements of claim from the wives, or of the discharge, or of any contract at all that has been made, or shall be made, should be obliged to produce them on behalf of the bankers and their heirs, as proof of what has taken place, so that the wives do not make a gain when they were not owed anything, while the bankers make a loss even when they were owed

¹⁶ With insertion of 'not', the sense confirms the insistence in *J. Nov.* 121 c. 2 that payments by instalment should count towards defraying the whole debt. The sentence thus becomes a balanced rejection first of claims against bankers, and then, more emphatically, of claims by them.

¹⁷ The effect of this section of the edict is seemingly that none may petition the emperor to be exempted from the obligation to repay what they owe bankers or to escape interest payments; nor may bankers refuse to have interest payments reckoned against the principal debt (see Van Der Wal (1998), p. 108).

¹⁸ '*Paraphernalia*' = Greek *παράφερνα* (late Latin *parapherna*), i.e. 'things which belong to the wife beyond the dowry' (*Codex* 5.14.8). The wife could dispose of these as she chose or entrust her husband with their administration.

something.¹⁹ We decree that if anything of the kind has happened, or shall happen, the recipients are obliged to produce the documents, but with complete immunity; they cannot undergo any loss as a result of producing them, as we bear in mind our constitution which desires compulsory production of probative documents to be made without detriment to the producers.²⁰ They are to produce the documents, and to receive them back again; and should those who compelled their production succeed in deriving some advantage over the wives from that, it is from the wives that they are to find it, according to law, without any interest of the producers' being permitted to be injured by their production.

1. If they have deposited with anyone duplicate copies of agreements, settlements of claim or any contractual instruments whatever, or should they hereafter do so, and the copies stored with themselves have been lost, in various ways, those holding the duplicates must produce them, or else take an oath that they do not have, and cannot produce, anything of the kind. Should they take that oath, on the record, they must be troubled no further.²¹

No-one shall overstep the limit set by our constitution for *sportulae*²² or court costs, under threat of the penalty imposed on those who act in that way.

8

Because of your excellency's strict application of the laws, observance of justice, and facility in devising ways by means of which solutions can be found even to problems that appear very difficult, and inaccessible to others, the bankers requested, at the outset of their petitions, that you should look after them, and hear cases brought against them; and that you should hear any cases they have against others, or others against them, in the manner of a special judge. We therefore decree that you are to hear them, both when they are plaintiffs and when they are defendants, in accordance with what we have decreed, in the manner of a special judge. You are to dispose of past cases according to this law, and as you may decide is appropriate; and you are to take care that an accepted and proper

¹⁹ In other words, when a banker believed that an insolvent debtor had instructed his own debtors to pay what they owed to his wife, the banker should be able to demand that they produce any documentation relevant to the transaction. For such ruses, see also *J. Edict 7*.

²⁰ A reference to *Codex 4.21.22* and *4.20.16.2*.

²¹ Justinian here simply upholds *Codex 4.21.22*.

²² '*Sportulae*' = fees. See *J. Nov. 123 c. 28*.

assistance from us is bestowed on them in future, because those who accept such liabilities on behalf of all, and who take pains to show themselves helpful to everybody, must also enjoy an exceptional kind of support.

It is to be clear that everything that has been provided for them, both now and in the past, either by our laws or by divine pragmatic directives, is to be preserved intact, and to be applicable both for deeds made out hitherto and for those that shall be made out hereafter.

Conclusion

Your excellency, and every other judge of our realm, is accordingly to maintain the validity of our decisions manifested by this divine pragmatic law.

[No date: possibly 539–540]²³

²³ For discussion of possible dating, see Lounghis, Blysidu and Lampakes (2005), p. 273 (under entry 1091), Consentino (2013), pp. 359–60 and note 14 above.

[No heading]

Preamble

The unscrupulous behaviour of provincial civil servants towards the public treasury is something that we have frequently discovered, from actual facts.

1

In this connection, we have been informed that one further example of their effrontery is that they receive tax-payments in hand, and then shelter themselves within sacred grounds,² supposing that in this way they escape the penalties with which they deserve to be chastised. <By means of this divine directive addressed* > to your excellency, and just as we have also written to the most holy provincial bishops, we decree that should any provincial officials take sanctuary in sacred precincts, your excellency has authority to order them to leave that province, and to be in whatever place you may wish. When that order has been given, the most God-beloved bishops are obliged to give them what is called the licence³ and put them out of the holy grounds, and, <because their trial is to take place* > in the district <to which you have commanded them* > to depart, fiscal officials are to escort them safely to the said district, without any harassment.

, For the first lacuna [S/K, p. 776, line 27], the translation mainly adopts the supplement suggested in the app. crit. For the rest [p. 777, line 5], the supplements adopted are our own.

¹ ‘Civil servants’ (Greek ταξῆωται) = Latin *cohortales*. From the age of Constantine, these formed a hereditary class, akin to *curiales*: such hereditary bureaucrats or their heirs were only permitted to change from one branch of imperial service to another with express imperial permission (see Jones (1964), pp. 594–5 and *J. Nov.* 6, note 6). This edict, which should be read with *J. Edict* 2, seeks to prevent such officials who have absconded with or embezzled tax revenues from being granted ecclesiastical asylum.

² ‘Within sacred grounds’: i.e. they claim asylum in a church or other religious institution, on which see Rapp (2005), pp. 253–60.

³ ‘Licence’ (Greek λόγος) = the ‘licence of indemnity’ or λόγος ἀσουλίας; see *J. Edict* 2, note 1. The officials are only to be given safe conduct while they travel to face trial or disciplinary proceedings.

That, then, is to be the tenor of your excellency's orders against the provincial officials.

Accordingly, the most God-beloved bishops and their clergy have also been threatened that should they refuse to expel the civil servants from the province, under the so-called licence, and take them under safe-conduct of the licence to the area to which they have been sent out, to live there as on the equivalent of sacred ground, it is they who will make good the loss to the public treasury out of their own resources, not out of ecclesiastical revenues; and they will not be exempt from jeopardy even of their priesthood, as well.⁴

Conclusion

Accordingly, your excellency is to take pains to put our decisions, manifested by means of this divine pragmatic law, into practical effect.

Given . . .

[Date missing]⁵

⁴ As in *J. Edict 2* the edict here attempts to limit the granting of licences of indemnity by bishops or their staff, and makes them personally liable for any financial losses to the state that ensue from the granting of such licences. This re-appears as an issue of major imperial concern in *J. Edict 13*.

⁵ Lounghis, Blysidu and Lampakes (2005), p. 273 (under entry 1095) suggest a date range of c. 535–565.

***Zygotatai* and *chrysônes* in Egypt are to have no licence to demand any payment for *obryza* in future, but struck gold coinage is to be marked up there in the same way as in this great city; they are to place seals according to the weight remaining in the coinage¹ [Greek only]**

¹ This edict concerns the practices of money-handlers and changers (ζυγοστάται and χρυσῶνες) in Alexandria. Although they clearly engaged in some private business, these individuals are not to be confused with the professional bankers or financiers (ἀργυροπράται or *argentarii*) of *J. Edict* 9. Rather, they appear to have been civic officials who performed these roles by way of municipal obligation (*munus*). According to the legal sources and the documentary papyri, *zygotatai* were officials who were charged with the regulation of weights and balances and who could also be called upon to confirm the metallic content (and thus purity) of coinage and witness transactions. The former was a major problem in the rapidly monetising economy of late antiquity, which was associated with high velocity (and thus wear) on the part of coins (as discussed in Banaji (2007): see below). According to *P.Oxy.* LXIII 4397, such *zygotatai* could also have money deposited with them which they would lend out at interest, thereby furnishing a return, whilst a tale recorded in the anonymous *Sayings of the Desert Fathers* records the depositing of precious stone with a *zygotatês* on the basis of the value of which the depositor hoped to be able to withdraw cash (see Wortley (2013), pp. 44–5). According to an edict of the Prefect Hierius (494–96), whose family properties may be those discussed in *J. Nov.* 159, *zygotatai* were elected by the bishop and landowners of the city, and were presumably comparatively wealthy civic notables in their own right. Accordingly, they may well have been the target of the complaints lodged with Justinian by a leading citizen of Aphrodisias that elicited the promulgation of *J. Nov.* 160 (concerning civic funds that had been deposited with local notables who then tried to assert ownership of them). *Chrysônes*, by contrast, appear to have been an entirely Egyptian phenomenon, and are recorded in the papyri from late antiquity as municipal cashiers who (importantly for the contents of this edict) handled tax revenues and effected exchanges between gold and copper coinage. For discussion of these posts, see Zuckerman (2004), pp. 102–5. ‘*Obryza*’: Hellenised version of the Latin *obrussa*, this word signified pure gold, and appears for the first time in Greek in Diocletian’s Edict on Maximum Prices of 301 AD. It is attested papyrologically from the fourth to seventh centuries in the context of charges associated with transactions in, from, or into gold (see Zuckerman (2004), pp. 105–9 and 113–14). ‘Struck gold coinage’ (Greek τὸ χαπαττόμενον χρυσίον): the Greek *chrySION* could mean either a gold coin (= a *solidus*), or the value of a *solidus* (= one *solidus*’ worth of small denomination coinage) or just money (see Zuckerman (2004), p. 99). Gold was not struck in Alexandria in the sixth century, so ‘struck gold coinage is to be marked up in the same way there’ is to be preferred as a translation to ‘gold struck there’, although ‘money struck there’ would be a plausible rendering if one agrees with Zuckerman (2004) (see below). The former, however, is probably a tighter translation of the Greek.

This edict (dating from 559) has been variously interpreted by modern commentators. What is generally agreed is that the law concerns the disparity between the face value of

coinage in circulation and its ponderal (or weight) value. Thereafter opinions differ, although the two most convincing recent hypotheses have been those of Banaji (2007) and Zuckerman (2004). As the former has noted, the period from the fourth to sixth centuries witnessed growing monetisation within the early Byzantine economy, such that demand for coin often outstripped supply. Accordingly, coinage circulated with great velocity, as a result of which it was prone to weight-loss. On Banaji's model, this edict is explicable in terms of money-handlers bagging up coin (primarily for tax payments to the state) applying a commission of 12.5 per cent on transactions to make up for the weight-loss, thereby ensuring that the government (or they) did not receive less actual gold than they otherwise would have done (see Banaji (2007), pp. 73–5). 'This rate', Banaji suggests, 'was unacceptable to the authorities because it was disrupting business' (Banaji (2016), p. 103).

By contrast, Zuckerman (2004), argues that the 'transactions' referred to in the edict comprised the exchange of small denomination copper coinage (which was struck in Alexandria) for gold (which was not). In such processes of exchange, Zuckerman argues, it was common for bags of copper to be simply weighed and commuted for gold (due to the large number of Egyptian copper coins or *nummi* required to make up one *solidus*). In 550, however, the government had reduced the weight of the small denomination coinage by roughly 12 per cent for the (rare) 33 *nummus* piece and 15 per cent for the more common 12 *nummus* piece. Accordingly, those money-changers who continued to simply weigh and bag the coinage would have been demanding more copper coins *per solidus* from tax-payers than the face-value of the coins would have sanctioned. This interpretation makes good sense of the rate of charge (12.5 per cent per transaction) referred to in the law, and the edict's references to the problem being a relatively recent one. An objection, however, would be that c. 2 suggests that the coinage *should* be bagged up and labelled according to weight (which runs contrary to the logic of Zuckerman's argument: see Zuckerman (2004), pp. 97–114).

A third suggestion is proposed here. As Banaji rightly notes, it would appear to have become common in sixth-century Egypt for money-changers and handlers of coin to levy a commission of 6.25 per cent on transactions in gold to account for weight loss and clipping (the ponderal value of the coinage always being prioritised: see Banaji (2016), pp. 102–3). In *P.Oxy.* I 144 and *P.Oxy.* XVI 1907, the commission was levied as a surcharge: thus in the former a payment of 720 'loose' *solidi* (i.e. coins that had been in circulation) was supplemented with an additional payment of 45 *solidi* 'by way of *obryza*' (ὕπερ ὀβρύζης). Such a rate of commission may have irritated those obliged to pay it, but if it was being levied with respect to tax payments for the state being handled by *chrysônes*, there is little reason for the government to have intervened, as this practice would not have had a negative impact on net imperial receipts (always the government's chief concern). In Alexandria, however, the practice with respect to the handling of tax receipts by *chrysônes* appears to have altered prior to the issuing of this edict. A commission (presumably of 6.25 per cent) was being levied on those bringing loose gold coinage to the *zygostatai* and *chrysônes* in the context of tax-payments. However, that commission was being levied by way of deduction rather than surcharge, thereby diminishing the number of coins (and thus the level of tax revenues) earmarked for the state. A second commission (of 6.25 per cent) was then probably being deducted by way of handling fee as the money was transmitted to agents of the Praetorian Prefecture, leading to the net loss to the government of 12.5 per cent complained about in this edict. The *zygostatai* and *chrysônes*, moreover, were marking up and labelling the bags of loose gold coin according to the money's gross value as initially presented by the taxpayer (who, along with the money-handlers, profited from this innovation), rather than its net (ponderal) value at the point when it was handed over to representatives of the central government. In this edict, Justinian orders that practice to cease.

*The same Sovereign to Peter, for the second time Most Illustrious prefect of the Eastern praetoria and for the second time ex-comes of the sacred largitiones, ex-consul*²

Preamble

Obryza, as it is called in Egypt, was not known in earlier times, but only shortly after its origination it has been causing trouble over transactions in Egypt, and has risen to such an unacceptable level as to be paid at nine gold pieces on each pound.³ To obviate any detriment it would be going to cause to the public treasury, and also the nuisance to our taxpayers' transactions, we have considered it necessary to suppress and end it for the future, particularly because, as we have found, this unacceptable practice has mainly extended to the city of Alexandria alone, and is not in such use throughout Egypt,⁴ or in the other cities of the province in that diocese.

1

Accordingly, we decree that the gold currency in the diocese of Egypt is to be as it was formerly, despite this having meanwhile become corrupted in what is called the 'loose coinage' of Alexandria.⁵ No-one is to be able to demand anything for the pernicious innovation of *obryza*.

² The edict is thus addressed to the former *comes sacrarum largitionum* Peter Barsymes, in his capacity as Praetorian Prefect.

³ One pound of gold comprised 72 *solidi*: a charge of nine *solidi* per pound would thus have constituted a charge of 12.5 per cent.

⁴ 'Throughout Egypt' = i.e. throughout what was known in Greek as the *chôra* of Egypt (i.e. the countryside).

⁵ 'Loose coinage': this probably means coinage in circulation, or not 'bagged up'. Zuckerman (2004), p. 100 construes this phrase rather differently by moving the commas in the Greek text: 'Nous décrétons donc selon la pratique ancienne, même si elle a été corrompue par le temps intervenu, que le numéraire doit circuler dans le diocèse d'Égypte sous forme que les Alexandrins appellent la monnaie déliée, sans que personne puisse procéder à un quelconque prélèvement au titre de cette malheureuse invention qui est l'*obryza*' (= 'We accordingly decree as in former usage, even if it has meanwhile become corrupted, that the currency is to circulate in the diocese of Egypt in the form that the Alexandrians call "loose coinage", without anyone being able to make any deduction for the pernicious innovation of *obryza*').

1. The gold currency in Egypt is also to be reckoned for transactions as it is for that struck in this great city.⁶ This is to be observed on the liability of the *augustalis*⁷ of the time at Alexandria, and of the bureaux under him.

2

We have charged the present holder of these offices⁸ to put the *zygostatai* and *chrysônes*,⁹ as being the chief causes of the malpractice, under due caution to use loose coinage when carrying out transactions, and, on any occasion when it is necessary to seal it, only to mark it with the true weight of the gold that has been put under their seals; they cannot mark it under their seals at more than the true weight contained, as has so far, wrongly, been the practice. If they dare to do any such thing, we make their estates public property, and subject them to corporal punishments as well, for not having given up their habitual malpractice even at our command. They will also be obliged to deliver all gold without making any deduction at all for *obryza*,¹⁰ in the first place to the *augustalis* at Alexandria and those holding that post in the usual course of missions, but also to the present and eventual *alabarches*,¹¹ and the *praepositus*¹² of our divine treasuries.

⁶ 'This great city' = Constantinople.

⁷ 'Augustalis' = the Augustal Prefect of Alexandria under whom (according to *J. Edict* 13) both civilian and military bureaux had been united. Zuckerman (2004) suggests that by here referring to the existence of more than one staff serving under the Prefect, the edict should be taken to indicate that *J. Edict* 13 had either never been put into effect, or had been reversed by 559. *J. Edict* 13 does, however, suggest that although united, military and civilian officials in Alexandria had still been kept separate, so as to facilitate their supervision of one another. In other words, the two bureaux had been united, but not fused, as Zuckerman appears to suppose.

⁸ 'The present holder of these offices' = the Augustal Prefect of Alexandria who, according to *J. Edict* 13, had also been accorded the authority hitherto assigned to the military commander or *dux Aegypti*. The clear implication of this section of the edict is that those bagging the coinage were trying to label it with a higher value than its weight alone would suggest (i.e. it was being labelled in terms of the transaction's initial gross value rather than its final net value).

⁹ See note 1.

¹⁰ It is significant in terms of making sense of this law that the *obryza* is here presented as a *deduction* rather than a *surcharge* which diminishes net tax revenues.

¹¹ 'ἀλαβάρχης' = a tax and customs official who handled money due to the *Sacrae Largitiones*: see *Codex* 4.61.9, Thurman (1964), p. 135, note 272, and Delmaire (1989), p. 286.

¹² 'Praepositus' = officer in charge or provost of the *Sacrae Largitiones*. See Thurman (1964), p. 135, note 273.

3

That is how we have charged him and those who will take up his post after him, and the bureaux under them, to see to this matter, in the knowledge that if they, or those at the heads of our divine *alabarchiae*¹³ or our *praepositus* of the divine *largitiones*, prove to have submitted to any demand for *obryza*,¹⁴ they will pay for it out of their own resources – out of their existing means, for one thing, and out of the *annonae*¹⁵ paid to them and their staff for another – not only during their term of office but even after they have left it, and whether they gave written acknowledgements of this demand when they took up office, or made no such acknowledgement. In particular, this is because there is nothing old-established about *obryza*; it is of recent origin.¹⁶

1. You will also, likewise, proclaim to all others engaged in business dealings who have hitherto been in the habit of taking a deduction, that should they prove to have taken or accounted anything for *obryza*, they will both forfeit their estates and undergo corporal punishments. Wrongly instituted, it has risen so high that it is harmful to our whole state; and by means of our present law, we are commanding that it should be suppressed for time to come, and no longer be a nuisance to transactions.¹⁷ On the liability of the *augustalis* at Alexandria and those who in due course will be officiating in the said position, and of both bureaux, the law is to be observed so thoroughly that even mention of *obryza* will be done away with, and transactions in the diocese of Egypt will be free of so heavy a cost.

¹³ ‘ἀλαβάρχαι’: offices of the *alabarches* (see note 11).

¹⁴ ‘Submitted to any demand’: i.e. if they accept the tax revenues net of deductions for *obryza*.

¹⁵ ‘*Annonae*’ = stipend. See *J. Edict* 13, note 15.

¹⁶ The practice is likely to have been accentuated by the recent diminution of the weight of the *solidus* of which Procopius complains (and for which he blames Peter Barsymes to whom this edict is addressed): see *Anecdota* 22.38.

