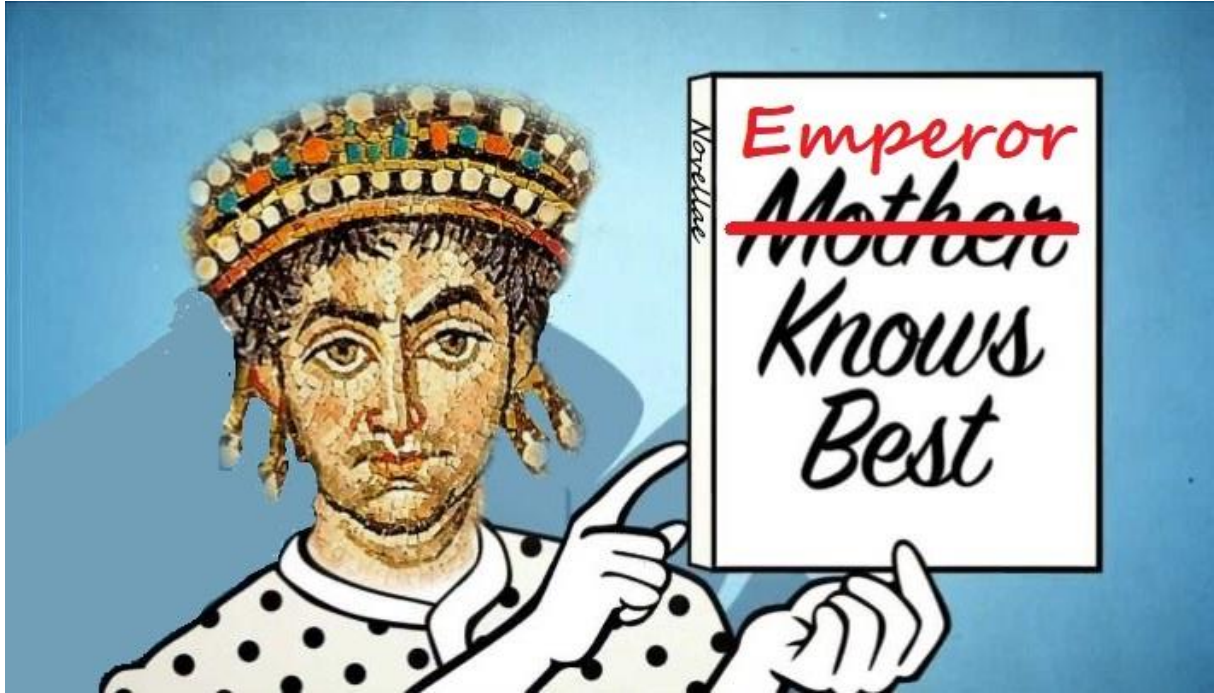


Emperor knows best

Anchoring Justinian's *Novellae* in practice, past and present



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Introduction: Justinian the legislator

Emperor Justinian (r.527 to 565) was one of the most famous and infamous emperors of Late Antiquity. He ruled the eastern empire for almost half a century and did not sit still during that time. He is seen as the last emperor to make a serious attempt at restoring the former territories of the western empire to his rule, he is celebrated as the builder of innumerable churches reviving Roman architecture, and he is venerated as a great law-giver, codifying Roman law in the *Codex Justinianus*, still a foundational text of the western legal tradition.

Justinian's legal activity was unprecedented.¹ Only half a year into his reign, his administration already began codifying Roman law, a massive task of collecting and streamlining all kinds of legal pronouncements. When the second edition of the Code was completed in 529, the emperor victoriously pronounced:

a tempered compendium of the ancient laws, which until now were weighed down by old age, has at last stood forth in new beauty: which nobody before our rule had ever hoped for, nor did anyone think it even possible by human intelligence. For it is marvellous that consistency could be imposed upon Roman law – which, from the founding of the City until the time of our rule, that is, almost 1400 years, vacillated in internal contradictions extending even into the laws of the emperors - so that nothing contrary or repetitive should be discovered in it, and so that no twin laws ruling on the same subject should anywhere appear.²

Roman law was brought completely in harmony. But was it really? And for how long would it remain that way?