¹⁷ It is clear from documentary papyri from Egypt that post-date this law that Justinian was not able to stamp out the practice of *obryza* in its entirety. However, the later examples (such as *P.Oxy.* I 144 – dating from 580) represent it as a surcharge of 6.25 per cent levied on transactions in loose gold coin rather than a deduction of 12.5 per cent: see Zuckerman (2004), pp. 113–14. For further discussion of this law, see also Hendy (1985), pp. 338–60.

Conclusion

Accordingly, your distinction is to give orders for our decisions, manifested by means of this divine law, to be put into practical execution and observance.

Given at Constantinople, December 27th in the 33rd year of the reign of the Lord Justinian, pius princeps, Augustus, 18th year after consulship of the Most Distinguished Basilius

559

[No heading]

Preamble

Our Majesty has been informed about John, a *scriniarius*² who was sent to Hellespont entrusted, in fact, with certain directives in the matter of account-keeping for civic funds, or what are called *sollemnia*;³ but on his arrival in the province, there was absolutely no form of what amounts to utter rapine from which he abstained: he plundered the cities,⁴ and returned to this fortunate city laden with gold for himself, leaving behind him complete destitution for the province of Hellespont. We have therefore made arrangements to have him dealt with in an appropriate manner, and for the victims of injustice to have redress from us.

1

The rapacity of those who are given such instructions has made us think it necessary to provide redress for it as a whole, in a general directive.⁵

¹ In this edict (dating from 535), the imperial government responds to reports concerning the depredations of a tax-collector sent out from Constantinople. Henceforth, such officers of the central fiscal bureaux were only to be permitted to interfere in local tax affairs if they possessed an official letter of instruction from the emperor appointing them to that task. Even then, that letter had to be corroborated by a second letter of appointment sent out on the emperor's behalf.

² 'Scriniarius' = an employee of a *scrinium* or governmental bureau, typically (as in this instance) of the praetorian prefecture (see *Codex* 12.49.8 and 12.49.10). John was evidently sent out as a 'trouble-shooter' from Constantinople: he was thus a representative of the fiscal authorities in Constantinople akin to the Middle Byzantine figure of the 'logothete' (λογοθέτης) – a title which was already used as a synonym for *scriniarius* in the sixth century (see *PLREIII*A, pp. 637–8 (Ioannes 19), *Codex* 10.30.4, Delmaire (1989), p. 713 and Bury (1911), pp. 80–5).

³ 'Sollemnia': these were civic funds that were hypothecated to meet specific purposes (such as the repair of aqueducts, etc.). By the Middle Byzantine period, the term was applied to any process of fiscal hypothecation, such as the diversion of provincial tax revenues to support a local religious foundation: see *J. Nov.* 128 c. 16 and Bartusis (2012), pp. 74–8. The Hellespont included the Dardanelles. John's crimes thus occurred in the near vicinity of Constantinople.

⁴ For imperial concern to maintain the prosperity and physical integrity of cities as reflected in the legal sources (including this edict), see Rodríguez López (2012) *passim*.

⁵ Similar misbehaviour by representatives of the central imperial government in western Asia Minor is the subject of bitter complaint by John Lydus: see *De Magistratibus* 3.59.

We therefore decree that if anyone arrives in the province, whether Hellespont or any other province at all, for the purpose of this kind of investigation, should it be an office-holder's order⁶ that he holds, no-one is to take any notice of him at all, and tax-levying by him is to be safely rejected; should he arrive with a divine pragmatic directive,⁷ if what he shows should be a *commonitorium*⁸ or a letter, no notice is to be taken of those either, as having been issued for purposes of plunder, and contrary to our intention; but should the pragmatic he shows be a decree,⁹ even so no action is to be taken precipitately by him: the provincial governor is to receive the pragmatic directive, notify us of the circumstances, and await a second command of ours.¹⁰ Thus, should we acknowledge it, and the recipient of such directive, a second pragmatic directive of ours is to be made out authorising the investigation to take place. Should we, however, disown either the mission or the person, no action is to be taken on it, but the divine directive is to be sent back by the provincial governor, in the knowledge that should he be negligent in this, and any loss be inflicted on our subjects as a result, he will take it on himself, out of his own resources.

2

Further, should the provincial governor be negligent, and not suspend the pragmatic directive but give way to its holder, we give authority to the bishops to notify us of this themselves.¹¹ Should we learn of it, we shall dismiss the governor from his office as being guilty by association, and

⁶ 'An office-holder's order', i.e. if the order has not come from the emperor but rather simply from an official.

⁷ 'Pragmatic directive' or 'pragmatic sanction' = Greek πραγματικός τύπος (Latin *pragmatica sanctio/iussio/lex* or a *pragmaticum* or *pragmatica* for short) was an important order or enactment issued by the emperor and drafted in his name by officials known as *pragmaticarii*: see *Codex* 1.23 and Berger (1953), p. 648. Such directives carried the force of law (see *J. Nov.* 43 c.1.1).

⁸ '*Commonitorium*' = an imperial order or memorandum to an official: see Berger (1953), p. 400. In other words, if the imperial directive simply appeared to be a letter or memorandum, it was not to be regarded as giving the official licence to collect taxes.

⁹ The Greek here is complicated by the fact that the term πραγματικός τύπος ('pragmatic directive') is used in the edict as both a general term for an imperial order and, as at this point in the text, as an express decree. Similar ambiguity is evident with respect to the use of the word τύπος in the contemporary documentary papyri from Egypt: see the editors' comments on *P.Oxy.* XVI 1829.

¹⁰ The procedure set out here is similar to that detailed more fully in *J. Nov.* 152, which also required that directives sent from Constantinople concerning taxation be double-checked by the praetorian prefect. This prefectorial edict was thus probably connected to that law.

¹¹ Here, as elsewhere, we see bishops being used to check the authority of local governors and act as the emperor's 'eyes and ears' in the provinces (see Rapp (2005), pp. 288–9).

deprive him of his office and property; we shall also ensure that there is indemnity for the victims of any form of injustice.

Conclusion

Your excellency, on learning of our decisions manifested by means of the present divine pragmatic directive, is accordingly to take pains to put them into practical effect.

Given at Constantinople, August 18th, consulship of the Most Distinguished Belisarius

535

Edict 13 | Alexandria and the Egyptian provinces¹

[Greek only]

To John,² Most Illustrious prefect of the sacred eastern praetoria

¹ Egypt was by far the most wealthy and agriculturally productive region in the entire East Roman Empire, not only furnishing a high proportion of the money-taxes collected by the state, but also the grain supply which supported the population of Constantinople and many of the other cities of the East. Accordingly, the fiscal administration of Egypt was of the greatest concern to the imperial authorities. In this lengthy but nevertheless fragmentary edict, probably dating from 539 (see below), Justinian complains that the money-taxes due from Egypt were being collected, but then embezzled and pocketed by local administrators, tax-collectors and landowners. In order to remedy this situation, and allow for greater tightness of imperial control, the emperor breaks up the power of the Augustal Prefect of Alexandria (who was equivalent to a diocesan *vicarius*), which had hitherto extended over the whole region. The Augustal Prefect was henceforth to exercise full military and civil authority over Alexandria and the neighbouring provinces of Egypt I and Egypt II. The *dux* of Libya to the west was henceforth to be directly answerable to the Praetorian Prefect of the East and derive additional revenues from the Mareotic region in the Nile Delta, whilst the *dux* of the Thebaid would administer both the Upper and Lower Thebaid and, once more, would be directly answerable to the Praetorian Prefecture. The law also indicates that great care was taken in handling the sensibilities of powerful local landowners to whom the fiscal office of 'pagarch' was entrusted. Such pagarchs, the law makes clear, were only to be removed from office, for example, with the express permission of both the Praetorian Prefect of the East and the emperor himself. Whilst the edict thus has much in common with Justinian's broader programme of provincial reform, his handling of local aristocratic interests in Egypt is noticeably more respectful of their interests than it was in relation to other provinces, perhaps informed by the presence in Constantinople, and at the imperial court, of Flavius Strategius Apion, whose family possessed extensive estates around Oxyrhynchus and elsewhere in Middle Egypt, and who was a firm supporter of the regime (see *PLREII*, pp. 1034–6 (Fl. Strategius 9) and *PLREIIIB*, pp. 1200–1 (Strategius)). At the same time, the emperor places great emphasis in the edict on the personal liability borne by imperial officers and representatives for all revenues they were expected to collect, and re-iterates imperial opposition to the granting of letters of fiscal indemnity or licences of exemption by bishops to taxpayers and officials (see *J. Edict* 2). The edict also casts interesting light on the accounting techniques and documentary practices of the imperial government. See further discussion in Sarris (2006), esp. pp. 10–20 and 212–14. The current text we possess of this edict makes no mention of the Egyptian province of Arcadia, in which the city of Oxyrhynchus was located. The Oxyrhynchite archive of the Apion family, however (of which Flavius Strategius was head) preserves what appears to be a fragment of this edict addressed not to the Praetorian Prefect, but rather to a local governor: that governor may have been a *dux* of the Thebaid (a position Flavius Strategius' son, Flavius Apion, held c. 550: see *PLREIIIA*, pp. 96–8 (Apion 3)), or may be derived from a missing section of the edict concerned with and addressed to the governor of Arcadia (see *P.Oxy.* LXIII 4400). For further discussion of this edict, see Demicheli (2000). For bibliographical orientation over the vexed issue of its dating, see Lounghis, Blysidu and Lampakes (2005), p. 293 (under entry 1176).

² John the Cappadocian: see *PLREIIIA*, pp. 627–35 (Fl. Ioannes 11) and *J. Nov.* 1, note 2.

Preamble

Given that we regard even the smallest matters as deserving our consideration, much more shall we not ignore the most important ones, which sustain our realm, or let them go unconsidered or bereft of the proper condition of order, especially as we have the support of your excellency, whose responsibility it is to serve us unremittingly, to increase the tax-revenue and to care for our taxpayers.

Accordingly, despite our view that other aspects of the tax-gathering had otherwise been quite well organised in times past, we have had in mind that in the diocese of Egypt it has reached such a confused state that there is no knowledge here even of what is going on out there. We have been surprised at the disorder over it hitherto; but God has granted that this, too, has been kept for our times³ and your excellency's ministrations.

They have been, as it were, tossing the grain over to us from there, and, that done, not deigning to bring in anything else; but, while the taxpayers were insisting that they were definitely having the whole assessment demanded of them in full, the pagarchs,⁴ city councillors and tax-collectors, and in particular the governors at the time, have hitherto arranged the business in such a way that no-one can find out anything about it, and that only they can profit from it.

Should we leave the business under a single administration, we would never be able to clear it up and organise it properly; so we have decided to reduce the responsibilities of the authority in charge of Egyptian affairs – of the *augustales*,⁵ that is – because a single person's mind could hardly cope with so many cares, and administer the business in such a way as to give us a clear insight into it.

³ Justinian here provides a powerful statement of his sense of providential mission.

⁴ 'Pagarchs' (Greek *παγάρχαι*) were locally dominant landowners in Egypt charged with the collection of taxes: see Sarris (2006), pp.104–12 and Liebeschuetz (1973). The taxes collected in Egypt were primarily of two types: taxes in kind for the purposes of the grain shipment to Constantinople, on which the capital was reliant for its food supply, and money taxes. The implication of this preface is that whereas the former were being collected and making their way to the imperial authorities in the ruling city, the latter were being pocketed and embezzled by local landowners and governors. Precisely the phenomenon complained of here (taxpayers being made to pay, but locally powerful tax-collectors then holding on to the proceeds of taxation) is recorded in the sixth-century documentary papyri from the Middle Egyptian settlement of Aphrodito (see Sarris (2006), pp. 96–114).

⁵ '*Augustales*': until this law, the Augustal Prefect of Alexandria had held supreme civil command across Egypt as a whole.

1

For that reason, then, we decree that your excellency, on receipt of this law of ours on the subject, is to deal with it in a manner befitting our decree and your excellency's services.

For a start, we wish the Admirable *augustalis* to govern no more than Alexandria itself, with responsibility for all its affairs, and just the two Egypts, apart from the city called Menelaïtes which is in the First Egypt, and Mareotes, for which we shall be making suitable arrangements.⁶

1. As stated, we wish him to be governor not only of Alexandria but also of the two Egypts (with the said exception of the Mareotes and Menelaïtes); the local governor of those two provinces will thus have only the form of appointment that he has been holding hitherto. That is to say, because of the large population of the said very great city, the Admirable *augustalis* will also have the rights of military command; it will not be a divided office, nor be shared between two office-holders, but, as we think advantageous overall, there will be a single person holding the said high office, with authority over all the troops stationed there, whether in the great city of Alexandria itself or in the two Egypts, as stated, . . .⁷

2

. . . because there must be provision for maintenance of good order in the city, and for there being no rioting among the said population. Under the guidance of God, above all, the person appointed to this post will have both the power of the civil office, and the military strength, to see to the good order of the said city; as far as the troops in Alexandria and the two Egypts are concerned, he will represent the Most Illustrious and gallant generals⁸

⁶ Egypt was divided into a number of provinces, with Alexandria being flanked by those of Egypt I and Egypt II which, until this edict, had been governed by the *dux Aegypti* (see Jones (1964), p. 281). For the city of Menelaïtes, see Cancik and Schneider (2006) *Antiquity* 8, pp. 682–3. Like Menelaïtes, Mareotes was located in the Nile Delta (see Haas (2001)).

⁷ Both civil and military authority in Alexandria and the two provinces of Egypt I and Egypt II are thus concentrated in the hands of the Augustal Prefect.

⁸ 'Generals' (Greek στρατηγοί) = *magistri militum* (high-ranking commanders in charge of the field armies: see Lee (2005), p.117 and Treadgold (1995), pp. 152–3): the Augustal Prefect was thus to exercise authority on behalf of the *Magister Militum Praesentalis* (who had authority over mobile units originally meant to accompany the emperor) and the *Magister Militum Per Orientem* (who had authority over field armies deployed in the East). See Treadgold (1995), pp. 54–63.

both of the *praesentales*⁹ and of the East. Thus, he will also have an *ad responsum*¹⁰ at hand to serve on any duties he may assign.

The staff that he will have is both the *augustaliana* and the *duciana*,¹¹ up to a total of no more than six hundred. These are not to be separate bureaux of *duciani* and *augustaliani*, but are to form a single staff and a single list, on which there will be one hundred in the highest grade, fifty for the staff of *augustaliani* and fifty for that of the leading *duciani*, seniority being organised alternately: first an *augustalianus*, then a *ducianus*, with this pattern being observed throughout the hundred members of the highest grade among them. The rest is to be constituted in whatever way the holder of the office may decide, always provided that the whole staff, comprising intermingled *augustaliani* and *duciani*,¹² does not exceed six hundred men.

3

All the actions taken on this are to be referred to your high office and, through your excellency, to us, so that, if correct, they may also receive confirmation from us.¹³ Once the staff is established, no-one is to join the *augustaliani* without *probatoriae*¹⁴ from us under our own signature, as hitherto. The staff itself, as a whole, will be called 'augustalian', and its head will be the one appointed by the Sovereignty as being worthy of the Sovereign's choice. On taking over the office he will keep his hands clean, and will show himself worthy of the Sovereign's choice in every way. We shall grant him from the public treasury not just the emolument that the Admirable *augustalis* has had hitherto, of fifty *annonae* and fifty *capita*;¹⁵ we are making a large increase, and wish him to receive from the

⁹ 'Praesentales' = mobile troop units originally meant to accompany the emperor (see Khazdan (1991) 2, pp. 1266–7, Treadgold (1995), pp. 10–13 and Jones (1964), pp. 124–5).

¹⁰ 'Ad responsum': a military aide de camp or liaison officer assisting the governor in carrying out his orders (see Edict 8 c. 3), or with the execution of writs and judgments (Jones (1964), p. 488; Avotins (1992), pp. 5–7).

¹¹ 'Augustaliana . . . duciana': i.e. all those civil and military officials who hitherto served under the Augustal Prefect of Alexandria and the *dux* of Egypt were to be placed under his command.

¹² By intermingling the officials in this way, Justinian was probably attempting to both contain resentment and use the ducal officials and those of the augustal prefecture as checks and balances on each another.

¹³ All appointments thus had to be confirmed by the Praetorian Prefect of the East and the Emperor.

¹⁴ 'Probatoriae' = imperial letters of appointment: see Codex 12.59.

¹⁵ 'Fifty *annonae* and fifty *capita*' = 450 *solidi*: see Treadgold (1995), pp. 118–57 (*contra* Thurman (1964), p. 140, note 297). The *capita* (or alternatively *capitus*) were originally fodder allowances for pack and other animals employed by imperial officials, whilst the

*vindex*¹⁶ forty pounds of gold each year for stipends, customary dues and *calandica*,¹⁷ from the places, and in the accounts,¹⁸ that are subjoined to this directive.

4

Those assisting him will receive five pounds of gold from the same sources, and his staff a further thousand¹⁹ *solidi*, although previously it had only one-third of that. This will be a distinguished institution, managed in a manner worthy of our times.

1. We wish the first concern of the holder of such an office to be the management of the auspicious shipment.²⁰ Not only at the peril of his own present and future property, and at the peril of his staff, who will have not just that but also their very life at stake, the Admirable *augustalis* himself and the staff under him will take every care to have the said grain for the auspicious shipment both collected and shipped out at the established times.

2. He is both to exact what comes from the two Egypts, and expeditiously to receive the rest of the amount comprising the fixed annual tax payment²¹ of the said auspicious shipment for conveyance over here, which he is to cause to be loaded onto the ships, and sent out to this fortunate city. Similarly, at his own peril and that of his staff, he is to

annona were stipends given by way of remuneration (by the sixth century typically commuted into coin) to imperial employees. For the rate of commutation in the sixth century (of five *solidi* per *annona* and four *solidi* per *capitus*), see Treadgold (1995), esp. pp. 149–50.

¹⁶ Justinian thus increases the total level of remuneration for the Augustal Prefect to some 3,330 *solidi*. *Vindices* were collectors of taxes introduced by Anastasius: see Malalas 16.12 and John Lydus, *De Magistratibus* 3.49. The equivalent of the *vindex* elsewhere in Egypt was the ‘pagarch’: see Sarris (2006), pp. 158–9. ‘Forty pounds of gold’: the Greek text gives this phrase in Latin.

¹⁷ ‘καλανδικά’: these appear to have been customary perquisites, perhaps derived from the *strenae calandariae* (new-year gifts) attested in *Codex Theodosianus* 6.30.11. For a papyrological attestation, see *P. Cairo Masp.* I 67058, lines 3 and 18 (see Thurman (1964), p. 141, note 298).

¹⁸ ‘Places and accounts’: as with respect to *J. Edict* 4, the governor received income from specific places, the fiscal revenues of which were directly hypothecated to him via the procedure that would be known into the Middle Byzantine period as the *solemnion*: see Bartusis (2012), pp. 74–9. The list of places and headings referred to is missing from the end of the edict.

¹⁹ ‘Thousand *solidi*’: the Greek text gives this phrase in Latin.

²⁰ ‘The auspicious shipment’ = the grain supply shipped to Constantinople (see Sarris (2006), p. 11).

²¹ ‘Fixed annual tax payment’ = κανών, late Latin *canon*.

demand from each Egypt what belongs to the great city of Alexandria, by award from us;²² and he is to receive the whole amount that is to come in from other areas and be delivered to him, as will be explained still more clearly in what follows. His outlay for the food-supply of the said city is to be as has been customary, so that, God willing, it remains continuously abundant. The liability of the Admirable *augustalis* for the completely unhindered running of the exaction will be shared by the troops under his command, the Most Distinguished *tribuni*²³ and every civic and public supporting body.

5

As for what is brought in from areas not under him,²⁴ we decree that the liability imposed on him extends only to receiving it without any delay, once it has been sent out, and conveying it over to this fortunate city, at his own peril and that of his staff. He is to take every care that nothing shall be exported from the cities, provinces, areas, anchorages and river-mouths under his control until the auspicious shipment has sailed from the city of Alexandria; nor even after that, unless authorisation has been, or shall be, made from us by divine directives of ours, and on instructions from your high office.²⁵ The troops will assist him in all duties that he may assign to them, as has been stated previously; and ships' captains will receive the grain, load it aboard the ships and, under God's guidance, make the voyage from there to this fortunate city.

6

Should the governor not exact the grain from the two Egypts, and ensure that what belongs to the auspicious shipment consigned to this fortunate

²² Part of the grain shipment collected from Egypt was thus set aside to feed the population of Alexandria, just as that surplus to the needs of Constantinople would also be assigned to other cities of the East and was also used to feed the imperial army on campaign (see Sarris (2006), p. 11 and Procopius, *Anecdota* 22.14–17). Procopius is highly critical of the monopolistic practices of the Augustal Prefect with respect to the food supply, implying that hitherto the population of Alexandria had largely been fed by means of commercial markets which Justinian brought under governmental control: see *Anecdota* 26.37–40.

²³ '*Tribuni*' = high-ranking military officers with overall command of a regiment (see Southern and Dixon (1996), pp. 59–61 and Treadgold (1995), pp. 87–92 and 149–55).

²⁴ 'Not under him': i.e. the grain brought in from the provinces of Arcadia and the Upper and Lower Thebaid, which were not subject to the Augustal Prefect.

²⁵ Again, this degree of state regulation is the subject of Procopius' criticism: see *Anecdota* 26.37–40.

and sovereign city is brought in to Alexandria and shipped over here before the end of the month of August, and also that the food-supply awarded by us to the city of Alexandria is brought into it during September, he is to be aware that he will lose his position, and he himself, and his heirs and successors, will have a demand from your high office of one coin for every three *artabae*²⁶ short from the contribution of the two Egypts for either the shipment or the food-supply; his property will on no account be set free until the entire resultant debt calculated for every three *artabae* has been brought into your exchequers. But, in any case, it is also his duty to make up a full exaction from the two Egypts by the stated dates, without fail.

7

As the oversight of the auspicious shipment has the tax for freight-charges inseparably bound up with it, we wish to determine the procedure for that as well, so as to bring the matter as a whole under proper care. As a start, we do not wish the receiver for freight-charges to have authority to intervene in the public taxes as a whole; nor is he to let off some of those liable, and to make what are called *endomantica*²⁷ for himself, consequently becoming remiss towards the public treasury, while charging others more than the amount due, perhaps more than before, and at abnormal times – thus making an opening for confusion to begin, by constant use of the pretext that freight-charges are inexorable, and using the confusion to pursue his own interest in contempt of your excellency's exchequers, and similarly aiming to profit by putting everything under his own control.

8

In the course of your vigilant universal administration, your excellency has informed us that the fixed annual tax payment of freight-charges supplied by Alexandria amounts to eighty thousand <gold> pieces, while the fortunate grain-consignment comes to eight million.²⁸ Accordingly, we wish

²⁶ The ἀρτάβη was the standard unit of dry volume in Egypt, with one *artaba* equivalent to 30 metric litres. The fine of one *solidus* per three missing *artabae* was at a punitively high rate: see Sarris (2006), p. 213 and Thurman (1964), p. 142, note 308.

²⁷ 'ἐνδοματικά': these appear to have been payments exacted by officials to enable taxpayers to defer their tax-payments: see *Codex* 10.19.9.6 and Thurman (1964), p. 143, note 311. Such charges or fees are the subject of criticism by John Lydus, *De Magistratibus* 3.70.

²⁸ The freight charges amounted to 80,000 *solidi*, whereas the grain shipment consisted of 8,000,000 *artabae* or some 240,000,000 kg of grain per year. It has been estimated that one person could live on about ten *artabae* of grain *per annum*, so this would have been

the payment of these eighty thousand gold pieces²⁹ to be made to the receiver of freight-charges from the subjoined provinces, cities, areas and persons. In making this assessment where there is wealth, our purpose is to ensure that there is absolutely no delay or shortfall to the auspicious shipment. The Admirable *augustalis* and the staff under him – formed into a single unit, as stated, by combination from the *augustaliani* and the former *duciani* – will make the exactions for the receiver of freight charges from the designated cities, areas and persons, and from Alexandria and the two Egypts, with the receiver of freight charges himself also making such exaction likewise.

It is at their own peril that the *augustalis* and his staff, as stated, are to make these demands, together with the receiver for freight-charges, who is also charged with the liability for the exaction of these charges. It is to be done in such a way that the demand for money, its disbursement for the stated purpose, and its distribution to the captains in accordance with the practice hitherto established, are all to be irreproachable; and all aspects of the operation, and the liability for it, are to be shared with the said receiver of freight-charges by the Admirable *augustalis* and the staff under him, and by the most gallant regiments in the area, with their *tribuni*. The account due for freight-charges is without fail to be made up in full and paid to the receiver, and administered through him in the proper and accepted manner, by providing it to the captains for the whole auspicious shipment.

His first care, then, will be that of the auspicious shipment and the freight-charges, with the concomitant administration.

9

In second place, we wish your excellency, the eventual holder of this office, and the *scriniarii*³⁰ and administrators of the two Egypts and of Alexandria, to see to the exaction of the public taxes brought in to each of the two exchequers, the special and the general,³¹ of your court; these come, of course, from the cities, persons (with their sureties) and areas designated

enough to feed some 800,000 people (see Sarris (2006), p. 11 with note 9). It is conceivable that Justinian may have meant 8,000,000 of the smaller unit known as the *modius*, but given that earlier in the edict *artabae* are expressly referred to, this seems unlikely.

²⁹ I.e. *solidi*.

³⁰ ‘*Scriniarii*’ = employees of the *scrinium* or bureau (typically of the Praetorian Prefecture: see *J. Edict* 12, note 2); ‘administrators’ = Greek *τρακτευταί* (Latin *tractatores*).

³¹ ‘The special and the general’: the financial offices of the Praetorian Prefecture were divided into these two sections, with the land tax handled by the general treasury (see *J. Nov.* 148, note 5).

for this duty, which are also subjoined to this divine legislation.³² Not even the Admirable *augustalis*, nor the staff under him, nor yet the most God-beloved bishop of Alexandria can grant licence³³ or exempt any one at all from the public exaction; nor can they involve themselves with the said exaction pertaining to your excellency's exchequers, or with the persons designated for it, for any reason other than that the administrators and those acting for them locally have requested that to be done, for their assistance. If they do make this request, or if your distinction and those eventually holding the same office should so order, the *augustalis* of the time, the devoted soldiery under him, the *tribuni* and the staff under the said Most Magnificent *augustalis*, with every civic and public supporting body, will be obliged to come to the aid of your *scriniarii*, and to cause all those subject to such contributions, pertaining to both the exchequers of your excellency's court, to pay in the public taxes imposed on them, without any delay and without daring to object. Should any inhabitant of either Egypt, or of Alexandria, who is subject to such contributions (with the exception of the Mareotes and the city of Menelaïtes, for which we shall be making the appropriate dispositions in what follows) dare to be confrontational over the payment or to oppose it in any way, and the Admirable *augustalis* with military and civil power, together with the regimental officers and *tribuni*, does not compel him or them to pay in what is due, and accept compliance with the public treasury, they are to know that the Most Magnificent *augustalis* himself and every supporting force that we have mentioned above will be in jeopardy both of their office <and of their *annonae* which will be accounted* > to the public treasury as part of what is owing; while those who had the temerity to object will see their estate become public property, and themselves banished from the province. The *augustalis* at the time will, of course, be subject to all future orders from your excellency, being under your excellency's authority and command, just as has been the observance up to now.

* Accepting S/K's suggested supplement [S/K, p. 784, line 13].

10

If your distinction, or the *scriniarii*, the administrators or their local representatives, wish licence to be granted to any persons, they will

³² The schedule referred to is missing.

³³ 'Licence' (Greek λόγος) = the licence of indemnity (λόγος ἀσυλίας) discussed in *J. Edict 2*, note 1.

themselves bear the jeopardy for them. It is the most God-beloved patriarch³⁴ who will grant it, lasting for whatever number of days and under whatever conditions may be ordered by your excellency's authority, or requested by the administrators. Any grant of a licence otherwise will be entirely invalid; we do not permit a licence to be granted otherwise to the persons designated for each tax-category, for any reason whatsoever. They are not to receive it except on condition of appearing in public and, without fail, paying what they owe to the public treasury within a stated number of days, or providing the *scriniarii* or administrators with sufficient security. Furthermore, the recipient of a licence otherwise than that, from any person whatsoever, counts as a defaulter, and is subject to the exaction even when inside the holy precincts.³⁵

1. Should the most God-beloved archbishop grant a licence otherwise than as stated, the most God-beloved stewards and the ecclesiastical defender³⁶ of the most holy church will be obliged to take on the consequent loss to the public treasury, out of their own resources and property. Should they be insolvent, satisfaction to the treasury will be made out of the money and property of the most holy church.

2. If they dare to grant a licence themselves without the approval of the most God-beloved bishop, not only will the grant be completely invalid, but they will themselves make good the loss to the public treasury, and the most blessed patriarch will, without fail, dismiss them from the positions they hold, and expel them from the priesthood, for acting in this way without his approval.

3. Should an office-holder – that is to say, either the *augustalis* or the Most Distinguished *tribuni* or regimental officers – grant a licence, in contravention of what has been explicitly stated, to anyone who owes taxes destined for your exchequers, they will be relieved of their rank and post, and will compensate the public treasury for the said loss even after being put out of office, not only in their lifetime but even after their death, because they, their heirs and their property will be liable to such demands.

³⁴ The Patriarch of Alexandria was a towering figure both within Egypt and the imperial Church more generally. Denounced as a 'New Pharaoh' by his opponents, his authority was in many ways enhanced by this edict, in that whilst the authority of the Augustal Prefect was henceforth limited to Alexandria and the two Egypts, the Patriarch's writ ran over the entirety of the country.

³⁵ 'Holy precincts': i.e., he is to be subject to punishment even if claiming asylum in a church.

³⁶ 'Ecclesiastical defender' = the office of the *defensor ecclesiae* who was meant to represent the legal interests of the Church: see *J. Nov.* 17, note 17. For the personal financial liability of ecclesiastical and monastic stewards, see *P.Oxy.* LXIII 4397.

For fear of the penalties, no such crime will be committed, nor will it escape the penalty until the whole debt is paid off.

4. However, should anyone remove an accused person³⁷ from the holy precincts or places, or if he hinders the demand, he too must similarly be liable, together with his own heirs, successors and property, to a demand for all that the person who has been removed was owing. As stated, those who bear the whole liability for this exaction – we mean the administrators and *scriniarii* – themselves also have the complete control and management of it, and of the export to your excellency's exchequers of the whole fixed annual tax payment pertaining, by what has been said, from cities, provinces and areas to your excellency's general and special exchequers, and for making payments to any others whom you yourself determine.

11

We decree that the Admirable *augustalis* is also obliged to render assistance to emissaries from your high office for this purpose, and to the administrators and *scriniarii*, or their representative, over the exactions which concern them, and which are transmitted to the general and the special exchequer.

1. In the event that any inhabitants of the said regions should be intransigent towards the public treasury, and attempt to make some disturbance in order to escape the exaction, we decree that the administrator, the *scriniarii* or their representatives have authority to make this known to the Most Magnificent *augustalis*; and he, at his own peril and that of the staff under him, is to compel his troops, at their peril, to give their support over this, arresting the intransigent and demanding what is owed to your exchequers, so that it is successfully obtained by a combination of the civil and the military arm, being promptly exacted and brought into this great city.³⁸ The Most Distinguished *tribuni* and most gallant soldiers, particularly those of the highest rank among them, are to be aware that should they be negligent over this and not cause the men to do all that we have said, they will be in jeopardy of their stipends, which will be withheld by the *augustalis* at the time and paid in to your exchequers, at his peril. The Most Distinguished *tribuni* and the higher-ranking soldiers will suffer confiscation, the latter also being under threat of capital punishment; and the whole

³⁷ 'Remove an accused person': i.e. help a malefactor to abscond.

³⁸ Here, as throughout this edict, Justinian places emphasis on the personal liability and risk (Greek οἰκειός κίνδυνος) of those charged with official duties for the tax-revenues they are meant to collect.

regiment will be moved from the region and transferred to regions beyond the Ister, or Danube, to remain on guard-duty at the *limites* out there.³⁹

2. Those who have shown intransigence towards the public treasury, and awaited such enforcement, will themselves be subjected to confiscation and perpetual exile, to live in Sebastopolis and Pityus, <which are at the furthest extremity of our domains* > on the Black Sea.⁴⁰

* Accepting S/K's suggested supplement [S/K, p. 785 line, 29].

Likewise, we impose on the Admirable *augustalis* an identical, equivalent responsibility for the successful collection by him and his staff of the *largitionalis* taxes, and all that pertains to our divine *largitiones*, carried out by him and his staff either in Alexandria or in the two Egypts.⁴¹ Those taxes too are of equal concern to us, and it is his duty, and that of his staff, at their peril, to see to the exaction of the *largitionalis* taxes, and of all that pertains to our divine *largitiones*, so that such public taxes appertaining to our divine treasuries are both exacted and brought in to our divine *largitiones*, at the entire peril of the Admirable *augustalis* and the staff under him. Should there be negligence over any of this, he will be in imminent peril of his office, and also of his estate, not merely while he is still in office but afterwards as well, when he has laid it down; the jeopardy will then be against his successors and heirs. Not he alone, but his heirs and successors also, will be liable for such exactions until all that is owed from the areas under his command has been paid to our divine *largitiones* in full.

3. No licence of indemnity is to be granted by any one to those under him, except by those <who bear* > the liability for conducting the exaction, as has been stated, at the peril of the Admirable *augustalis* at the time, and the staff under him, and for paying in the money to the devoted *palatini*⁴² of the divine *largitiones* whose concern that duty is, and to those otherwise

* Accepting S/K's suggested supplement [S/K, p. 786, line 8].

³⁹ '*Limites*' = the frontiers of the Roman Empire. It is instructive that the empire's troubled Danubian frontier was evidently regarded as the worst posting. Although the Danube (also known as the Ister) marked the limit of Roman territory, the edict would suggest that the empire nevertheless maintained garrisons in barbarian territory beyond it.

Alternatively, the reference to the places 'beyond the Ister' may be a reference to the imperial possessions in the Crimea (see Sarris (2011a), pp. 169–81).

⁴⁰ 'Sebastopolis and Pityus' = fortresses on the border of Lazica and Abasgia: see Procopius, *de Aedificiis* 3.7.8 and 3.7.9, *Wars* 8.4.4–5 and Cancik and Schneider (2007) 11, p. 308.

⁴¹ '*Largitionalis/largitiones*': i.e. the Augustal Prefect is to be responsible for all taxes that accrued to the *Comes Sacrarum Largitionum*, on which see Jones (1964), pp. 427–38.

⁴² '*Palatini*' = (in this instance) officials of the *Sacrae Largitiones* stationed at Alexandria under their chief officer (= *praepositus*).

despatched for that purpose by the Most Illustrious holder of the said renowned office. They will not permit a licence to be granted to anyone, otherwise than as has been explicitly stated above, nor any impediment to occur over the exactions. The devoted soldiers in those regions and in the cities will suffer the same punishments should they not also assist; should the *largitionalis* funds not be collected without fail, and paid to those despatched for that purpose; and should there not be as fully energetic exaction of those funds as we have directed that there should also be for the *arcaria*.⁴³

12

Our commission to the Admirable *augustalis* also includes the giving of orders on all matters to soldiers, to pagarchs⁴⁴ and to those handling the taxes that are under his administration and authority. He cannot, however, use his authority to dismiss pagarchs who are intransigent over the grain, the freight-charges or the other taxes pertaining to the causes stated, or for local expenditure; instead of dismissing any errant pagarchs, he will put them in custody, while looking about for others to discharge the function properly. He will give full information to your excellency's high office here, and through that, to the Sovereignty, so that we may have full knowledge with which to take the appropriate action, both over ejection of pagarchs who have not discharged the function properly and over the putting in place, should we so decide, of those chosen as their replacements, and the passing on of what pertains to the office, and to their property.⁴⁵

1. Also subject to the *augustalis* will be the city councillors in Alexandria and in the two Egypts, and all those who handle taxes that have been assigned for his exaction in the regions under him. Even should these people be in other regions which are not under him, he will have authority to bring them to him and exact the taxes.⁴⁶ If any owners of property in

⁴³ '*Arcaria*' = the taxes due to the accounts (*arcae*) of the Praetorian Prefect: see *J. Nov.* 148, note 5.

⁴⁴ The pagarchs, as noted earlier, were typically local great landowners whose families effectively came to hold the pagarchate by way of hereditary right or duty. They included, for example, members of the Apion family, who owned extensive estates around Oxyrhynchus and held high office in Constantinople: see Sarris (2006), pp. 17–22 and 104–12 and Liebeschuetz (1973).

⁴⁵ The fact that pagarchs could only be dismissed by the Praetorian Prefect with the emperor's consent permitted them a high degree of autonomy with regard to the provincial administration and its representatives (see Liebeschuetz (1973), p. 42).

⁴⁶ The emperor here alludes to landowners who owned property on a trans-regional basis. This was common in Egypt at the time, as the imperial aristocracy grew in wealth and range of economic interests: see Sarris (2006), pp. 177–99 and Banaji (2007), pp. 137–8.

Alexandria or the two Egypts should be living elsewhere, or be resident in provinces not subject to him, he will have authority to bring them, also, back to the province they have left, so that there is no impediment to the exaction of the taxes that are under his authority. The same action is also to be taken should there be people owing taxes pertaining to your exchequers, and should the administrators and their representatives on whom the exaction for the special and general exchequer is incumbent, put any such information before him; for this purpose likewise, he will send out and bring them, so that they too are subject to exaction by your administrators. Even if they are elsewhere, those who owe taxes cannot evade the *augustalis* over tax-liability on the ground of his having no competence as judge for them. We wish that to be done also for the demands for the *largitionales*.

13

On tax-exactions, there remains the care of the *augustalis* and the staff under him for military expenditures in Alexandria and the two Egypts; and also those for the civic and *sollemnia*⁴⁷ taxes for the great city of Alexandria, and for each Egypt. These must be both demanded and paid in at the peril of the Admirable *augustalis* and the staff under him. That task will no longer be carried out by your excellency's *scriniarius* known to Egyptians as *stratiôtos*,⁴⁸ from his administration of the military taxes; his role will be ended once for all, and the Admirable *augustalis* and the staff under him will make the exaction at their peril, by whatever means they wish. He will supply the expenditure for all the devoted troops stationed in Alexandria <and in the two Egypts, and* > will meet the expenditure relevant to them from the subjoined areas and cities, making the exaction of them, at his peril, by means of these devoted soldiers.