Emendations followed quickly. The imperial administration argued new laws remained necessary to perfect the body of law the Codex had established. Eventually, more of these single laws have survived from Justinian's reign than from any other emperor. That his legal output was indeed extraordinary and not just a case of fortunate preservation is confirmed by the Byzantine ruler Leo, who wrote around 900 CE that Justinian had been a failed and defective legislator, because he did not know when to stop.³ More tellingly, Justinian himself impatiently addressed the complaint that he had too easily indulged in making new laws. In the preamble of Novella 60, he defended himself fiercely when 'some people complained

¹ For convenience sake, I use 'Justinian' and 'imperial administration' interchangeably as the actors behind legislation, because they are written in the emperor's name and represent imperial policy. The exact role of the emperor in the creation of the *Novellae* will be discussed in chapter 1.

² *Constitutio Tanta pr.: leges antiquas iam senio praegravatas per nostram vigilantiam praebuit in novam pulchritudinem et moderatum pervenire compendium: quod nemo ante nostrum imperium umquam speravit neque humano ingenio possibile esse penitus existimavit. Erat enim mirabile Romanam sanctionem ab urbe condita usque ad nostri imperii tempora, quae paene in mille et quadringentos annos concurrunt, intestinis proeliis vacillantem hocque et in imperiales constitutiones extendentem in unam reducere consonantiam, ut nihil neque contrarium neque idem neque simile in ea inveniatur et ne geminae leges pro rebus singulis positae usquam appareant.* Translation from P. Amory, *People and Identity in Ostrogothic Italy, 489–554* (Cambridge 1997) 140.

³ C. Humfress, 'Law and Legal Practice in the Age of Justinian' in: M. Maas ed., *The Cambridge Companion to the Age of Justinian* (Cambridge, NY 2005) 161-184: 175.

about the large amount of laws that are issued by Us every time'. Those people just did not think their accusation through: they did not realise these laws were desperately needed!

Private collections bundled these laws and dubbed them the 'new laws', *Novellae*. In contrast with the laws cited in the *Codex*, they are preserved in full and have the shape of letters to high officials or to the inhabitants of Constantinople. They provide a unique insight in the strong rhetorical nature of legislation normally hidden from our eyes.

Now, how are we to understand this mass of laws and how did Justinian justify all these innovations? Instinctively it makes sense that these laws were to introduce rules, so the most obvious answer would be that Justinian issued many laws because he wanted to introduce many new rules. However, the 'rules' introduced were often not really new, but instead repeating earlier legislation. Furthermore, this interpretation does not account for the elaborate rhetoric the *Novellae* display. If reforms were the only reason for new laws, they could have been presented much more economically.

Another way to explain Justinian's legislative activity is by his adherence to a 'Grand Design'. The emperor had embarked on great projects during his reign: his conquest of Africa and Italy, an elaborate building program, and of course his legal achievements. For historians, the temptation to see these parts of his reign as elements of a preconceived 'Grand Design' has been very strong. This view presents all Justinian's actions as a deliberate restoration of the ancient Roman empire, though an empire raised to new heights of glory by confessing the Christian faith. The Grand Design interpretation is found in authoritative older works like Rubin's *Das Zeitalter Iustinians*, but still finds expression in modern studies like Amory's *People and Identity in Ostrogothic Italy*.⁴ However, the theory is also strongly called into question. It is highly disputed whether the elements of Justinian's reign would fit together to make up such a Grand Design and if the emperor even had the means to accomplish such a goal.⁵ Nevertheless, Justinian's legislative activity might be the most convincing argument for this view and even Louth, who is generally critical of the idea, thinks 'Such comprehensive legislative activity can hardly be regarded as other than part of a grand design of imperial rule.'⁶ However, just a few passages in the *Novellae* reflect something of an ideology of 'Grand Design' and, as I will show in more detail in chapter 2, the rhetoric of restoration was limited to specific contexts.

Key to a better understanding of the *Novellae* is treating them as a 'legal socio-political literary source' operating in a Late Antique world. First of all, they were laws, documents in a legal tradition in which they are embedded. Second, they were literary rhetorical exercises, letters with an addressee, an introduction, body and epilogue and part of a dialogue between emperor and subject. Finally, their 'socio-political' aspect tied legal and literary traditions

⁴ B. Rubin, *Das Zeitalter Iustinians* (Berlin 1960) esp. 156; Amory *People and Identity* 9-10.

⁵ A. Louth, 'Justinian and his legacy (500-600)' in: J. Shepard ed., *The Cambridge History of the Byzantine Empire c.500-1492* (Cambridge 2008) 107-119.