* Accepting S/K's suggested supplement [S/K, p. 787, line 13].

14

You will also require the *vindex* of Alexandria at the time to make all the payments that come from him for heating the public baths, and all other

⁴⁷ *Sollemnia*: tax revenues hypothecated by the imperial government to meet certain specific items of local expenditure: see *J. Nov.* 128, note 29.

⁴⁸ 'Known . . . as "στρατιωτός": derived from Greek 'στρατιώτης' = 'soldier': this was evidently a local title or nickname.

civic *sollemnia*; these are attached to this divine law of ours, in detail.⁴⁹ That transcript will show clearly the areas and persons from which those are to be collected, and under which schedules or purposes; also the amounts, and the way in which they are to be administered; that is for *sollemnia*, and all the civic expenditures that there are in the two Egypts, to be paid to the said cities at the peril of the local governor of these provinces. As for those that are to be administered by the Admirable *augustalis* at his own peril, and that of his staff, he will have authority both to grant licence and to take all actions he may deem advantageous to the task, as all liability rests with him and his staff. It is to be understood that expenditures for the city of Alexandria will be effected in the customary manner, through those who have been doing so hitherto.

1. There is to be no deliberate malfeasance or any trickery over the bringing in or conveyance of the auspicious shipment, by people falsely claiming not to be subject to the Admirable *augustalis*, nor by the Admirable *augustalis* himself or his staff; they must carry out the task cleanly in their responsibility for the public interest and to its profit, knowing that it cannot be avoided, and being aware that they will be under the most extreme punishment not merely for any crime, but even for any sharp practice of theirs over it.

15

There is another point referred to us by your excellency which we have deemed necessary to include in the text of this law. In the course of a full enquiry into affairs at the said city of Alexandria, your distinction discovered something in the ledger⁵⁰ of the time of Anastasius of pious destiny. There was a fiscal ledger,⁵¹ made out when Marianus of glorious memory was the administrator under him, and Potamon⁵² was then, as *vindex*, in charge of the taxation at Alexandria; in this ledger, he had recorded the export duty⁵³ as producing, for various purposes, 1,469<½> gold pieces, as

⁴⁹ The promised schedule is now lost.

⁵⁰ 'Ledger': 'diptych', or 'tablet' (Greek *πικτή*): see *Codex* 4.21.16 and 4. 21.22.10.

⁵¹ 'Fiscal ledger' (Greek *δημόσια πικτή*) or 'public record'. 'Marianus': probably to be identified with the figure of Marinus, who served as Praetorian Prefect under Anastasius (491–518) in the early sixth century, and who is accused by John Lydus of institutionalising the office of *vindex* (on which see n. 16) to the great detriment of taxpayers: see John Lydus, *De Magistratibus* 3.49, Sarris (2006), pp. 158–9 and *PLREII*, pp. 726–8 (Marinus 7).

⁵² See *PLREII*, p.902 (Potamon).

⁵³ 'Export duty' = Greek *ἐξαγωγήιον*.

follows: for the said city's public baths, four hundred and ninety-two gold pieces; for the so-called '*antikantharon*',⁵⁴ four hundred and nineteen; and for the receiver of the freight-charges, five hundred and fifty-eight and a half, thus making up the recorded total of one thousand four hundred and sixty-nine<and a half> gold pieces.⁵⁵ It was also recorded that, later, an acquisition of 100 gold pieces was made by the city councillors on account of the export duty, and that the *augustalis* of the time was paid three hundred and twenty gold pieces, for thirty-six colts supplied by himself to the hippodrome of the said city of Alexandria. This was the state of things that lasted not only when the Most Illustrious Strategius held office, but right up to the second indiction of the past cycle, fifteen years ago.⁵⁶ Since then, however, because of negligence by some, malpractice by others and theft by a great many, the revenue has gradually decreased: the public baths have lost their sum of four hundred and ninety-two gold pieces and the freight-charges their income of five hundred and fifty-eight and a half gold pieces. An excuse for these thefts was given them by the fact that some people actually contrived to obtain – from the Court, for one thing, and from your excellency's high office for another – licence for themselves to export from the said city of Alexandria, actually duty-free, jars⁵⁷ and other goods subject to such duty; and that was how the said city was gradually impoverished.

⁵⁴ 'ἀντικάνθαρον': the meaning of this term is unclear, and a number of possible textual emendations have been proposed, such as a fee for cleaning the river channels of the Nile (ἀντι καθαρωσως), the furnishing of bread, perhaps for the poor, (ἄρτω καθαρωῶ), or compensation for destruction of grain by the scarab beetle (ἀντι κανθάρον): see extensive discussion in Thurman (1964), pp. 150–2, note 359.

⁵⁵ For the urban infrastructure of Alexandria in late antiquity, see Haas (1997).

⁵⁶ Flavius Strategius Apion (also known as Strategius III) served as Augustal Prefect before becoming *Comes Sacrarum Largitionum* (a post he is recorded to have held in 535: see *PLREII*, pp. 1034–6 (Flavius Strategius 9) and *PLREIIIB*, pp. 1200–1 (Strategius)). As noted earlier, his family were extensive landowners in the region around Oxyrhynchus in Middle Egypt: see Sarris (2006), pp. 18–19. If, as is generally supposed, this edict was issued in the year 539, then the emperor is here referring back to the year 524. Certainly, Strategius is spoken of here as if he is still alive. He is thought to have died in the early 540s, rendering the alternative dating of the edict proposed by some, of 553–4, unlikely: see Thurman (1964), p. 152, notes 362 and 363 and Rémondon (1955). If this edict was indeed issued in 539, then it would have been promulgated during the consulship of Fl. Strategius' son, Fl. Apion (see Sarris (2006), p. 19 and *PLREIIIA*, pp. 96–8 (Apion 3)).

⁵⁷ 'Jars' (Greek κέραμοι): for the Egyptian export trade and its archaeological visibility in the ceramic record, see Sarris (2006), pp. 11–12. Merchants were probably charged to transport their merchandise along with the state grain to Constantinople. On such 'piggy-back' trade, see Wickham (1988).

16

We welcome your excellency's attention to this matter as well; and we decree that such divine or authoritative directives furnished to certain people are to be of absolutely no benefit to them. All must accept liability to pay what they were paying up to the time of the Most Illustrious Strategius, and the Admirable *augustalis* is not to make any expenditure in excess of what had been current in the past, and up to the time of the Most Illustrious Strategius; nor is he to make any innovation by intervening in those taxes, and claiming them for himself. The original state of things as they were, right up to and including the Most Illustrious Strategius, is to be maintained, and no opportunity for dispute is to be given to the *augustalis* of the time <and the *vindex**>, one of them claiming not to have received anything, and the other claiming to have received too little. From the total amount of one thousand eight hundred and eighty-nine gold pieces, three hundred and sixty-nine are to be remitted, as we wish to act in a manner somewhat more generous than strict; for the assistance of the Admirable *augustalis* of the time, only one thousand five hundred and twenty gold pieces are to be brought in from the assessment, of which the Admirable *augustalis* will credit three hundred and twenty gold pieces to himself for the thirty-six colts he must provide for the hippodrome at Alexandria, in accordance with the custom prevailing formerly; again, he will put down to his own account the remaining one thousand two hundred gold pieces, for his stipends. The demand will thus be easy to meet, retaining the former method and giving no licence for criminal behaviour to anyone at all. For the heating of the public baths, for the *antikantharon*, for the public freight-charges <and for expenditures arising*> from other causes, <the income to be provided*> is shown in the list <attached> to this divine law.⁵⁸

,,* These supplements are partly as suggested by S/K [p. 788], partly new.

17

As we have attached the Mareotes to the territory of Libya, and it is likely that some of those guilty of communal rioting at Alexandria are taking refuge there, to escape having punishments inflicted on them by the

⁵⁸ As noted earlier, the schedule alluded to is missing.

Admirable *augustalis*, we decree that the Admirable *augustalis* at the time has authority, for this cause alone, to appoint a *commentariensis* with an official letter made out to the person who will be holding the office of Most Distinguished governor of the province of Libya, for him to arrest them and hand them over, through the civil servants and soldiers under him, so that no-one who has been causing communal disturbances in Alexandria could avoid punishment by the Admirable *augustalis*, by escaping to Libya. Additionally, the governor in those parts himself has authority, should he discover any such men, to arrest them and punish them, * co-operating with the *augustalis* to unburden themselves of the business*.

. Conjecturing <ἐκ> κοινοῦ τὴν χρεῖαν ἐλευθεροῦν αὐτοῖς for the meaningless κοινοῦ τὴν χεῖραν ἐλευθεροῦν αὐτούς in the text [S/K, p. 789, lines 8–9].

The conditions that we are determining for the said office, and the duties that we are establishing it to perform, are those which we have defined in this law. The position will thus be equal to the task; well equipped and well organised in all respects, it will offer no opening to those whose aim is confusion and theft.

18

Next to call for our attention is the position <of the Admirable *dux** > of the Libyan *limes*, which we have located at Paraetionium.⁵⁹

* Accepting S/K's suggested supplement [S/K, p. 789, line 13].

We have given him, too, a military arm for the government of the barbarians in those parts. We wish the Admirable *dux* of Libya to be based in the area of Paraetionium, as stated, and the cities under it; that is where the troops serving under his command will be. He, too, will receive the stipends allotted to him: for ninety *annonae* in kind and one hundred and twenty *capita*, one thousand and five and a quarter gold pieces; and for fifty *annonae* in gold and fifty *capita*, four hundred gold pieces. Additionally, the staff under him will receive 187½ gold pieces, and the

⁵⁹ The policing of Egypt's western desert frontier was clearly regarded as a matter of considerable significance, perhaps by virtue of the caravan routes that traversed the region (see Bagnall (2005), pp. 196–7). 'Paraetionium' (= modern Mersa Matruh): this city, located on the Mediterranean coast some 290 km to the west of Alexandria, was commonly regarded as marking the westernmost limit of Egypt and represented the only major port between the Nile Delta and Cyrenaica: see White (1996).

soldiers, that is those assigned to the said area from the regiments *Libyes Justiniani* and *Paraetonitae Justiniani*,⁶⁰ will receive their stipends as determined by the public treasury. All *sollemnia*⁶¹ in his cities will, of course, be paid as they have been hitherto; and the local governor and the staff under him, similarly, will have their own stipends.

1. Because a calculation of this whole expenditure will show that the income from the area under him, or the province of Libya, would be inadequate, we have deemed it necessary to add to it, as well, the district called the Mareotes and the city of Menelaïtes, which belongs to the First Egypt.⁶² Otherwise, he will be unable to provide from the public treasury for supplying the soldiers under his command. If the means of payment depend on an external source, and should that belong under a different governor, it will result in innumerable concerns and confusions arising from disagreement between the governors. Instead, he will himself be the governor of the said areas, at his own peril, and he and the staff under him, and the civil governor, with his own staff, will both conduct the exactions, and pay out what is collected to the troops and to themselves.⁶³ Thus both their costs and their stipends come from that source, the exaction being made on their own liability.

19

Here too, we are also making appropriate arrangements to avoid letting anyone cheat over this, either from wishing to over-spend, or from understating the income. As we have made clear on the list attached to this divine law, we are showing the total of the fixed annual tax payment⁶⁴ pertaining to your excellency's court that is brought in from the said provinces and areas – Libya itself, the Mareotes and the city of Menelaïtes – and the total of the expenditure due to be raised from them for the office-holders, their

⁶⁰ Justinian here once again reveals his penchant for naming institutions after himself for which he is criticised by Procopius: see *Anecdota* 11.2.

⁶¹ 'Sollemnia' = hypothecated tax revenues (see *J. Nov.* 128, note 29).

⁶² 'Mareotes and the city of Menelaïtes': see note 6. Rather as with the *Quaestura Exercitus*, Justinian is here subjoining an economically more highly developed area to support a less prosperous and more liminal one, despite their relative geographical distance from one another. For the economy of the Mareotic region in late antiquity, see Haas (2001).

⁶³ The implication of the text is that the *dux* has a subordinate civil governor placed under him.

⁶⁴ 'Fixed annual tax payment' = *canon*. The schedule is missing, but it is described as if it were structured on the same basis as private or household accounts of this period such as are attested papyrologically, i.e. as accounts of income followed by accounts of expenditure (Greek λόγοι λημμάτων και ἀναλωμάτων). See, for example, *P. Oxy.* XIX 2243(a). For the relationship between public and private documentary language and types, see Sarris (2013).

staff, the *sollemnia* and the commissariat of the devoted soldiers. Neither the Admirable *augustalis* nor his staff has any involvement at all with the said *dux* or with the provinces, cities and areas under his command, nor with any other local governor; the Admirable *dux* himself, and the civil governor of Libya, have complete authority in the said areas over financial and criminal cases, and over the exaction of taxes. However, the governor of Libya is under the Admirable *dux*, as are all the proprietors resident in the said regions, for their holdings, and as are those living on them. Even if they are resident in other provinces,⁶⁵ but have holdings under the said cities or areas of which the Admirable *dux* has charge, we wish them too to be subject to him, likewise, for exaction of taxes; he has freedom to send out to them, to make demands, and to carry out all the functions required by the process of exaction.

20

As our divine *largitiones*⁶⁶ also have some income from these provinces and areas under the said *dux* of the Libyan *limes*, we make that income, too, our similar and equal concern. We therefore decree that the said Admirable *dux* of Libya, and of the Mareotes and the city of Menelaïtes (as we have also added these to him), with the provincial governor and the staff under him, have to make the exaction of the *largitionalis* funds from all the said places, at their peril, in such a way that they are exacted annually with no shortfall, sent out by them to Alexandria, and handed over to the member of the devoted *palatini*⁶⁷ of the time who is charged with fulfilling the function of the *praepositus* there. In the awareness of being under the same jeopardy as they are – that is, the successive *duces*, the governor and the staff under them –, should they⁶⁸ not see to these exactions without fail, they are to give assistance over this. The troops will also give their assistance, they too being at risk, should they not give it, of being subject to the same penalties as we have also imposed on the soldiers stationed in Alexandria, and the two Egypts, should they, too, not treat the matter as deserving equal attention.

No licence⁶⁹ for the requirements of the *largitiones* can be provided for anybody, other than for the causes explicitly stated above, without the

⁶⁵ Justinian here once again alludes to trans-regional patterns of land ownership.

⁶⁶ ‘Divine *largitiones*’ = the office of the *Sacrae Largitiones*: see Jones (1964), pp. 427–38.

⁶⁷ ‘*Palatini*’ = (in this instance) officials of the *Sacrae Largitiones* stationed at Alexandria under their chief officer (= *praepositus*).

⁶⁸ ‘They’ = the *palatini*.

⁶⁹ ‘Licence’ = licence of indemnity or exemption (Greek λόγος ἀσυλίας).

approval of the devoted *palatini* of the said office, or those otherwise designated, by their chief at the time, for the exaction of the taxes for the *largitiones*. Exaction must take place even within places of asylum, and all else must be done over exactions for the *largitiones* in Libya, the Mareotes and the Egyptian city of Menelaites, in the same way as we have stated must be done for the exaction of *arcarica*⁷⁰ in Alexandria and the two Egypts.

21

Neither the account for freight-charges nor that for the special and general exchequer of your excellency's court are to have anything at all to do with the said authority of the Libyan *limes* and its exaction, <either in the areas originally under it* > or in those now being added to it, namely the Mareotes and the city of Menelaites in the first Egypt, for the administrative reasons that we have given earlier. In fact the whole fixed annual tax payment⁷¹ which pertains to your excellency's office, contributed from Libya, the Mareotes and the city of Menelaites, in whatsoever way and under whatsoever schedule, is to be assigned to the expenditures that we have stated above, namely maintenance of the office-holders and their staff, military expenditures, and those for *sollemnia*; but all that we have stated on the contributions for the *largitiones* is by all means to be in force.

* Accepting S/K's suggested supplement [S/K, p. 791, line 6].

22

We are also concerned that our subjects should not suffer from hardship and injustice consequent on long distances, particularly as the Mareotes is in the neighbourhood of Alexandria, and some trouble-makers there come to the Mareotes and no longer have any fear of the Admirable *augustalis* of

⁷⁰ ἀρκαρική (derived from Latin *arca*, strong-room, treasury) = revenues due to the Praetorian Prefecture (see *J. Nov.* 148, note 5).

⁷¹ 'The whole fixed annual tax payment' = the whole *canon*. It is here implied that revenues earmarked for the Praetorian Prefecture from the Mareotic region in the Nile Delta were to be hypothecated to support the empire's military and administrative personnel based at Paraetonium, some 290 km to the west of Alexandria, and stationed along the Libyan frontier. This provision thus reveals the effectiveness of inter-regional integration within and beyond Egypt, and parallels the arrangements whereby wealthier territories were to subsidise militarily more exposed frontier zones as set out with respect to the *Quaestura Exercitus* (on which see *J. Nov.* 50).

Alexandria.⁷² We therefore decree that the Most Distinguished civil governor of Libya at the time is to choose, at his own peril, a sound man,⁷³ and send him out as his representative. This man will be based in the Mareotes and the city of Menelaïtes, and will hear financial, criminal and all other proceedings conducted in the areas surrounding the Mareotes and the city of Menelaïtes, and deal with them as appropriate. He will arrest any seditious refugees there may be from Alexandria, and despatch them to the Admirable *augustalis*, making out an official letter to him, so that no activity of that kind is left unpunished. However, should the Admirable *augustalis* wish to make arrests in the Mareotes of any seditious refugees there, he will have authority to send out one of the *commentarienses*⁷⁴ under him, with an official letter to the representative of the Most Distinguished governor of Libya, for those who have taken part in disorder to be arrested, handed over and sent over to Alexandria under his supervision, and at his peril. We are assigning to the said deputy twenty civil servants⁷⁵ from the staff under the Most Distinguished local governor of Libya, and up to a total of fifty of the soldiers stationed there, for him to have under his command, and working for him, a force adequate for the duty. The said civil servants and soldiers will be at his service for keeping order, and for all other duties that the person fulfilling the function of governor is required to carry out. For emolument, he will receive one hundred gold pieces.

That is to be the end of our dispositions on the administration of Libya.⁷⁶

23

Next, then, we move on from there to the *limes* of the Thebaid: that is, to the two provinces of Thebais, which have over them the Admirable *dux* who receives this administration from us.⁷⁷ The local governors of these

⁷² Justinian here once more alludes to criminals seeking to evade justice by crossing provincial boundaries and weaving between the zones of authority of different officials: see *J.Nov.* 145 and *J. Edict.* 8.

⁷³ ‘Sound man’ (Greek ἀνὴρ σπουδαῖος): perhaps an echo of the legal Latin *vir bonus* (see Berger (1953), p. 767).

⁷⁴ ‘*Commentarienses*’: these were subordinate judicial officers charged with the custody and supervision of prisoners: see *Codex* 1.4.9 Their influence was the subject of criticism by John Lydus: see *De Magistratibus* 3.17.

⁷⁵ ‘Civil servants’ (Greek ταξῆται) = *cohortales* (see *J. Nov.* 6, note 6).

⁷⁶ The effect of Justinian’s reforms with respect to Libya was to remove the region from the jurisdiction of the Augustal Prefect and render the *dux* directly answerable to the praetorian prefect.

⁷⁷ The region of the Thebaid in Middle Egypt comprised the Upper and Lower Thebaid, each of which is here placed under the command of the *dux*, whose authority is carved out

provinces will be obedient to him, and he too will be of augustal rank, as if he were actually the *augustalis*. He too will be subject in all respects to the dispositions of your excellency, and to the court of the East, as the Admirable *augustalis* is now. We are giving him the whole jurisdiction and authority that the *augustalis* <has been accustomed to* >hold in the provinces formerly assigned to him, that is the two Thebaida.

* Supplementing ἔχει<ν> ἐν ταῖς ἐπαρχίαις <εἶθιστα> ταῖς for ἔχει . . . τοῖς ταῖς [S/K, p. 792, line 9].

24

It will be his first care and liability, whatever happens, to exact the grain for the auspicious shipment, to send it out and to hand it over to the Admirable *augustalis* of Alexandria. At his peril, he is to ensure that in actual practice, and within the stated time-limits, all the grain that is charged to his provinces, cities and areas, and pertains to the shipment for this fortunate city and to the food-supply awarded by us to Alexandria, is unfailingly sent out, with no delay about it; the entire liability rests on him and on the staff under him. The troops in the area, their *tribuni*⁷⁸ and every civic and public supporting body are also at risk, should they not assist in this. The full amount of the auspicious shipment for export over here must be loaded by him into the river-ships, in actual practice, by the ninth of August; the statement of full receipt for it is to be made out by him, and the grain is to be transported to Alexandria by the tenth of September, and handed over to the Admirable *augustalis* or to those appointed by him for that duty, while the food-supply awarded by us for the great city of Alexandria is to be there by the fifteenth of October. It is an understood thing that should all the grain – both that for the auspicious shipment to be transported over here, and that for Alexandria’s food-supply – not have been sent down to Alexandria and handed over in full to the Admirable

from that of the Augustal Prefect. The Lower Thebaid stretched from Hermopolis to Panopolis, whilst the Upper Thebaid extended to Upper Egypt from Ptolemais to Ombi. To the south, the Thebaid faced incursions from barbarian tribes such as the Blemmyes. Social and economic relations in the Thebaid at this time are reflected in the papyrological archive of a sixth-century lawyer from the settlement of Aphrodito by the name of Dioscorus, which reveals that the office of the *dux* of the Thebaid was becoming the preserve of powerful members of the local aristocracy. By 550, for example, the position had come to be held by Flavius Apion (the *consul* of 539): see MacCoull (1988) and Sarris (2006), pp. 19 and 96–114; ‘*limes*’ = frontier.

⁷⁸ ‘*Tribuni*’ = commanding officers in charge of a regiment (see Southern and Dixon (1996), pp. 59–61 and Treadgold (1995), pp. 87–92 and 149–55).

augustalis within the stated time-limits, * he will be charged for whatever of the whole he does not himself produce in entirety, * at one *solidus* for every three *artabae* of all grain missing and not handed over.⁷⁹ This liability will not stop with his lifetime or his tenure of office, but he will have that demand even when out of office, and after he dies; it will outlast his death, because his heirs and his property will be liable to such distresses, and his negligence will present them with perpetual peril, responsibility and exaction until the whole debt is settled, in the manner stated.

- Conjecturing [καί] < ὁ ἄν > οὐ πᾶν αὐτός προσστήσοιτο τοῦ παντός <ἀπατηθήσεται> for the meaningless printed text καὶ οὐ πᾶν αὐτός προσστήσοιτο παντός [S/K, p. 792, line 26].

In this requirement, we are making no innovation beyond what has happened hitherto, because we know that in the first indiction just past, John, Most Illustrious son of Cometas of Most Magnificent memory, brought all the grain into Alexandria and handed it over to the holder of the office of *augustalis* at the time before August was quite over, and that the same has been done by the present holder of the said office, the Most Illustrious Orion,⁸⁰ and your excellency and we ourselves have inspected the statements of full receipt that had been sent out, both the one made out in John's time and the one in Orion's. In that we have made the holder of this office more important and powerful, and have given him the rank and jurisdiction of the *augustalis*, failure to follow the examples of men of their standing will be nothing short of negligence, and betrayal of trust; it would be intolerable for him to fall short of his predecessors despite having greater authority in his grasp, and to subject the whole realm to peril and himself to perpetual ruin, forfeiting his office, being prosecuted, and continuing to pay off the debt, both during his lifetime out of office and even after death, through his heirs and property, until the whole value of the undelivered grain has been safely repaid to the public treasury, having been

⁷⁹ The *dux* is thus to be penalised for the non-delivery of grain at the same rate as the Augustal Prefect.

⁸⁰ The individuals referred to here have not been securely identified. A number of hypotheses are discussed in Thurman (1964), p. 157, note 391. If one emends Orion to Horion, then it may be that there is some connection to the figure of Flavius John (or Ioannes) Menas Narses Chnoubammon Horion Hephaestus, who is recorded to have served as *dux* of the Thebaid, Augustal Prefect of Alexandria, and Praetorian Prefect of the East, and of whom John Lydus noted that 'he was a good man whose very name alone displayed the nobility which was his, for he was reputed to be a descendant of that Hephaestus, who, according to the Sicilian, had reigned as the first king of Egypt': see *De Magistratibus* 3.30 and *PLREIII*A, pp. 582–3 (Fl. Ioannes Theodorus Menas Narses Chnoubammon Horion Hephaestus).

exacted through your excellency's high office at the rate of <one gold piece> for three *artabae* of grain.

25

He will have authority over both soldiers and civilians, the former in right of his military office, the latter under his jurisdiction as *augustalis*. As we said earlier, the local governors will, of course, be under him, with responsibility for the said provinces, as also will the staff under them and every supporting body, civic and public, including the pagarchs,⁸¹ the city councillors and, in a word, everyone present or resident in these provinces, or acting as pagarchs or working in any way on public business. He will have freedom to bring them before him even if they are living in other provinces not subject to him, but only for tax-exactions; he will do so also if those in his area should then abscond.⁸² The tax-exaction will therefore be inescapable, in any case. Should he find that any pagarchs, for whom he is also liable, are intransigent over the auspicious grain-shipment, or over the freight-charges or payments for local expenditures, he will not dismiss them, but will put them under custody, and look for others fit for the task. He will inform your excellency's high office of this, so that the matter is referred to the Sovereignty by you and by the holders of the said office at any given time, and receives administration from there: those condemned for intransigence will be banished, should we so decide, and those selected locally will be appointed in their stead, should we judge them suitable; on the issue of a divine command from us on the subject, and a dutiful instruction from your high office, they will take over the property of the others, as well as their office as pagarchs.⁸³

⁸¹ For the activities of pagarchs in the Thebaid, see Sarris (2006), pp. 104–12.

⁸² The law here alludes to absentee landowners acting as pagarchs. This phenomenon is reflected in the papyri, which record members of the Apion family to have served as pagarchs for the region around Oxyrhynchus (in the province of Arcadia) whilst holding high office elsewhere in Egypt and in Constantinople. The tax-collecting duties associated with the pagarchate were instead handled by members and employees of the Apion household: see Sarris (2006), pp. 71–80.

⁸³ As with respect to pagarchs answerable to the Augustal Prefect, those in the Thebaid could only be removed with the express permission of the Praetorian Prefect and the emperor (see Liebeschuetz (1973), p. 42). The obligation to become a pagarch was effectively an hereditary public duty (*munus*) to which one became liable by virtue of one's status as a landowner (as reflected, for example, in *P.Oxy.* XVI 1829). It is thus understandable that Justinian should here threaten recalcitrant or remiss pagarchs not only with dismissal from office, but also with the confiscation of their landed property.

26

In the first place, then, we wish him to see to the auspicious shipment and the food-supply for Alexandria, despatching them to Alexandria at his peril and that of the local governors and staff under them, in the amount that the regions and cities under them <contribute^{*}>. The Most Distinguished *tribuni*, and every civic and public supporting body, will also be at risk of their rank, their property and their very life, should they not assist. As we have already said <he will be penalised as stated above^{**}> if he does not send out <the total amount^{**}> of the fortunate grain shipment for Constantinople and hand it over at Alexandria to the *augustalis* there, or to his appointees, by the tenth of September in each indiction; also send out what we have awarded as Alexandria's food-supply, and hand it over to the Admirable *augustalis* or to his appointees for that, by the fifteenth of October, as we have also ruled before. He will make out a statement of full receipt, in accordance with our instructions above.

* Accepting Zachariae's suggested supplement [S/K, p. 794, line 1].

** As this copyist has been proving so constantly prone to omissions, such supplements seem more likely than the implausible emendation of εἰ μὴ το τὸ μέτρον [S/K, p. 794, line 4], as in app. crit.

27

Then there is the next part of the task to be placed under his full care and on his full liability, and on that of the local governors and the staff under them: namely, the freight-charges. They are to exact them, without any reduction, from all the cities, areas and persons that we have put down on the list subjoined to this law, and have assigned to the schedule for freight-charges; they are to demand all the money from them, and pay it to the receiver of freight-charges within the appointed dates and without any over-running on their part, so as to avoid impeding the account for freight-charges, which in its turn impedes the auspicious shipment. The jeopardy facing him over that will be such that he and his staff are compelled to face a demand for double any payment that he does not make punctually to the receiver of freight-charges. We wish all that is brought in to your excellency's exchequers, from the region entrusted to him by us, to be demanded, at his own peril, through your excellency's

staff and through the *scriniarii* and administrators of the said provinces, from the areas, cities and persons in the schedule⁸⁴ attached to this divine law of ours, which clarifies the smooth running of the exaction. They will themselves carry out the collection of it, and its despatch over here.

28

No-one, whether it be the office-holder, a city bishop or the Admirable *augustalis* of Alexandria, will give a licence of indemnity unless there is an order with that intention from your excellency's high office, or unless the administrators, the *scriniarii* or their representatives request it themselves. That, though, must be done with the said time-limit, and on whatever terms your high office may instruct, or they themselves may wish; but they must only grant the licence on condition that the recipient will emerge from the sacred grounds⁸⁵ within a stated number of days, without fail, and see to the payment of the debt to the public treasury in full, or give it satisfaction, in whatever way the *scriniarii*⁸⁶ of your court, at whose peril this is, may choose to accept.* We do not wish a licence granted otherwise than this to be a licence at all: the person who has, invalidly, received such a licence is in all circumstances to undergo the exaction even within the sacred grounds, and the person who has provided it will also be subject to the consequent exactions and proceedings, as will his heirs, successors and property. Should any most God-beloved bishop grant a licence otherwise than as stated, the most God-beloved stewards and defenders of the church under him will be compelled to make good the resultant loss to the public treasury, in the first place from their own resources and their existing property; but should they be insolvent, from the property of the most holy church.⁸⁷ Should they dare to grant any licence without the approval of the most God-beloved bishop, not only will that action be entirely void, but they themselves will also make good the loss to the public treasury, and in addition will be without fail dismissed from the posts they hold and

* Accepting Zachariae's λαβεῖν οἱ for λαβοῖεν [S/K, p. 794, line 27].

⁸⁴ The schedule, as noted, is missing.

⁸⁵ 'Emerge from the sacred grounds': i.e. will cease to claim asylum or sanctuary on ecclesiastical property: see Rapp (2005), pp. 258–9.

⁸⁶ '*Scriniarii*': see note 30.

⁸⁷ See *J. Edict 2*.

ejected from the priesthood, for having taken any such action without the approval of their bishop. Should it be an office-holder who has given licence to anyone who owes taxes destined for your excellency's exchequers, in contravention of what has been explicitly stated, or the *tribuni* or chief officers . . .

[remainder missing]

Appendix 1

Adscripticii and *coloni*¹

[Latin only]

*Emperor Justinianus Augustus to Dominicus, prefect*²

Preamble

Our Serenity has been petitioned by the people of Lugdunum.³ They informed us that the promulgation of our previous law,⁴ by means of which we commanded that children begotten by *adscripticii* or *coloni* in cohabitation with free women are likewise free, is being detrimental to their estates and their tax-contributions, as agricultural workers have been leaving, on the ground that they were the issue of a free womb.

¹ In this Latin constitution, the text of which only survives in the *Epitome Iuliani*, Justinian responds to a petition on the part of landowners in the Balkans by revising the provisions of his recent *J. Nov.* 162 c. 3 on tied agricultural workers (*coloni adscripticii*) and 'free' *coloni* who were nevertheless bound to their estates (*coloni liberi*), and the offspring of mixed unions. Justinian here decrees that any child of a free woman fathered by an *adscripticius* or *colonus liber* is henceforth to inherit the father's status rather than the fully free status of the mother. The fully free status of the mother was only to be inherited by the child if the father was a slave. The later testimony of a law issued by Justin II (*Nov J. II.* 6.1) would suggest that this measure was in turn rescinded, and the provisions of *J. Nov.* 162 upheld. The law thus reveals both the responsive nature of imperial law-making in this period, and the keen interest shown by landowners in legislation on the colonate, thereby reminding one of the extent to which such laws played an important role in Byzantine social and economic relations, and did not simply exist in the pages of the law books (see Sarris (2011b) and Banaji (2007), pp. 209–12). For further discussion of this law, see Schmitz (1986).

² Dominicus (also addressed as Domnicus) was the Praetorian Prefect of Illyricum from 535–540 (see *J. Nov.* 7, 8, 33 and 162 and *PLREIIIA*, p. 415 (Domnicus 2)).

³ 'Lugdunum': this was the standard Latin name for the city of Lyon, but it was clearly also the name of a city in Illyricum, hence the present law.

⁴ The law referred to here is *J. Nov.* 162 c. 3 of the previous year. Strictly speaking, the petitioners misread the provisions of that law: the children of a free mother but an *adscript* father, Justinian had decreed, were to bear the status of 'free *coloni*' (*coloni liberi*) rather than full-blown freedom: though not subject to the legal authority or power (*potestas*) of their master in the same way as *adscripticii* were, such *coloni* were still obliged to work the estates on which they were born.

1

Rectifying this, we decree that in accordance with ancient law, the issue of agricultural workers with the status of *adscripticii* and *coloni* becomes *adscripticius* and *colonus*; but that if the woman, alone, was of free status at the time when she bore children, we consequently do not then allow an entirely free womb to suffer from this on the ground that such a woman had been allied with such a man, neither *adscripticius* nor *colonus*.⁵ That is the only case where the law obtains.

Accordingly, we are enacting a general law that the offspring of an *adscripticius* or *colonus* is to follow the father's condition; and as another consequence, my dearest father, the collectors of taxes will have no loss of revenue. We have made the present ruling as a remedy for this situation, and decree that your excellency is to observe it in all parts of Illyricum, so that there shall be no consequent loss to masters.

Conclusion

Accordingly, your distinction is to take pains to put our decisions, manifested by means of this divine law, into effect. There is the threat of a fine of ten pounds of gold for one who contravenes it, or permits its contravention.

Given at Constantinople, April 7th in the 14th year of the reign of the Lord Justinian Augustus, consulship of Justinus 540

⁵ 'Neither *adscripticius* nor *colonus*': this appears to mean Justinian is considering the case of when the father is a slave.

Appendix 2

Order of Emperor Justinian on privilege for the synod of Byzacium¹

[Latin only]

*Emperor Justinianus Alamannicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africanus,*² *fortunate glorious victor and triumphator, ever Augustus, to Dacianus,*³ *metropolitan of Byzacium, and to the whole synod of Byzacium*⁴

Preamble

It seemed that the most reverend Restitutus and Heraclius⁵ brought not just an appeal from virtually all the prelates of your synod, but their actual presence, because there shone forth in them the purity of your authority and your life.⁶ They furthered not only ecclesiastical causes, but also those that are to the good of the whole province, speaking of what benefits you already enjoy, and of those that are to be conferred by our Clemency. Hence, we have received their entreaties with the greatest favour, and are responding to every point. The effect that their deputation had on us will be

¹ This constitution, in which Justinian responds to an ecclesiastical delegation from the African synod and diocese of Byzacium, records part of the process by which Justinian restored order to the life of the Church in Africa after he returned it to imperial control. For further discussion, see *J. Nov.* 37, *J. Nov.* 131, Leone (2012), Conant (2013), p. 346 (who notes the significance of the fact recorded by this and the following law that representatives of the African Church petitioned the emperor directly), and, above all, the detailed treatment of Kaiser (2007), pp. 68–155.

² On Justinian's triumphant titulature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ For Dacianus (or Datianus), see Kaiser (2007), p. 115 and *PCBEI*, pp. 266–7 (Datianus 4). He is recorded to have been a leading figure amongst the Catholic bishops of Africa during the period of Vandal rule and played an active role in the theological controversies of the day. He had been metropolitan bishop of Byzacium since at least 533 (a position which was associated with primacy over the territory of Numidia: see Kaiser (2007), p. 115).

⁴ For the administration and geography of Byzacium and the region around it, see Cancik and Schneider (2003) *Antiquity* 2, p. 846 and Kaiser (2007), pp. 72–6. Since Punic times, the territory had been renowned for its agricultural fecundity and wealth.

⁵ For Restitutus, see *PCBEI*, pp. 980–1 (Restitutus 29). Heraclius is otherwise unattested.

⁶ Presumably, at least in part, a reference to Dacianus' attested theological resistance to the Arianism of the Vandals (on which see Whelan (2014)).

evinced by the actual revelation of what we have bestowed: we are confirming, in accordance with the old order, everything that pertains to your privileges, and to those of your synod.⁷

Pray, therefore, that divine mercy may keep us safe for the realm, and it for us; and that we may raise up, to a level beyond even the flowering of their ancient felicity, as we desire, those whom we have snatched from under the Vandals' yoke.

Given at Constantinople, October 6th in the 15th year of the reign of the Lord Justinian Augustus 541

⁷ On these privileges (inferred on the basis of Justinian's other legislation relating to metropolitan and other bishops and the Church), see Kaiser (2007), pp. 125–30.

Appendix 3

Order of Emperor Justinian on privilege for the synod of Byzacium¹

[Latin only]

Emperor Flavius Justinianus Alamannicus Gothicus Francicus Germanicus Anticus Vandalicus Africanus,² fortunate glorious victor and triumphator, ever Augustus, to Dacianus,³ metropolitan of Byzacium

It has always been our Serenity's concern to preserve the ancient order, to the greatest extent;⁴ we have never slighted it, unless to improve it as well. This is particularly so whenever a question arises of ecclesiastical affairs, which are acknowledged to be determined by the rulings of the fathers, or rather, inspired by the intervention of God's power from above, as it is acknowledged that whatever apostolic authority decrees is established by Heaven. Hence, what we wish to be maintained in the synods of Africa, as well, is that which antiquity decided and which the observance of posterity has preserved, and has brought right down to our era, intact. No primate is to claim for himself a privilege he is not recorded as having received; none is to grasp at something he is not proven to have continuously possessed; nor is he to be tempted by any ambition arising from rescripts earned in

¹ In this constitution (which follows on from *J. Nov. Appendix 2*), Justinian decrees that the authority of Bishops in Africa and their standing with respect to one another is to conform to the existing decrees of the Councils of the Church, which are presented as expressions of the divine will (by inference, through the workings of the Holy Spirit). One implication to be drawn from this law is that a dispute over precedence had arisen between the metropolitan bishops of Carthage and Byzacium (on which see *J. Nov. 37, J. Nov. Appendix 2* and Kaiser (2007), pp. 86–90). However, the main (and primarily ideological) point of the law is arguably to give imperial sanction and standing to the councils and canons of the African Church as a whole, and thereby to entrench and foreground both the orthodoxy of the Church and the authority of the emperor. Three years later, Justinian would adopt a similar stance with respect to the canons of all Ecumenical Councils (see *J. Nov. 131 c. 1*). For further discussion of the restoration of Catholic episcopal authority in Africa in the aftermath of Justinian's reconquest, see Leone (2012). For detailed and illuminating discussion of this and related texts, see Kaiser (2007), esp. pp. 132–55. Honoré (1975) suggests that this law may have been written by the emperor himself (see p. 120).