⁶ Louth, 'Justinian and his legacy' 109.

together. Bringing together theories of Millar, Honoré and Harries, I will place the *Novellae* in the world in which they were created and where they served a communicative function.⁷ These laws were not just rules to obey or disobey, neither were they literary essays disengaged from their legal context. They aimed to delineate a worldview and defined what role the emperor and the law played in that world, while keeping a connection to their audience and reflecting their values too. They were morally charged documents, surprisingly more spirited than we might expect of texts we associate with dry, technical matters. In the words of Harries:

rhetoric was as much a part of the “law” as the legal command or prohibition contained in it. (...) the integration of rhetoric with *ius* (...) was essential both to emperors’ affirmations of their own legitimacy as rulers and to the activity of the legislator as educator in the good life.⁸

Moreover, not only the end-product – the law – interacted with people, they participated in the entire process of creation. Their petitions and complaints were an integral part of the legal system the working of which again reflected the quality of the emperor. Together, all these elements build a framework that will help us understand both the multitude and the elaborate rhetoric of the *Novellae*.

I will tackle the questions revolving around the *Novellae* with the recently developed concept of ‘anchoring’. Anchoring is a process or activity in which a concrete phenomenon or concept (a ‘message’) is embedded in the worldview of the ones ‘receiving’ the message. It uses ‘anchors’ that are perceived or experienced as the stable basis for innovation. Anchoring can be done horizontally or vertically. Horizontal anchoring creates a link between different contemporary domains and embeds something in moral norms and values. Vertical anchoring uses constructions of the past as an anchoring device and ties innovations to established practices or traditions, either really historical or entirely invented. Ultimately, anchoring gives the anchored thing or concept legitimacy and acceptance; it explains the ‘human element’ in the question why innovations are successful.⁹

Because it is in the nature of laws that they are highly desired to be broadly accepted and they barely have technological aspects determining their success, anchoring is a very suitable concept to analyse how legislators have tried to make their laws successful. In her study on the question whether Sulla had given Athens a new constitution after sacking the city in 86 BCE, Kuin has already argued convincingly that anchoring political innovations in existing or ancient practices helps avoid the risks associated with changing laws, i.e. the feeling of

⁷ F. Millar, *The Emperor in the Roman World (31 BC – AD 337)* (London 1977); T. Honoré, *Law in the Crisis of Empire 379-455 AD. The Theodosian Dynasty and its Quaestors* (Oxford, NY 1998) and T. Honoré, *Tribonian* (London 1978); J. Harries, *Law and Empire in Late Antiquity* (Cambridge, NY 1999).

⁸ J. Harries ‘Superfluous Verbiage? Rhetoric and Law in the Age of Constantine and Julian’, *Journal of Early Christian Studies* 19.3 (2011) 345-374: abstract.

⁹ I. Sluiter, ‘Anchoring Innovation: A Classical Research Agenda’, *European Review* 25.1 (2016) 20–38.

disobeying old laws and getting accustomed to obeying the new law.¹⁰ Thus, the language in which new laws are presented is very important for the reception of those laws.

In this thesis, I will focus on the preambles, first chapters and epilogues of Justinian's *Novellae*, because those are the places we can expect to find the ideological message. In the preamble, the emperor gave an imperial spin on relevant current events and often justified why his new law was a good and necessary one.¹¹ I have also taken the first chapters into account because the distinction between 'introduction' and 'body' of the law is not original to the time of promulgation. Later collectors have added this categorisation to create an admittedly better readable text. However, their distinctions have sometimes cut an ideological argument in half, because it extended into the first chapter. The text usually signals quite clearly the end of the introductory part (*prooemium*) and the beginning of the 'decision' (*promulgatio*) with the emperor saying he had considered his options and reached a verdict.¹² Finally, I have found that the epilogues also regularly add an ideological layer to their usual instructions for publication. In my analysis of the preambles, first chapters and epilogues, I have discovered different ideological elements that will be discussed across this thesis. An overview of this categorisation can be found in the Appendix.