² On Justinian's triumphant titlature, see *J. Nov. 17*, note 7 and *J. Nov. 43*, note 2.

³ For Dacianus (or Datianus), see *J. Nov. Appendix 2* note 3.

⁴ 'To preserve the ancient order': Justinian here deploys the antiquarian rhetoric of imperial restoration common to much of his reform legislation (see Maas (1986)).

response to one person's petition, or from precedents that violate customary usage. What is to be observed as law is that which has been determined by councils and preserved by devout posterity; when someone has arrogated to himself something prejudicial to what has been established, in any sphere, we deem it a matter for correction, not imitation.

Accordingly, what everyone is to wish for, to claim, and to expect to be confirmed by our directive, is anything that the authority of councils has provided for the metropolitan of Carthage or the primates of Numidia or Byzacium, and unimpugned custom has preserved. We are merely the guardians and champions of antiquity; and punitive measures, ecclesiastical or our own, will not be lacking against those who are reported as having violated antiquity by arrogant ambition or stealthy demands, because, holy and most religious father, one who has not feared to slight and violate the decisions of the Fathers is verging on sacrilege.

Accordingly, your beatitude is to see that what our Eternity has decided, by means of this divine pragmatic directive, is to be put into effect, and observed.

May the Divinity preserve you for many years, holy and most religious father.

Given 29th October, in the 16th year of the reign of the Lord Justinian

Appendix 4

No requisitioning, on either private or public grounds

[incomplete abstract; Greek only]¹

The same Sovereign . . .

The purpose for which our realm maintains the military is . . .

1. No governor, logothete² or other person engaged on public business is to requisition anyone's house because of tax debts.³ If he thinks that those liable are hiding in the house, he is to employ persons in the public service to search for them; if he has found them, he is to bring them out into the open, and is to make the exaction without interfering with the houses in any way. Should he also need military assistance⁴ for the collection of the taxes, the soldiers he uses for this are not to be new recruits, but men with practical experience, and with an understanding of civil procedure; they are to make the exaction publicly, not in the houses, and with due punctiliousness.

2. The constitution flatly forbids everyone to employ soldiers for private purposes,⁵ or use them to bring any proceeding whatever against anyone. Those who attempt to do anything of the kind are to be aware that, merely by the attempt itself, they will in fact be forfeiting all right of action that the law might have given them against those under obligation to them.⁶

¹ This epitome of an imperial constitution, taken from the *Epitome of Athanasius* (see Introduction) summarises a law concerned with the collection of tax debts, prohibiting governors and fiscal officials from breaking into or requisitioning the homes of suspected tax-debtors. It also prohibits the demolition of houses save for with the owner's consent, and repeats the provisions of *J. Nov.* 116 with respect to the private employment of imperial soldiers and *J. Nov.* 128 c. 16 with respect to *sportulae* (fees, bribes or payments to imperial officials), on which see also *J. Edict* 2.

² 'Logothete' (Greek λογοθέτης) = a tax official, typically sent out from the praetorian prefecture to the provinces. In the Middle Byzantine period it would become the standard word for an imperial official of this sort. In Justinianic law, the Latin loanword *scriniarius* is more commonly used in the novels to designate a holder of this post (see *J. Edict* 12, note 2).

³ This is reminiscent of the regulation to be found in *J. Nov.* 168 (see *J. Nov.* 168, note 6).

⁴ For near-contemporary papyrological evidence for the use of armed manpower in tax-collection, see *P.Oxy.* XVI 1856.

⁵ 'Private purposes': the employment of soldiers for 'private purposes' had been expressly outlawed by *J. Nov.* 116 but remained well attested in the documentary papyri thereafter: see *P.Oxy.* XXVII 2480 and Sarris (2006), pp. 162–75.

⁶ 'Under obligation' = indebted.

3. It commands soldiers detailed for tax-collection to refrain from any acceptance of *sportulae*,⁷ and from receiving any payment at all from anyone, but to rest content with their stipends.

4. It enjoins observance of all the above on local bishops and governors.

5. Additionally, it forbids governors, and anyone else, from demolishing anyone's house for the purpose of rebuilding it *-<except> with <the consent>* of the house-owner; but it must be done without infringement of another's rights. It <threatens>* the perpetrator with compensation in double the loss incurred by the house-owner, a fine of ten pounds of gold, and sovereign displeasure. These provisions to be observed by governors and those employed on public affairs.

*- The text here [S/K, p. 798, line 9] is very uncertain; these supplements, implying <εἰ μὴ> κατὰ <γνώμην> τοῦ δεσποτοῦ, disagree with those of S/K, but seem to give a more likely sense, and are on the lines of Zachariae's emendation in app. crit.

* [S/K, p. 798, lines 11–12] ἀπειλοῦσα (cf. e.g. *J. Nov.* 7 pr. [S/K, p. 49, line 32]) is suggested instead of S/K's conjecture ἐπιτιθεῖσα, as being more applicable to the following βασιλικὴν ἀγανάκτησιν.

Addressed . . .

[Addressee and date missing]⁸

⁷ 'Sportulae' = payments or fees.

⁸ Lounghis, Blysidu and Lampakes (2005), p. 311 (under entry 1267) date it to 542 (in agreement with S/K).

Appendix 5

Silk¹

[Abstract; Greek only]

[No heading]

Commerciarii must trade in silk with the barbarians at 15 gold pieces per *libra*, and sell it on to mercers or others at no more <than >*, pure,

¹ This abstract of an imperial constitution (which only survives in anonymous epitome) concerns regulations for the purchase of raw silk (or silk yarn) from barbarians by officials known as *commerciarii*. Silks were extraordinarily popular amongst Roman and early medieval elites and constituted a vital political commodity in the late Roman Empire: the highest grades of pure silk (and especially of purple-dyed silk, which was spun, woven and dyed in and around the cities of Beirut and Tyre), were traditionally reserved for the emperor and his entourage (see *Codex Theodosianus* 15.9.1 and *Codex* 11.9 and Procopius, *Anecdota* 25.14). From the reign of Justinian onwards, however, dealing in silk would be established as a government monopoly, and considerable profit was made by the government's decision to start selling high-grade dress materials, including strips of purple, to members of the elite (a reform for which Zuckerman (2013), p. 338 has suggested a dating of 547 or 548: see Procopius, *Anecdota* 25.13–26). At the same time, silk played an important role in both imperial and ecclesiastical decoration and ceremonial, and served as a medium of diplomatic exchange. Up until Justinian's reign, silk was primarily produced in China. According to the sixth-century Alexandrian merchant Constantine (or Cosmas, as he is more commonly known) it had traditionally reached the empire via two routes: the Red Sea and Indian Ocean, with the Romans buying silk from Indian middlemen in Sri Lanka and India; and a land route along the Eurasian steppe, with the silk passing through the hands of Persian traders who sold it on to the Romans (so we are informed by diplomatic sources) at officially sanctioned trading posts such as those in the cities of Nisibis and Dara on the Roman–Persian frontier (see Cosmas Indicopleustes, *Christian Topography* 2.46 and Winter (1987)). Procopius records, however, that the Persians increasingly managed to exclude Roman traders from sub-continental markets by effectively blockading harbours as soon as Indian silk merchants arrived there with their loads of yarn, thereby enabling the Persians to buy up the entire cargo (*Wars* 1.20.12). This meant that the Romans found themselves increasingly dependent on Persian sources of supply. It was probably for this reason that the imperial government was determined to try to limit the purchase of silk from foreigners to state employees, as an open market in silk would have enabled the Persians to continually ratchet up the price. There is some indication that the renewal of warfare between the East Roman Empire and Persia in 540 may have disrupted the silk trade, perhaps occasioning the present constitution. At some point in the emperor's reign, however, the East Roman authorities managed to acquire silkworm eggs from monks who had travelled from the east, thereby permitting the empire to begin to wean itself off dependence on Persia and develop a silk industry of its own, which would thereafter be strictly controlled by the state: see Procopius, *Wars* 8.17.1–9, *Anecdota* 25.13–26, *Codex* 4.40.2, Lopez (1945), Delmaire (1989), pp. 455–71, Muthesius (1997) and (2004) and Feltham (2009). Zuckerman (2013) dates the beginning of the empire's attempt to develop a native Byzantine silk industry to the 530s.

without coarse fibre, other additive, or dirt.² If anyone not a *commerciarius* does any trade with barbarians and imports silk from there, the *commerciarius* can take it away, and the trader suffers confiscation and perpetual exile. If a *commerciarius* or mercer sells or buys at a figure above that specified, he is punished in the same way.

* It seems that a maximum price for the resale has dropped out of the text here [S/K, p. 798, line 16].³

Dealers in such goods must give sureties to the urban prefecture⁴ that they are selling all the stock they have publicly, not covertly, because <otherwise> they are punished. By this, accounts are to be made for the public treasury by the *comes* of the *largitiones*⁵ for the price of all pure silk paid in to the treasury by him. A purchaser compelled to pay a price higher than that set denounces the vendor and demands recovery at double; the vendor will then suffer what is stated.

[No date]⁶

² *Commerciarii*: these were officials (originally known as *comites commerciorum*) who regulated, controlled, and levied taxes and tolls on foreign trade on behalf of the state. Such *comites* are first attested in the late fourth century (*Codex* 4.40.2) in the same context as are the *commerciarii* within this law (i.e. in an imperial constitution aimed at establishing that only they were to buy raw silk from the barbarians: see Zuckerman (2013), pp. 327–9). Over the course of the seventh and eighth centuries, however, such *commerciarii* are increasingly recorded to have acted as requisitioning agents who helped to supply the imperial government and army with a whole range of supplies through registered state warehouses (ἀποθήκαι) (see Oikonomides (1986)). It should be noted, however, that on the basis of *Codex* 4.61.7, it can be inferred that it was already standard practice under Justinian for certain military officers and civil servants to be given explicit permission to act as merchants and engage in trade, presumably because this was deemed to be of benefit to the state through facilitating the acquisition of supplies. These licensed military and state traders of the Justinianic era were perhaps already equivalent to the κομμερκιάριοι of the Middle Byzantine period (see discussion in Brubaker and Haldon (2011), pp. 474–5 and Sarris (2016)).

³ Alternatively, it is conceivable that this law may have been establishing a single purchase-and-resale price which government-employed *commerciarii* were obliged to observe (see Zuckerman (2013), p. 338).

⁴ ‘Urban prefecture’ = the office of the Urban Prefect of Constantinople, which oversaw and regulated the importation into the capital of those goods of greatest concern to the government, including for ceremonial purposes. Regulations concerning the guilds engaged in such trade were recorded in the tenth century in the so-called *Book of the Prefect* which arguably drew on late antique materials (see Koder (1991) and Kazhdan (1991) 1, p.308).

⁵ ‘*Comes* of the *largitiones*’ = the *comes sacrarum largitionum*, or head of the department of the Sacred Largesses, with responsibility for bullion from mines and mining, the minting of coin, the administration of state-run clothing workshops, and the distribution of military and other donatives (see Delmaire (1989), pp. 421–593).

⁶ A date range of 540/547 is suggested by Lounghis, Blysidu and Lampakes (2005), p. 305 (entry 1235).

Appendix 6¹

[Latin only]

*Justinianus Alamannicus Gothicus Francicus Anticus Vandalicus Africanus,*² *pious fortunate glorious victor and triumphator, ever Augustus, to Paulus,*³ *praetorian prefect of Africa*

We have decided to write to your magnificence that none of the *coloni* who left their estates in the time of the Vandals, and have remained amongst the free,⁴ are to be pulled back and reduced to the status of *coloni* again; our will is that they should now still be as they were in the time of the Vandals.

Apart from that, however, we additionally command <you> to make restitution of any who spurned their own land and wanted to betake themselves to that of another.⁵

Given at Constantinople, September 6th in the <26th year> of the reign of the Lord Justinianus Augustus, 11th year after consulship of the Most Distinguished Flavius Basilius, indiction 1⁶ 552

¹ This constitution, dating from 552 (which only survives in the *Epitome of Julian*) concerns the rights of Roman landowners over their tied agricultural labourers or *coloni adscripticii* (more commonly known in the West as *coloni originarii*) in the re-conquered territories of Africa. A great deal of agricultural land had changed ownership during the Vandal take-over of Africa, with estates belonging to absentee landowners belonging to the great senatorial families of Rome and others passing into Vandal control. The present law would suggest that, although the underlying structures of the agrarian economy remained intact, certain *coloni* had taken advantage of the political dislocation associated with the era to flee from the properties to which they were bound and live beyond the estates as if they were free. Justinian here decrees that such *coloni* could not be reclaimed by the owners of the estates unless they had fled to work as the *coloni* of other landowners (see Sarris (2011b), pp. 89–96). *Adscripticii* on African estates are also referred to in a law of Justin II (*Nov. J. II* 6.1). Honoré (1975) suggests that this law may have been composed by Justinian himself (see p. 121). For further discussion of this law, see de Dominicis (1963).

² On Justinian's triumphant titulature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ Paulus is otherwise unattested.

⁴ 'Amongst the free' (Latin *inter liberos*): the wording of the law thus reminds one of the important point that such *coloni* were not regarded as free despite not being slaves (see Sarris (2011b)).

⁵ 'Another' = another landowner.

⁶ 'Indiction 1' = the first year of the new fifteen-year fiscal cycle known as the 'indiction', on which see Chouquer (2014), p.311.

Appendix 7¹

[Latin only]

[No title or heading]

Preamble

1. All concessions granted by Amalasantha, Athalaric or Theodahad to be confirmed²

Pursuant to the petition of Vigilius,³ venerable bishop of the elder Rome, we have deemed it necessary to make certain dispositions pertinent to the advantage of all known inhabitants of the West.⁴

¹ This important constitution, known in the historiography as the ‘Pragmatic Sanction’, was issued via the Praetorian Prefect of Italy to Pope Vigilius and the Senate of Rome by Justinian in the year 554, and marked the final pacification of Italy and the destruction of the Ostrogothic kingdom. In it, Justinian legislates to restore social and economic order in the province, by, amongst other things, restoring slaves, *coloni*, and estates to their aristocratic and institutional masters, seeking to revive and regulate the collection of taxes, and attempting to ensure the writ of imperial law (especially the emperor’s post-codificatory novels). Measures taken by Gothic kings whom the emperor had recognised were to be regarded as valid. All others were to be set aside. The text is preserved in a manuscript of the *Epitome of Julian* (see the Introduction). See also Bonini (1985), pp. 157–8.

² Amalasantha was a daughter of Theoderic the Ostrogoth who initially succeeded her father in 526 as Queen Regent, ruling on behalf of her son, the boy-king Athalaric. Upon Athalaric’s death in 534, however, she was forced to reign jointly with her avaricious cousin Theodahad. Machinations between the two led to rising tensions within the Ostrogothic kingdom, and it was Amalasantha’s murder at the hands of agents of Theodahad that provided Justinian with the pretext to initiate his Italian campaign in 535: see Sarris (2011a), pp. 112–19. For law, society, and administration in the Ostrogothic kingdom of Italy, see especially Bjornlie (2013), pp. 7–34, Lafferty (2013) and Tedesco (2015). For an overview of economic conditions in Byzantine Italy from the Justinianic period onwards, see Tedesco (2016) and Zaninini (2014).

³ Pope Vigilius (who held office from 537 to 555) had the difficult task of leading the Church in Italy and the West during the period of Justinian’s re-conquest of the Italian peninsula and the tightening of imperial control over ecclesiastical affairs that was associated with it. This had recently culminated in the emperor’s humiliation of the Pope at the Second Council of Constantinople in 553, the decrees of which he had been forced to sign under duress (see discussion in Price (2009) 1, pp. 42–58 and *PCBEII* 2, pp. 2298–9 (Vigilius 6). In the present edict, the Pope is effectively treated as an imperial governor.

The constitution thus reveals the extent to which, in the aftermath of Justinian’s Gothic wars, the Papacy was to all intents and purposes the last fully functioning institution left in the Italian peninsula. This would prove to be the key to the emergence of the Papacy as an autonomous political power in the early Middle Ages as first Byzantine and then Frankish power in Italy fragmented and declined (see Noble (1996)).

⁴ ‘All known inhabitants of the West’: the inference here is that Justinian was now legislating for the former Roman territories of the West as a whole.

First, then, we command that all concessions granted by Athalaric, his royal mother Amalasantha, or also Theodahad, at the request of the Romans or their Senate, should be preserved inviolably; we also wish to be kept intact those conferred by ourselves or by our late consort Theodora Augusta, of pious memory.⁵ No licence is to be granted to anyone to oppose grants or concessions known to have been made by the above-mentioned persons, on any matters or heads whatsoever. There is an exception: the grant of the property of Marcianus,⁶ made by Theodahad to Maximus.⁷ We bear in mind that we granted a half share of that to the Most Illustrious Liberius, leaving the magnificent Maximus the other half; by our decision, these are to be confirmed as remaining with each of them.⁸

2. All grants made by Totila to be inoperative⁹

In no way do we do permit any act of the usurper Totila, or grant found to have been made by him to any Roman, or to anyone else, to be

⁵ Theodora had died in 548: see *PLREIIIB*, pp. 1240–1 (Theodora 1). This provision thus would have reminded contemporaries of the active role she had played in governmental affairs under Justinian (to the great displeasure of conservative critics of the regime such as Procopius: see *Anecdota* 15–17).

⁶ Marcianus is otherwise unknown. Probably around 535 his estates had been given by Theodahad to Maximus (on whom see below): see *PLREIIIB*, p. 820 (Marcianus 3).

⁷ This Maximus is usually identified as a member of the distinguished western senatorial lineage of the *Anicii*, and as a descendant of the Emperor Petronius Maximus (r. 455) (see *PLREII*, pp. 748–9 (Fl. Maximus 20)). He served as western *consul* in 523 and was accorded the title of *patricius* by Theoderic. In 552, however, he and a number of other senators were killed by Gothic troops in Campania as they prepared to return to Rome in the wake of Narses' final crushing of resistance to Justinian's re-conquest of Italy (see Procopius, *Wars* 5.25.15, and 8.34.6). If the identification is correct, therefore, Justinian's information was considerably out of date: Maximus is spoken of here as if still alive, but he was in fact already dead. Alternatively, Justinian may mean that the property was to remain with his heirs (as suggested by Martindale: *PLREII*, p. 749).

⁸ Liberius was perhaps one of the most arresting figures of his age: born in the dying days of the Western Empire, he had served in the civil service under the usurper Odoacer who had deposed Romulus Augustulus in 476. He remained in service under Odoacer until the latter was successfully deposed by Theoderic, the settlement of whose troops on the land Liberius is reported to have overseen. After a long career in the Roman government and elevation to the Senate, Liberius had been sent to Constantinople by the Gothic King Theodahad to implore Justinian not to invade Italy. While there, however, he defected to the empire and was appointed Augustal Prefect of Alexandria. After a brief and unsuccessful period of office in Egypt, Liberius was made governor of Sicily upon the Byzantine conquest of the island, and is last referred to in the Gothic History (*Getica*) of Jordanes, where he is recorded to have accompanied the East Roman army in the early 550s in initiating the conquest of Visigothic-held territory in Spain: see O'Donnell (1981) and *PLREII*, pp. 677–81 (Petrus Marcellinus Felix Liberius 3).

⁹ Totila succeeded to the leadership of the Ostrogoths in 540 and initiated a spirited counter-attack against the East Roman expeditionary force that drove the Byzantines back from Rome. He is recorded to have promised freedom to the slaves and *coloni* of Roman landowners if they fought on his behalf and deliberately targeted members of the Roman Senate and their estates: see Sarris (2011a), pp. 218–20.

upheld or to remain in its own force; we instruct that property¹⁰ is to be taken away from such holders and restored to its original owners. We do not allow an act found to have been made by him during his usurpation to leave its mark on our law-abiding times.

3. No-one to suffer through loss of documents while in captivity

Although it has already been provided, by a general law,¹¹ that loss of documents should not be made prejudicial in any way to owners in whose favour the documents were drawn up, we have nevertheless decided also to renew that, specifically for those areas, since we are aware that, both in the city of Rome and elsewhere, people's documents have been lost during various disasters and enemy incursions.¹² Accordingly, so that they should not suffer any false accusation or sustain any consequent loss, we decree that mere loss of documents, or damage to them, is not to result in any prejudice for the owners of property as to ownership, * possession or credit over property, or for possessors or creditors in whose favour the documents were made out.¹³

* Accepting *dominio* [Skutsch] for *domino* [S/K, p. 799, line 32].

Pragmatic,¹⁴ given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pious princeps, Augustus, 13th year after consulship of the Most Distinguished Basilius

554

4. But if anyone, on his own or anyone else's authority, has seized someone else's properties, perhaps his flocks, during his absence or even captivity, or has obtained them by petitioning, we command that on the owner's return or release they are to be returned to him with no delay.* If he has met his end, as may be, restitution is still to be made to his heirs, as the law's authority provides.

* Following Skutsch in deletion of *vel etiam heredibus* [p. 799, lines 36–7].

¹⁰ 'Property': this would have included slaves and *adscripticii* (more commonly known in the West as *coloni originarii*) to whom Totila had granted freedom: see Procopius, *Wars* 7.20–22 and Sarris (2017).

¹¹ See *Codex* 4.21.4–5.

¹² For the growing role of written documentation in late antique Italy (as well as the Eastern Empire), see Everett (2013).

¹³ The law is here differentiating between those with full legal title to property (*dominium*) and those with effective ownership by way of possession or detention (*possessio*): see Berger (1953), pp. 441–2 and 636–7.

¹⁴ 'Pragmatic' (Latin *pragmaticum/a*) could be used as a noun in its own right to signify an imperial edict or instruction: see Berger (1953), p. 648.

Year, day, consulship: as above

5. **No-one to hold as his what is another's**

We regard it as probable that during the usurpation various people were frightened into alienating property of theirs, either by sale or by any other contractual titles, to men who either held some office from Totila, or had some right of action or power committed to them by him, or some influence with him; and now wish their previous action to be rescinded, as having been carried out under the violence, or threat of it, that prevailed in the usurper's time. We therefore decree that everyone has licence to recover or claim what is his, or to receive possession of it from a judge. This must, however, only be on repayment of the prices genuinely established as having been paid out, with the assent of the person who acknowledges that he paid them, and as not having somehow been either fraudulently abstracted later or received back by him. We think it not unlikely that at that period fear, or violence, was responsible for much being done that the justice of our time demands should be rescinded. It is to be understood that, as a result of the foregoing directives, a penalty contained in the deeds is to lapse entirely.

Given on date, year and consulship as above

6. **On the period of *postliminium*,¹⁵ i.e. after captivity**

As, by God's mercy, all have now been restored to our rule, we decree that under the authority of our laws the prescription of thirty years, and also that of forty, which is additionally <required by other*> laws, is to be applicable, and to retain its own force throughout;¹⁶ but that is to be

¹⁵ '*Postliminium*' (lit. 'beyond the frontier'): the concept whereby Roman citizens caught by the enemy were regarded as becoming the slaves of the latter, but were restored to their full legal rights when they returned to Roman territory: see *Digest* 49.15, *Codex* 8.50 and Berger (1953), p. 639. It is interesting that the restoration of Roman control to former Roman territory is here conceived of in such terms and through the lens of this legal doctrine. Perhaps equally significant is the inference that until the death of Amalasantha, Italy was still regarded in Constantinople as being within the empire. This claim had been contested by the Ostrogothic leadership (see Cassiodorus, *Variarum* 2.1 and Sarris (2011a) pp. 105–7).

¹⁶ Justinian here refers to the regulations concerning the *praescriptio triginta annorum* of Theodosius II, according to which any action was automatically extinguished if the plaintiff did not sue within a period of thirty years (save in those cases where the law established a shorter period) and the *praescriptio quadraginta annorum* (or period of forty years) which applied to claims pertaining to imperial property, property of the church and charitable institutions: see *Codex* 7.39 and Berger (1953), pp. 645–6.

without counting, as any part of the course of prescriptions, the period covered by the turmoil of war, from the advent of the usurpers.¹⁷

- Following Skutsch [S/K, p. 800, line 11] in reading *aliis* for *alias*, and S/K in filling the lacuna.

Given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pius princeps, Augustus, 13th year after consulship of the Most Distinguished Basilius 554

7. Deeds not to be revoked as invalid

We are aware that while Rome or other cities were being besieged by enemy savagery, various contracts were made, or actual deeds drawn up, between Romans under siege; but that some people are at present rescinding the contracts, or even revoking the deeds aforesaid as invalid. We therefore decree that even if such deeds have perished as a result of the enemy invasion, there is no licence to invalidate those that were made. All contracts made during the siege are to remain in their own validity, and deeds are to have the appropriate force, with no prejudice being engendered against the owners as a result of their loss. Strict legal reasoning does not permit a properly conducted transaction to be subverted by accidents of warfare.

Given: year, day and consulship as above

8. Property, movable or immovable

Under whatever right or title Romans are known to have had possession of property, movable, immovable, or ambulant, in their own person or through usufructuaries or other persons through whom <some law > has ordained that a given individual <can > have possession, from the time of king Theoderic through to the supervention of the utterly abominable Totila,¹⁸ we are keeping that property with them undisturbedly, that is in the form in which they are known to have been in possession of the said property during the aforesaid period.

, Conjecturing *per quas unumquemque praecepit <lex quaedam posse> possidere* for *per quas unumquemque praecepit possidere* [S/K, p. 800, lines 25–6].

¹⁷ ‘The advent of the usurpers’: probably meaning (on the basis of section 8 below) that the years between the death of Amalasantha in 534–535 and the end of the war in 554 were to be excluded in the calculation of temporal restrictions on claims, as the military circumstances had not been conducive to property owners asserting their rights. On such *praescriptio temporis*, see Berger (1953), pp. 645–6.

¹⁸ I.e. from 489 to 540.

Given: year, day and indiction as above

9. Immunity from taxation¹⁹

So that the provincial population shall suffer no injurious treatment with regard to the tax-exaction, we decree that no office-holders of higher status are to be sent out for the exactions, but that <they are to be carried out*> through provincial governors and their staff, <lest*> taxpayers should seem to sustain any overcharging in the exaction of taxes; but if taxes have not been fully brought in, higher office-holders and their staff are not to be denied licence to take action against the governors themselves and their staff, and to exact what has not been fully brought in. Thus provision may be made both for the tax-accounts and for benefit to the taxpayer.

, Accepting the supplements in app.crit [S/K, p. 800, line 30].

Given: year, day and consulship as above

10. Confirmation of payment of taxes

We direct that payment of the said taxes is to be carried out regularly, at the usual places or times. No change at all is to be introduced in the tax-payment as a result of the advent of the enemy, but in future, also, each individual is to make his payment in accordance with his own custom, or with the tenor of our acts of beneficence, whether to the public treasury or within the province.²⁰

¹⁹ 'Immunity' (*immunitas*) = exemption from public charges or obligations (i.e. taxation and *munera*): see *Digest* 5.6 and *Codex* 10.25. Such 'immunities' would come to play an important role in the institutional and economic history of the early medieval West (see Rosenwein (2009)). The heading does not really match the contents of the provision that follows, which is largely concerned with ensuring that taxes are not collected from the same tax-payers twice by different levels of the imperial administration (i.e. it is concerned with *superexactio*: see Berger (1953), p. 724 and *Codex* 10.20). Procopius accuses the official known as Alexander the Logothete of having done precisely this when sent to Italy from Constantinople (*Anecdota* 24.9–10: see also *Wars* 7.1.28–30).

²⁰ The law is here concerned with the restoration of a fully functioning fiscal system in a region where there are signs that the land tax and the Roman fiscal machinery had been becoming increasingly vestigial under Gothic rule. For this and discussion of related issues, see Sarris (2015) and Tedesco (2015).

Given: year, day and consulship as above

11. Emperors' laws to circulate throughout the provinces

We further decree that the ordinances or laws contained in the volumes of our Codex, which we have already sent to Italy some time ago under edictal²¹ proclamation, are to hold good; but we command that the constitutions we have promulgated subsequently are also to be published under edictal posting, and are to be valid in the regions of Italy as well, from the time of their publication under edictal proclamation.²² Thus, now that the realm has, by God's will, been united, the authority of our laws may also be disseminated throughout it.

Given: year, day and consulship as above

12. *Suffragium*²³ from taxpayers

We command that the appointment of provincial governors is to be made by the bishops and leading men of each area, choosing, from the actual provinces which they are going to govern, suitable men who are capable of governing the place.²⁴ The appointment is to be without *suffragium*; and the customary codicils are to be issued to them through the office-holder concerned, with the condition that should they be found to have inflicted any injury on the taxpayers, to have exacted anything in excess of the set taxes, or to have caused loss to landowners over compulsory purchases by using excessively heavy weights, by other prejudicial or burdensome acts, or by using *solidi* below the true weight, they are to give compensation out of their own resources.²⁵ Also, if any administrator or judge is found to have been acting in that way during the period of the

²¹ 'Edictal' = public (Berger (1953), p. 656).

²² Justinian here decrees that his post-codificatory novels are to be promulgated in Italy. See discussion of this in the Introduction.

²³ '*Suffragium*' = payment for office (see *J. Nov.* 8).

²⁴ Under Justin II, this procedure would later be adopted across the empire as a whole (see *J. Nov.* 149). Its aim was presumably to bind the landowners of Italy into the new regime.

²⁵ For the problems caused to *coloni* on Papal estates in late sixth-century Italy by tax collectors and stewards using extra-heavy weights and false measures, see Gregory the Great, *Reg. Ep.* 13.37. For *solidi* of deficient weight, see *Codex* 10.27.2.6, and Cassiodorus, *Variae* 1.10. The latter would suggest that the issuing of payments by officials in light-weight or clipped coin was a long-standing problem in Italy: see also discussion in Banaji (2007), pp. 73–5. The practice may have continued under Byzantine rule; the fiscal official known as Alexander the Logothete, whom Justinian sent to Italy, would acquire the nickname 'Snips' for his ability to pare gold coins without altering their appearance (Procopius, *Wars* 7.1.28–31).

abominable usurpers, now past, we command that he is to make restitution out of his own resources to the person from whom he has stolen.²⁶ We wish the freedom of our subjects from loss to be ensured at all points.

Given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pius princeps, Augustus, 13th year after consulship of the Most Distinguished Basilius 554

13. Restitution to each of what is his own property

We are aware that on the expulsion, by God's mercy, of enemies from various provinces, some people have found flocks left behind by them,²⁷ and have been claiming these as their own property even though they had previously belonged to others.²⁸ Accordingly, we decree that, after a decision has been reached on the case, all that belongs to them is to be given back to them. An owner is to receive back anything that is recognised by others as his; what is not known to be from a definite owner is to be distributed among those in the same province who are found to have lost flocks, the division being, of course, made proportionately.

Given: year, day and consulship as above

14. Restitution to be made to one who has had anything stolen

We command that if any taxpayer is known to have been injuriously treated by anyone in the matter of tax-exaction, as to either money or produce, or by reason of any burden, or in any other unreasonable manner, full restitution is unquestionably to be made to the person who has suffered loss, so that the population of the provinces may receive back what lawfully belongs to it, under all circumstances, and be able to feel the effect of the felicity of our time.

Given: year, day and consulship as above

²⁶ The inference of the law here is that many who had held office at a local level under the Ostrogothic regime continued to do so under Justinian. The punishment of such local notables for acts they had committed prior to the re-conquest is criticised by Procopius, who accuses Alexander the Logothete of exacting money from Italian subjects of the emperor 'alleging that he was punishing them for their behaviour during the reign of Theoderic and the Goths' (*Anecdota* 24.9–10).

²⁷ The wording would suggest (perhaps inadvertently) that the flocks belonged to Gothic or barbarian warriors.

²⁸ The implication here is that the herds were erroneously being claimed under the procedure known as *usucapio pro derelicto*: see Berger (1953), p. 752 and *Digest* 41.7.

15. Slaves who married free women during the time of the usurpers

There is a further point that we have deemed it necessary to include among the previous heads. Should men in slavery be found to have married free women during the abominable period of the Goths' savagery, or also slave women to have espoused free men, the free persons are, by these present pronouncements of ours, to be given the right to leave, while the slaves, male or female, return under the rights of their owners; no prejudicial loss against the masters of slaves, male or female, is to be engendered as a result of the past. However, should they decide that their marriages are still to be maintained in future, they are not to suffer any prejudicial loss in respect of their freedom, but children are to follow their mother's status.²⁹ We wish that to apply also to children already born of such a marriage.

Given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pius princeps, Augustus, 13th year after consulship of the Most Distinguished Basilius 554

16. Slaves or *coloni* held by another³⁰

We command that slaves or *coloni* who are in fact being held by someone <else> are to be returned to their owners, with their offspring born in the meantime.

Given: year, day and consulship as above

17. Virgins dedicated to God

It is beyond doubt that the arrogance of the usurping savagery committed even illicit acts, as if they were permitted. Accordingly, we decree

²⁹ Hence the children of a female slave were automatically to be regarded as slaves and those born to a free mother were automatically free: see also *J. Nov. Appendix* 1.

³⁰ 'Slaves or *coloni*': there are indications that in Ostrogothic Italy, as elsewhere in the post-Roman West, the late fifth and early sixth centuries had witnessed a breaking down of the legal distinction between *coloni adscripticii* (more commonly known as *originarii* in the West) and slaves, thereby creating what has been described as an undifferentiated 'mass of servile labour' from which the figure of the medieval serf would ultimately emerge (see Banaji (2016), p. 164). The *Edictum Theoderici*, for example, which some have attributed to Theoderic the Ostrogoth, speaks of 'slaves or *coloni*' (*servi aut coloni*) as if the two groups were equivalent or interchangeable (see Banaji (2016), p.162 and *Ed.Th.* 21, 84, 98, 104, 109, 121 and 148, whilst section 80 speaks of *servus aut originarius*). That formulation effectively re-appears here: Schipp (2009), pp. 286 and 335, and Sarris (2011a), p. 81.

that any men found to have allied themselves with women who had been consecrated to God, or had taken the religious habit, are to have no licence to keep them, or to exact dowries that may have been contracted. Instead, the women are to be taken away from them – all the more if the women are reluctant – and restored again to their monasteries, their churches, or the sacred purpose to which they were dedicated.

Given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pious princeps, Augustus, 13th year after consulship of the Most Distinguished Basilius 554

18. Taxpayers not to be burdened as a result of purchases of produce³¹

So that taxpayers shall not be found to have suffered any detriment as a result of compulsory purchases, we decree that in each province the kinds of produce to be compulsorily purchased are to be those known to be plentiful in that province; we do not allow compulsory purchase to be made of what does not grow there in plenty. The prices set for the sale of produce are to be those known as what they are fetching at that time, in the market;³² and those very prices for produce are to be accounted, for each taxpayer, towards the exaction of the taxes.³³ So that our most fortunate army can be supplied with food, and also so that taxpayers may be able to fund their money taxes from the trade in their surplus produce, it is to be understood that maritime³⁴ transactions are by no means to be excluded.

³¹ The requisitioning or compulsory purchase of goods (Latin *coemptio*) was potentially a major source of conflict between the imperial government (and especially the Roman army on campaign) and members of local society. Indeed, Procopius describes the General Belisarius, in the early stages of the re-conquest of Italy, to have been especially alert to the dangers posed by such transactions and keen to ensure that landowners and peasants were not harmed by them: see Procopius, *Wars* 7.1.8–9 and Sarris (2017). It is also attested to have been a problem on the Papal estates in Sicily in the late sixth and early seventh centuries: see Gregory the Great, *Reg. Ep.* 13.37.

³² Justinian here alludes to a 'market price' for goods. On this concept, see Sarris (2014), p. 157 and *Digest* 13.4.3.

³³ The landowners and farmers were thus to be compensated at market rate, not a lower official or governmental rate: see discussion in Sarris (2014), p. 157. Any requisitioned goods were also to be deducted from the taxes to which such landowners or farmers were liable. In other words, a military officer requisitioning a quantity of wheat from a farmer was to establish the market price of that wheat and then deduct that sum from the farmer's tax bill.

³⁴ 'Maritime transactions': i.e. supplies could be requisitioned from other provinces and brought over to Italy by sea (such as from Sicily or across the Adriatic). For the role of market exchange and requisitioning in enabling taxpayers in inland and other regions to acquire the coinage required to meet monetised tax demands, see Sarris (2014), p. 160, Procopius, *Anecdota* 30.5–7 and John Lydus, *De Magistratibus* 3.61.

The allocation of compulsory purchases is to be done at the discretion of the leading men³⁵ of each region, as well as of the local governor, so that it does not appear that taxpayers are being ill-treated in any way through avarice on the part of officials.

Given: day, year and consulship as above

19. Measures and weights

To obviate any opportunity arising for fraud, or for injury to the provinces, we command that outgoing and incoming payments in cash or kind are to be made with the measures and weights that our Piety has currently issued to the most blessed pope or the most eminent Senate.³⁶

Given: day, year and consulship as above

20. Changing of *solidi*, i.e. coin

As we are aware that the *solidi* of former Roman emperors are likely to be found in that area, and we have found that some traders, or others, have been charging our taxpayers a commission for changing *solidi*, we decree that in all provinces *solidi* stamped with the image of Roman emperors are to circulate, and transactions to be made, without commission for changing.³⁷ One who has had the temerity to charge a commission for changing *solidi* is to pay the other party not less than another *solidus* for each *solidus*.

Given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pius princeps, Augustus, 13th year after consulship of the Most Distinguished Basilus 554

³⁵ 'Leading men' = the local landowners. This provision effectively allows the locally powerful to manipulate such state demands to serve their private interests by ensuring the purchase or avoiding the requisitioning of the produce of their own estates.