To show the *Novellae* are indeed best understood as a 'legal socio-political literary source', I will first show that they were an important way for the emperor to communicate with his subjects and vice versa. This can be seen in the process of the creation of these laws discussed in Chapter 1. Most theories on both the symbolical and practical role of legislation in society are based on earlier periods. However, the completeness of the *Novellae* provides a unique opportunity to look at the circumstances that prompted legislation and to discover the traces the process of creation had left in the texts. I will see whether the theoretical concepts developed based on earlier source material are still applicable to Justinian's time. Moreover, questions about the agency of the emperor, the role of his administration, the influence of interest groups and the prevalence of petitions are important to place a rhetorical analysis of the *Novellae* in the right perspective.

In Chapters 2 and 3, I will study how the *Novellae* were anchored. I am neither a legal expert nor a classicist, so this won't be a study in legal precedents and judicial practice, nor a classical discourse analysis of the Greek and Latin used. Rather, I have done historical research on historiographic theoretical constructs, the impact of law on ancient society and patterns of imperial ideology. In Chapter 2, I will focus on the use of tradition and the Roman past. How were Justinian's laws vertically anchored in earlier laws and institutions and did their rhetoric

¹⁰ I.N.I. Kuin, 'Anchoring Political Change in Post-Sullan Athens' in: T.M. Dijkstra et al. ed., *Strategies of Remembering in Greece under Rome (100 BC – 100 AD)* 157-167: 161.

¹¹ J.E. Spruit e.a., *Corpus Iuris Civilis. Tekst en vertaling. X Novellen 1-50* (Amsterdam 2011) XLV-XLVI; M. Benner, *The Emperor Says. Studies in the Rhetorical Style in Edicts of the Early Empire* (Göteborg 1975) 15-17; G. Ries, *Prolog und Epilog in Gesetzen des Altertums* (München 1983) 191; A. Honig, *Humanitas und Rhetorik in spätrömischen Kaisergesetzen* (Göttingen 1960) 39; O. Mazal, *Justinian I. und seine Zeit. Geschichte und Kultur des byzantinischen Reiches im 6. Jahrhundert* (Köln 2001) 95; Humfress, 'Law and Legal Practice' 174.

¹² A. Fridh, *Terminologie et formules dans les *Variae* de Cassiodore* (Stockholm 1956).

fit an ideology of restoration or can we even discern a Grand Design? Finally, I will look how the *Novellae* are horizontally anchored in Chapter 3. How were the laws presented in relation to the emperor and what qualities of the emperor helped legitimising his laws? What were valid contemporary reasons to innovate and change the existing legal system? In addition, this chapter explores the relation between the different modes of anchoring apparent in the *Novellae*. How did past and present work together to give legitimacy to the laws in all spheres of society they operated in? Did the constraints of tradition and the expectations his subjects leave the emperor little choice, or did he, in the end, transcend all mortal limitations and stubbornly dictate his will? Did sixth-century mothers teach their children how to behave or did the *Novellae* provide the guidebook to life and was it the emperor in his divine glory and relentless concern that knew best?

Chapter 1: The circle of law

Only half a year into his reign Justinian announced to the Senate of Constantinople his first legislative project: a new compilation of imperial constitutions which was to bear his name, the *Codex Iustinianus*.¹³ Almost exactly one hundred years after Theodosius II had announced his own *Codex*, it was again necessary to clear the ‘thick, dark fog’ of Roman legislation in order to diminish the length and complexity of lawsuits and hence increase the public welfare.¹⁴ A specially appointed committee of ten men, headed by the praetorian prefect John the Cappadocian, got the freedom not only to extract the relevant passages from imperial constitutions, but also to weed out all inconsistencies. Whatever imperial legislative texts the commissioners could find from the emperor Hadrian up to Justinian himself had to be made into a coherent whole that would fit the age of Justinian. This included case-specific private rescripts, as well as imperial *epistulae* (letters) to individual officials, and *edicta* (edicts) often directed at specific provinces or the cities of Rome or Constantinople. Justinian claimed he boldly went where no emperor had gone before and that he would succeed with the assistance of the almighty God.¹⁵

The first edition of the *Codex* was promulgated in April 529, but soon a second edition was issued. This edition was completed in 534 and this text survives today. The *Codex* of 534 superseded the first. The first edition had only compiled imperial constitutions, but whether Justinian liked it or not, the emperor had not been the only source of law in Rome’s history. Therefore, the first edition was to be used alongside texts of ancient Roman jurists, keeping the ‘prolific mess of legal material’ intact. Emperors Constantine, Valentinian III and Theodosius II all had faced this same problem in their attempts to stabilise the use of juristic literature in court disputes. However, Justinian and his commissioners would not rest until this problem was solved.

Almost immediately after the promulgation of the 529 Code, Justinian issued a series of ‘fifty decisions’ (*quinquaginta decisiones*) to resolve outstanding controversies in ancient juristic texts. The opinions of the jurists were ‘perfected’ by the emperor’s imperial laws.¹⁶ But this was not enough. A second legal committee, headed by the *quaestor* Tribonian (to whose office and person I will return), was tasked with the harmonisation of fourteen hundred years’ worth of Roman jurisprudence into a single work eventually known as the *Digesta seu Pandectae*. ‘With hands stretched up to heaven, and imploring eternal aid’, the commission succeeded in

¹³ *Codex Iustinianus* (CJ), ‘Constitutio Haec’ (Const. Haec), 13 February 528. The following exposition on the *Codex*, *Digesta* and *Institutiones* is indebted to Humfress, ‘Law and Legal Practice’ 162-171; W. Kaiser, ‘Justinian and The *Corpus Iuris Civilis*’ in: D. Johnston ed., *The Cambridge Companion to Roman Law* (Cambridge, NY 2015) 119–148: 123-126.

¹⁴ Theodosian Novella (Th. Nov.) 1.1 pr. speaks of ‘crassa demersae caligine obscuritatis valde’ while Justinian’s *Digesta* ‘Constitutio Deo auctore’ I similarly finds the ‘way of law’ so confused ‘ut in infinitum extendatur et nullius humanae naturae capacitate concludatur’ and Novella 107.pr says people had more use of diviners than explainers when they had questions about the law.

¹⁵ CJ ‘Const. Haec’ pr.

¹⁶ CJ 2.55.5.3 and CJ ‘Constitutio Cordi’ pr.

this massive task, 'relying upon God, who in the magnitude of his goodness is able to sanction and to consummate achievements that are utterly beyond hope.'¹⁷ The *Digesta* would function as the ultimate legal companion to be used alongside the *Codex* in law schools and courtrooms alike. Any juristic texts excluded from it could no longer be relied upon in any legal transactions. Moreover, any new independent commentaries on the *Digesta* were prohibited, for it had to be clear that the only legitimate source of law was the emperor and all authority jurists had, derived from him.¹⁸

On 21 November 533, a month before the completion of the *Digesta*, Justinian topped off his overhaul of Roman legislation with the promulgation of the *Institutiones Iustiniani*. This textbook was based upon a tradition of introductory works (*institutiones*) and was directed at first-year law students. It aimed to provide them with 'an elementary framework, a cradle of law' so that their education proceeded 'from start to finish from the Emperor's lips.'¹⁹ The *Institutiones* included some of Justinian's most important legislative innovations and referred students to the *Digesta* and *Codex* for advice on other legal points. By now, Justinian had truly ventured where no emperor had ventured before. Yet, he was not finished. The law was never finished.

The *Novellae*

After the promulgation of the updated second edition of the *Codex* in 534, Justinian had completed the three works now collectively known as the *Corpus Iuris Civilis*. However, the emperor kept issuing legislation to perfect the law. These laws became known as the '*Novellae constitutiones*' or '*Νεαραι διατάξεις*' in ancient legal education, although Justinian had already called his *Codex* a 'new constitution'.²⁰ Moreover, the idea of individual *novellae* was not new. After the completion of his *Codex*, emperor Theodosius II had similarly issued *novellae*. In 447 AD, the eastern Theodosius had compiled a collection of them as a gift to his western co-emperor Valentinian III. At that moment, the *Codex Theodosianus* had already been 'gifted' to extend its authority empire-wide. Valentinian reciprocated these judicial gifts with a collection of *novellae* of his own. A tradition was born, and more collections of laws appeared under their successors until the deposition of the last western Roman emperor made this 'gift exchange' come to a halt.²¹

A compilation of Justinian's *Novellae* issued between 534 and 554 was planned would have received the original name '*Novellae constitutiones*', but this official collection never

¹⁷ *Digesta* sect. 2; Translation from Humfress, 'Law and Legal Practice' 167.

¹⁸ Harries, *Law and Empire* 15.

¹⁹ *Institutiones* 'Constitutio Imperatoriam' 3; Translation from Humfress, 'Law and Legal Practice' 170.