³⁶ For the manipulation of such weights and measures on Papal estates, see Gregory the Great, *Reg. Ep.* 13.37. See also *Codex* 10.73.1. There was considerable variation in weight standards between different cities and regions in the late Roman world, and equating the 'pound weight' of one city into the 'pound weight' of another could entail complex calculations: see Banaji (2016), pp. 91–109.

³⁷ *Solidi* issued by all previous emperors remained legal tender. For the charging of commission when handling loose or worn coin, see *J. Edict* 11 and Banaji (2007), pp. 7–73 and (2016), pp. 91–109. The fifth-century western imperial constitution *Nov. Val.* 16 had already sought to prohibit tax-collectors and others from refusing to accept coins issued by earlier rulers. See also *Codex* 11.11.1.

21. Compensation for what someone has removed to be made, at the value

Also, should anyone be found to have removed some fitting, or building-material, from immovable property belonging to another, he is by all means to make restitution.³⁸ Should it by then have been incorporated in another building, he is to be compelled to give compensation at its value, so that the authority of our laws shall be upheld in all respects. We also command that documents which may be held by one party, while pertaining to another, are to be returned to their original owners, so that all may obtain the assistance of our laws at all points.³⁹ Should an exemplar of a deed which is discovered to have been lost be found with the other party, two originals having been made as is usual with transactions, we command that another is to be made out from the one that is found with the other party, and given to the party whose deeds have now been lost, so that he may have proper security. Also, if anyone has either himself removed a deed of someone else's, or has somehow happened to find it, and has then maliciously burnt, hidden or damaged it, or shall have in whatever manner ceased to keep it, then the person who has committed the fraud is to be compelled to give compensation at its value to the person to whose rights the deeds shall pertain.

Given: day, year and consulship as above

22. *Annona*⁴⁰ to be provided for doctors, among others

We order that the *annona* which Theoderic used to pay, and which we too have granted to Romans, is also to be paid in future.⁴¹ Similarly, we order that the *annonae* which used customarily to be paid to teachers and rhetoricians, or also to doctors or jurisconsults, are also to be disbursed in future to those of them who are practising their profession, so that the young may be educated in liberal studies and may prosper, throughout our realm.⁴²

³⁸ Justinian here upholds the doctrine of *superficies cedit solo* (i.e. what is built on a piece of land or grows out of it belongs to the owner of that land): see *Digest* 43.17.3.7.

³⁹ Note the emphasis on the role of documents in legal claims. For the use of such documents in early medieval Italy, see Everett (2013).

⁴⁰ '*Annonae*' = publicly funded stipends and allowances: see *J. Nov.* 7, note 6 and Carrié (2012), p. 15. Theoderic had preserved the traditional Roman institution of issuing such stipends to teachers and others (which Procopius accuses Justinian of undermining in the East: see Cassiodorus, *Variae* 9.21.5 and Procopius, *Anecdota* 26.5).

⁴¹ See *Anonymous Valesianus* 12. Procopius, *Anecdota* 26.27–30 nevertheless accuses Justinian's agent Alexander the Logothete of curtailing the Roman *annona*.

⁴² The mention of jurisconsults would suggest the survival of a law school in Rome: see Liebs (1987) and, especially, Loschiavo (2010) and (2015).

Given: day, year and consulship as above

23. Civil cases to be judged by civil procedure

We command that lawsuits between two litigating Romans, or in which a Roman person is accused, are to be tried before civil judges; good order does not permit military judges to become involved in such affairs or cases.⁴³

Given: day, year and consulship as above

24. Exchanges to stand in their own force

We keep in their own force state deeds of exchange, purchase or agreement* made with the tax authorities, up to the advent of Totila⁴⁴ of criminal memory, provided that there is nothing pertaining to another possessor.

* Accepting Zachariae's *compactiones* for *competitiones* [S/K, p. 802, line 24].

Given: day, year and consulship as above

25. Public workshops to be maintained

We order that customary payments and privileges of the Roman state granted for the repair of public workshops, for the channel of the Tiber, the Forum, the port of Rome or the repair of ducts, are to be maintained, with the proviso that they are to be met solely from the actual tax-schedules that were assigned as their source.⁴⁵

Given: day, year and consulship as above

⁴³ This measure seeks to reverse a practice that had emerged under Gothic rule. Under Theoderic and his successors, military office in Italy had effectively come to be monopolised by those styled Goths (although they were not necessarily ethnically so by birth). According to Cassiodorus (*Variae* 7.3) disputes between a Goth (i.e. a soldier) and a Roman (i.e. a civilian) were to be heard jointly by a military (i.e. Gothic) judge and a Roman civil magistrate. For discussion of issues relating to Gothic ethnicity, see Amory (1989).

⁴⁴ 'Up to the advent of Totila' = 540.

⁴⁵ In Rome, as elsewhere, specific tax-revenues were assigned or hypothecated to meet specific purposes.

26. Compulsory purchases to be made through traders

Additionally, we have been informed that landowners in the province of Calabria or Apulia⁴⁶ have had a superindictional tax⁴⁷ imposed on them for each *millena*,⁴⁸ for not having brought in supplies for compulsory purchases, as a result of which the annual compulsory purchases have been conducted through traders; but that as traders are at present attempting to refuse the compulsory purchases of produce, landowners are threatened with the burden of compulsory purchases as well as the superindictional tax.⁴⁹ As there are plenty of traders through whom compulsory purchases could be conducted, we decree that if it is possible, under your magnificence's supervision, for produce to be brought in through purchase by traders, the province's taxpayers should not have any excessive burden at all, as it is impossible for them to be subjected to that burden as well, once the superindictional tax has been imposed on them.

Given: day, year and consulship as above

27. Those wishing to travel to the emperor's presence not to be prevented

Lest it should seem that due access to our court is somehow being denied to our senators or taxpayers, we permit Most Illustrious and magnificent senators, who wish to attend, to come to it without any impediment; no-one is to have authority to prevent them.⁵⁰ We also make authority available to them for travelling to a province of Italy, and staying there

⁴⁶ These two territories formed a single province. For the economy of Byzantine Calabria, see Noyé (2014).

⁴⁷ A superindictional tax (Latin *superindictio*) was an extraordinary or supplementary tax levied when the taxes collected from a region turned out to be insufficient. Such charges were at their most common during times of war, and were primarily levied on large estates (see Berger (1953), p. 725). The inference of this section of the constitution is that, in the agriculturally rich regions of Calabria and Apulia (where the Church had an extensive property portfolio), landowners had failed to co-operate with the state's attempts to arrange for the compulsory purchase of supplies (*coemptio*) from them, as a result of which officials had forced them to make an additional tax payment, the proceeds of which the government agents had then attempted to use to buy the supplies which the state required from merchants. The refusal of some of those merchants, in turn, to co-operate, however, had then induced the officials to return to the landowners (who had made the additional tax payment) to attempt to levy the supplies again.

⁴⁸ '*Millena*' = a unit of surface measurement for fiscal purposes equivalent to one *iugum* or 5/8 of an acre: see Chouquer (2014), pp. 117–21.

⁴⁹ The landowners are thus presented as facing the double jeopardy of having had to meet the demands of the *superindictio* but still finding themselves liable to *coemptio*.

⁵⁰ I.e. members of the western senatorial order who remained in Italy were to be allowed to petition the emperor in Constantinople in person. The Senate in Rome appears to have

for as long as they may wish, for the purpose of recovering their lands, as it is difficult for holdings to be revived, or given their proper cultivation, in the absence of their masters.⁵¹

Accordingly, your magnificence is without fail to put into effect what we have decided by means of this divine pragmatic directive, and to see to its observance. Violators of our commands are threatened with a fine of ten pounds of gold.

Pragmatic, given at Constantinople, August 13th in the 28th year of the reign of the Lord Justinian, pius princeps, Augustus, 13th year after consulship of the Most Distinguished Basilius, the Most Illustrious Narses⁵² being praepositus sacri cubiculi⁵³ and the Magnificent Antiochus prefect in Italy⁵⁴

554

continued to function in an increasingly attenuated form down to the 590s (Loschiavo (2015), p. 94).

⁵¹ At the height of the Gothic Wars, Totila and his entourage had deliberately targeted and confiscated senatorial estates and many senators appear to have fled (including, this provision would suggest, to Constantinople and the East): see Procopius, *Wars* 7.22. 1–19 and 20–22. Moreover, members of the Senate of Constantinople are also likely to have owned, or inherited claims to, land in Italy. On the relationship between the eastern and western senatorial orders in the age of Justinian, see Momigliano (1955). Justinian here suggests, one should note, that even senatorial landowners took a direct interest in the cultivation of their estates (on which see discussion in Sarris (2004), p. 305).

⁵² The General Narses (a eunuch of Persarmenian origin) had achieved the final pacification of Italy which this edict marked: see *PLREIIIB*, pp. 912–28 (Narses 1) and *J. Nov. Appendix* 8, note 3. He was famous not only for his devotion to the empire, but also his great personal beauty and height (Tougher (2008), p. 101).

⁵³ ‘*Praepositus Sacri Cubiculi*’ = chamberlain or head of the imperial bedchamber (on which see Jones (1964), pp. 566–71). This post was traditionally reserved for eunuchs.

⁵⁴ On Antiochus, see *PLREIIIA*, p. 90 (Antiochus 2).

Appendix 8

Law laid down for debtors in Italy and Sicily¹

[Latin only]

In the name of our Lord Jesus Christ. Emperor Caesar Flavius Justinianus Alamannicus Gothicus Francicus Germanicus Vandalicus Africanus,² pious fortunate glorious victor and triumphator, Augustus, to Narses,³ Panfronius⁴ and the Senate

Preamble

When people are in widespread difficulties it is necessary to come to their aid with a remedy in common,* given that an onslaught at a time of barbarism always gives occasion for promulgating <new laws, unknown> to the ancients, as <a remedy> for the new situation*.

*- Tentatively supplementing . . . *in novarum rerum <remedium novis> et <ignotis> veteribus legibus* . . . [S/K, p. 803, line 6].

¹ This constitution (which survives in only one manuscript of the *Epitome Iuliani*) records and responds to the destruction wrought by a Frankish assault on Italy that took place in 553–555, and, in particular, the implications for relations between creditors and debtors resultant from the loss of securities on debts amid the military strife caused by the Frankish incursion. In it, Justinian decrees that interest payments are to be suspended for five years, and that if the security for the debt is destroyed, the debtor is to be freed from it: see Van Der Wal (1998), p. 102 (entry 716).

² On Justinian's triumphant titulature, see *J. Nov.* 17, note 7 and *J. Nov.* 43, note 2.

³ A eunuch of Persarmenian origin, Narses was the general who had recently crushed the final remnants of Ostrogothic resistance in Italy. He would remain in the peninsula, overseeing its defence until his death in 568, just prior to which he is reported to have invited the Lombards to settle in northern Italy as imperial allies or *foederati*, partly so as to prevent further Frankish and other barbarian assaults such as that referred to in this law (see Paul the Deacon, *History of the Lombards* 2.1–27). The arrival of the Lombards, however, would soon take on the aspect of a full-blown migratory invasion, heralding a collapse in the Byzantine position in much of northern and central Italy: see Sarantis (2011), pp. 27–38, Sarris (2011a), pp. 177–9 and Pohl (1997).

⁴ Panfronius = Pamphronius: a leading member of the senate (an institution which had barely managed to survive Justinian's Gothic war), he is attested as acting on behalf of the imperial authorities as late as 578, when he is recorded to have been issued with 3,000 lb weight of gold by the government in Constantinople to bribe Lombard warlords (*duces*) to ally themselves with the empire: see Menander the Guardsman, fragment 22, Sarris (2011a), pp. 180–1 and *PLREIIIB*, pp. 962–3 (Pamphronius).

In this context, we have been moved by the entreaties brought from the whole of Italy, requesting us now to grant a remedy over repayment of moneys loaned at interest, in order to avoid both deprivation of due returns, and collapse under the impossibility of clearing indebtedness, owing to the communal disasters. Acceding to these entreaties, we accordingly decree, by means of the present law, that throughout Italy and Sicily, a debtor on loans known to have been made up to the recent invasion of the Franks is, within a full five-year period from the restoration of complete peace to Italy, to offer creditors either half the principal of the loan, or, if the debtor so chooses, a moiety of his own property; be it noted that interest on all these contracts is to lapse entirely from the date of the loan, up to the completion of the five-year period.⁵ If any securities given for the loan have perished in Italy's disaster, both debtor and creditor are to feel the effect of what had happened to all in common, so that neither can the creditor sue for the sums lent, nor can the debtor launch actions over his securities. If the securities still exist, the debt for the principal is to be cleared by the securities that are intact; but should only part of the securities be found unaffected, that part is to go to the creditor against a corresponding part of the principal. Should anyone wish to profit from the opportunity offered by the period of barbarism, by suppressing or concealing the amount of the securities he has been given, and this can be proved by the debtor, the creditor is to be obliged to forfeit his debit, and to return the securities. Those who, under pressure of the debt,* put *beneficia* or interest-payments against the principal of the debt, a practice the laws totally disallow even in good times, are by this directive to be deprived of their increment, in such a way that whatever it furnishes by way of interest-payments or *beneficia* ...⁶

* Accepting Zachariae's emendation of *necessitatem* ... *facientem* to *necessitate* ... *faciente* (S/K, p. 803, line 21).

⁵ The Frankish invasion referred to took place in 553–555 and is recorded by the contemporary historian Agathias (*Histories* 2.4–9).

⁶ This section of the constitution is very difficult to make sense of and the one manuscript we have of it (which was only discovered in the nineteenth century) is fragmentary and possibly corrupt. Its provisions are perhaps to be connected to the so-called 'benefice of competence' (*beneficium competentiae*) encountered in the literature but, as Berger notes, 'unknown in Roman juristic language', whereby in certain circumstances an insolvent debtor could be ordered to pay only 'what he can do' (*in id quod [quantum] facere potest*): see Berger (1953), p. 372.

[remainder, including date, missing]⁷

⁷ Lounghis, Blysidou and Lampakes (2005), p. 337 (under entry 1405) date this edict to 555 or shortly thereafter (see note 5).

PROOF

Appendix 9¹

[Latin only]

[No title]

*Emperor Flavius Justinianus Alamannicus Gothicus Francicus Germanicus Anticus Alanicus Vandalicus Africanus,*² *pious fortunate glorious victor and triumphator, ever Augustus, to John,*³ *praetorian prefect of Africa*

It has come to our knowledge that certain people in the African province⁴ are paying no attention to our commands which we made on the reclaiming of peasants, but are continuing to bring unjustified suit for recovery of *coloni*, or peasants, or of their children, who are shown to have left their proprietary holdings before the arrival of our victorious army;⁵ in fact, they even continue to harass those in ecclesiastical offices, under the law on the colonate.⁶ We know that we have promulgated sacred letters⁷ on this

¹ In *J. Nov. Appendix 6*, Justinian had issued an *ad hoc* rescript which granted liberty to those *coloni adscripticii* (or *originarii* as they tended to be referred to in the West) and their offspring in Africa who had fled the estates they worked during the period of Vandal rule. In this constitution (which survives in a manuscript of the *Epitome Iuliani*), Justinian records that African landowners had nevertheless sought to reclaim such *coloni* or their descendants, even when they had become priests, with lawyers (acting either as advocates or judges) seeking to trump the emperor's rescript (which only applied to Africa) by means of citing laws of general effect on the *ius colonatus* (or rights of masters over their *coloni adscripticii*). This Justinian here forbids, upholding his earlier measure. The constitution, therefore, again reveals the importance of the colonate in the sixth-century agrarian economy, and the determination of landowners to use or twist legislation pertaining to *coloni* to their advantage. The edict thus further alerts one to the vital social and economic significance of law and legal argumentation in late antiquity: see discussion in Sarris (2011b) and (2011c). It is perhaps significant that the law uses the term 'peasants' (*rustici*) as a synonym for *coloni adscripticii*, thereby conveying a strong sense of the ubiquity of the institution of the colonate in the estate-rich world of late Roman Africa. Honoré (1975) suggests that this law may have been composed by Justinian himself (p. 121). For further discussion of this law, see de Dominicis (1963).

² On Justinian's triumphant titulature, see *J. Nov. 17*, note 7 and *J. Nov. 43*, note 2.

³ John is otherwise unattested.

⁴ 'Province': strictly speaking, Africa was a prefecture rather than a province. The law referred to is *J. Nov. Appendix 6*.

⁵ According to *J. Nov. Appendix 6*, *coloni adscripticii* who had fled from estates and lived as free men during the period of Vandal rule were henceforth to be free.

⁶ 'Law on the colonate' = *ius colonatus*: see discussion in Sarris (2011b).

⁷ 'Sacred letters' (*sacrae apices*) = imperial letters or commands, i.e. laws (Berger (1953), p. 364 and Millar (2006), pp. 34–8).

subject, in which we delimited from which period reclamations of peasants, male or female, should be made; we therefore command your magnificence by all means to strike out these unjustified suits for reclamation in the African regions. We permit no-one to claim that men, women or children are in the status of *coloni* under him, except from the time when, as we said, our victorious army, with God's help, reclaimed the African province for our empire.⁸ We command that reclamations directed at clergy are to be made from no more distant a period than the time that we decreed in our letters, and we do not allow suits and contentions that are out of time to have their duration prolonged.

As we have found out that the most eloquent men⁹ have not been giving our above-mentioned commands precedence over general laws, we command that the previous commands that we have promulgated on this issue, as well as the present command, are to hold the place of law in the regions of Africa, and are not to be set aside by any prescription of the general laws;¹⁰ but they are to be made known, by means of edicts posted up by your magnificence, so that all the peoples of Africa may be aware of the period they should be careful to observe in bringing actions to reclaim male or female *coloni* or clergy. A fine of five pounds of gold is to be imposed on those who attempt to contravene this command.

May the Divinity preserve you for many years.

Given at Chalcedon, September 22nd in the 32nd year of the reign of the Lord Justinian Augustus, 17th year after consulship of the Most Distinguished Basilius, indiction 7¹¹ 558

⁸ I.e. 533.

⁹ 'The most eloquent men' = lawyers (akin to the phrase 'my learned friends').

¹⁰ 'Prescription of general laws', i.e. a defence or claim (*praescriptio*) based on a law of general effect.

¹¹ 'Indiction 7' = the seventh year of the fifteen-year fiscal cycle known as the indiction, on which see Chouquer (2014), p. 311.

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Abbreviations

Abbreviations of papyrological and other sources correspond to those used in the *Bulletin of the American Society of Papyrologists* and *L'Année Philologique*.

Note also:

Codex = *Codex Iustinianus*.

LIIVN = *Legum Iustiniani Imperatoris Vocabularium – Novellae (Pars Latina and Pars Graeca)* ed. A.M.B. Colombo and G.G. Archi. Milan: 1979 and 1988).

PCBEI = A. Mandouze ed. (1982) *Prosopographie Chrétienne du Bas-Empire – Volume I – Afrique*. Paris.

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PLREII = J.R. Martindale (1980) *The Prosopography of the Later Roman Empire, Volume II: AD 395–527*. Cambridge.

PLREIII = J.R. Martindale (1993) *The Prosopography of the Later Roman Empire, Volume III: AD 527–641*. 2 vols. Cambridge.

RB = *The Regula Benedicti* ('Rule of St Benedict').

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