²⁰ CJ 'Const. Haec' pr.; W. Kaiser, 'Zur äußeren Gestalt der Novellen Justinians' in: J.H.A. Lokin and B.H. Stolte, *Introduzione al diritto bizantino. Da Giustiniano ai Basilici* (Pavia 2011) 159-173: 170-173.

²¹ Although after the conquest of Italy and North Africa, Justinian did gift his *Codex*, the *Digesta* and the *Institutiones* to the new provinces. The planned official collection of the *Novellae* would also have been promulgated to the western provinces of it had materialised.

materialised.²² Only a small fragment of a Latin *Novella* of Justinian written on papyrus (PSI 1346 102) and a larger fragment of a *Novella* concerning Egypt (P. Oxy. 4400) have survived from late antiquity.²³ Instead, the *Novellae* have come down to us for the greatest part via a couple of private collections.

The most important collection is the Greek *Collectio CLXVIII Novellarum*, which had been drawn up ca. 10 years after Justinian's death and includes 155 original *Novellae*.²⁴ Two other important sources are the Latin *Epitome Iuliani* and the *Authenticum*. The *Epitome Iuliani* had long been the most authoritative text on Justinian's latest laws and included sometimes summaries and sometimes integral versions of 124 *Novellae*. The *Authenticum* was discovered around 1100 CE and was long presumed to be the official collection Justinian had announced. The collection originally included word-by-word (*kata-podas*) translations of 134 Greek *novellae* and was later edited to create a more or less syntactically coherent text. Although still very useful, this problematic translation process has resulted in a text fraught with difficulties. The authoritative edition of the Novels was begun by Rudolf Schöll and completed after his death by Wilhelm Kroll in 1895.²⁵ Two English translations exist by Scott and Blume respectively, but they are not the most reliable.²⁶ In this thesis, I use the most recent Dutch translation in J.E. Spruit i.a. ed., *Corpus Iuris Civilis* vols. X-XII.²⁷

In 535, the year after the completion of the *Codex*, law was – for the first time in Roman history – no longer primarily recorded in Latin. Only ordinances meant to circulate in parts of the empire where Latin was still spoken and/or written were issued in Latin, or both in Latin and Greek.²⁸ In *Novella* 17 (pr. pr.) for example, the emperor declares:

Om deze reden hebben Wij een boek met dienstinstructies samengesteld, dat hieronder in elk van beide talen is toegevoegd om Onze bestuurders al naar gelang de aard van de streek waar de Latijnse of de Griekse taal wordt gebezigd te laten weten wat hun orders zijn.²⁹

This shift from Latin to Greek could be of ideological importance when a conservative literary elite argued for a loss of tradition and a degeneration of the empire. However, when the

²² On Justinian's plans: *Novella* App. 7.11; on gift exchange: *Gesta Senatus Urbis Romae* and Th. Nov. 2.3; supplemented by: Humfress, 'Law and Legal Practice' 164; Kaiser, 'Zur äußeren Gestalt' 170-171.

²³ Kaiser, 'Justinian and the CIC' 139.

²⁴ The remaining 13 documents are doubles (3), edicts from the praetorian prefect of the East (3) and *Novellae* from Justinian's successors (7).

²⁵ Kaiser, 'Justinian and the CIC' 138-140; J.E. Spruit i.a. ed., *Corpus Iuris Civilis. Tekst en vertaling* Novellen vol. X (Amsterdam 2011) XXVI-XXXVI.

²⁶ Translations: S.P. Scott, *The Civil Law* vols. 16 and 17 (Cincinnati, OH 1932) and F.H. Blume, *The Annotated Justinian Code. Justinian Novels* (created between 1920-1952; published online in 2008) accessed 27-6-2017, <http://www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/novels/index.html>. The latter was based on the less precise Latin version of the *Novellae*; verdict on reliability: Humfress, 'Law and Legal Practice' 183, n.11 and T.G. Kearley, 'Justice Fred Blume and the Translation of Justinian's Code', *Law Library Journal* 99.3 (2007) 525-554: 549-554.

²⁷ J.E. Spruit i.a. ed., *Corpus Iuris Civilis. Tekst en vertaling* Novellen vols. X-XII (Amsterdam 2011).

²⁸ Spruit, *Corpus Iuris Civilis* (vol X) XIII-XIV; Kaiser, 'Justinian and the CIC' 140-141.

²⁹ Justinianic *Novella* (Nov.) 17.pr.pr.

Novellae themselves addressed this issue they treated it very pragmatically. The people had to be able to easily understand the law; that was more important than painstakingly preserving Latin as legal language.³⁰

The *Novellae* were not evenly distributed across Justinian's years of rule. Most of them were promulgated in the first years after the completion of the *Codex*, peaking in 535. After 539, the intensity decreased until 542 and after that it was only a trickle. In some years there were no *Novellae* and never more than five. This development might be explained by the loss of praetorian prefect John the Cappadocian and *quaestor* Tribonian. They were a driving force behind Justinian's early administration (more on their influence on legislation below).³¹ Furthermore, Justinian's activity might have shifted to another area – religion – as a reaction to the setbacks of the early 540s: the plague epidemic, the (temporary) loss of Italy, an assault of the Persians and an earthquake in Constantinople.³²

The *Novellae* dealt with a wide variety of subjects and covered virtually all areas of law. Remarkably, many laws dealt with the protection of rights of the weaker in society: women, children and the poor. In contrast with the *Codex* and the *Digesta*, we also see a lot of ecclesiastical law.³³ Around one quarter of the *Novellae* treated matters related to state administration and quite some laws revolved around improving the legal system itself. Finally, almost half of the *Novellae* concerned civil law, dealing with the economy, inheritance, marriage and property.³⁴

Most *Novellae* were addressed to the praetorian prefect (70 to John the Cappadocian), 14 were addressed to the *praefectus urbi* of Constantinople and some to regional governors or other, lower officials. When the Church was concerned, the patriarch of Constantinople was the most prominent addressee. A couple of *Novellae* were directed at the inhabitants or the Senate of Constantinople.³⁵

The importance of the *Novellae* lies in their completeness. The surviving codices have given us an enormous, comprehensive account of Roman law, but due to their purpose of providing a systematic collection of *rules* to be used in court, a handy companion for lawyers, their treatment of the historical circumstances in which those rules came into being is limited. The *Novellae*, in contrast, are preserved in the way they were issued: as letters (*epistulae*). They were written with an addressee, a preamble, and an epilogue explaining why a law was promulgated and how and to whom this law was meant to be distributed. Only this last aspect

³⁰ On the loss of Latin in administration: J.F. Matthews, *Laying Down the Law. A Study of the Theodosian Code* (Yale, CT 2000) 28-29; I will return to this ideological dispute in chapter 2, paragraph 'Romanitas in New Rome'.

³¹ Spruit, *Corpus Iuris Civilis* (vol. X) X-XI.

³² M. Meier, *Das andere Zeitalter Justinians. Kontingenzerfahrung und Kontingenzbewältigung im 6. Jahrhundert n. Chr* (Göttingen 2003) interim, esp. 104, 642-655.

³³ Kaiser, 'Justinian and the CIC' 138; Spruit, *Corpus Iuris Civilis* (vol. X) XV-XXIV.

³⁴ See Appendix. As I am no jurist, the categorisation is schematic and historic, rather than legal.

³⁵ Spruit, *Corpus Iuris Civilis* (vol. X) XLIV.

and the absence of a greeting set them apart from regular letters.³⁶ Multiple historians have acknowledged the potential of this source for historical and rhetorical analysis, yet few have taken up the challenge to systematically study these laws and only recently their use as incidental evidence has increased.³⁷ In this chapter, I will remedy this hiatus and face the complex nature of the *Novellae*.

Due to their epistolary nature, historical context and legal content, the *Novellae* are a 'legal socio-political literary source'. As Harries warns, 'to treat laws as just another literary or documentary source, without considering how law as text came into being, is to risk misunderstanding the texts themselves and drawing from them highly questionable historical conclusions'.³⁸ On the other hand, treating them as legal sources without an eye for historical and literary questions would be depriving yourself of valuable source material. Legal historians miss out when they disregard the social-political and ideological background and do not take into account the influence of rhetoric as a central element of the education of all men in the imperial administration.³⁹ Therefore, before turning to an analysis of the rhetoric of the *Novellae* to see how they are anchored (chapter 2 and 3), this chapter will study the law-making process under Justinian and how it is reflected in the *Novellae*.

A critical issue in this process revolves around the questions who is sending and who is receiving the message of the law and what this message was. The emperor was not simply the only active sender, making laws according to his own will, and his subjects the passive receivers, getting told how to behave. Reality was much more complex, as it always is.

To get a message across, one has to communicate with another, but this communication is always a constitutive process that produces shared meaning. The sender-receiver relation is never unilateral. In all communication, there is a 'feedback loop' from receiver to sender that influences both parties. To understand each other, they need a 'shared field of experience' that can be used to decode meaning. If people do not share a mutual understanding of the language

³⁶ Van der Wal's analysis of the formal structure of Late Antique imperial law shows the strong similarities between 'Gesetze' and 'Briefe': N. van der Wal, 'Edictum und lex edictalis. Form und Inhalt der Kaisergesetze im spätrömischen Reich', *Revue internationale des droits de l'antiquité* 3.28 (1981) 277-313: 285-289.

³⁷ Potential: Kaiser, 'Justinian and the Corpus' 139; A.H.M. Jones, *The Later Roman Empire 284-602. A Social Economic and Administrative Survey* I (Oxford 1964) 347; Spruit, *Corpus Iuris Civilis* (vol. X) XLV; Harries, *Law and Empire* 25; The articles in Maas ed., *The Cambridge Companion* regularly make use of the *Novellae* as incidental evidence; I have found six studies on the *Novellae*, most of them dealing with them among other things. The most general but dated study is P. Noailles, *Les Collections de Nouvelles de l'empereur Justinien. Origine et formation sous Justinien* (Paris 1912). H. Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden* (Vienna 1964) still is the leading study on the *Kaiseridee* in the preambles of Byzantine legislation, with Justinian's *Novellae* as main source. An analysis of a few preambles and some more epilogues can be found in S. Troianos, *Die Quellen des byzantinischen Rechts* [trans. D. Simon and S. Neye] (Berlin and Boston 2017) 26-35 and H. Krumpholz, *Über sozialstaatliche Aspekte in der Novellengesetzgebung Justinians* (Bonn 1992) studies the legal content of the *Novellae*. W.S. Thurman's article 'A Juridical and Theological Concept of Nature in the Sixth Century A.D.', *Byzantinoslavica* 32 (1971) 77-85 on the legal concept of Nature is largely dependent on the *Novellae* and finally M. Maas 'Roman History and Christian Ideology in Justinianic Reform Legislation', *Dumbarton Oaks Papers* 40 (1986) 17-31 comes closest to my approach in this thesis.

³⁸ Harries, *Law and Empire* 4.

³⁹ Honig, *Humanitas und Rhetorik* 40; H. Stroux, 'Römische Rechtswissenschaft und Rhetorik' (Potsdam 1949) 25.

(in a broad sense) in which they communicate, they cannot understand one another. Thus, those in power did not have a choice but to make use of the cultural frameworks of their subjects to express their power. Conversely, their understanding of that power could affect those sending the original message. In a similar way, representation is a reciprocal process. Subjects were not simply passive recipients of meaning, but could often change meanings in the process of decoding the originally intended message. The expectations of subjects needed to be incorporated into the ways in which rulers are presented. 'In other words, new power structures, like all changes in society, need to be 'anchored' into existing worldviews.'⁴⁰

In legal practice, the feedback loop manifests itself very clearly. Subjects did not passively experience law, but actively participated in the legal system and tried to influence it. Emperors might have had ideas or policies they wished to follow, but it is disputed whether they were responsible for the law at all. Their administrations might take that credit, but if so, what influence did those have on imperial 'policy'? It will be clear laws should not (solely) be discussed in terms of obedience or disobedience, because they had a much wider social and political function. I will show the creation and functioning of the *Novellae* was the result of a negotiation between many different actors. And exactly because it was a negotiation, the shared field of experience surrounding 'new laws' was quite strong, providing a firm basis for their anchoring in the people's worldviews.

The creation of law

In the history of Roman law there have been multiple sources for law, but in the later empire this privilege is exclusively claimed by the emperor. Justinian makes this very explicit, when he exempts himself (and thus his consulship) from his own law aiming to mitigate the costs of celebrating the accession of a consul:

Van al hetgeen door Ons is gezegd, moet de positie van de keizer, aan wie God juist ook de wetten onderworpen heeft toen Hij hem als bezielde wet (*νόμος ἔμψυχος*) naar de mensen zond, uitgezonderd zijn.⁴¹

Although imperial rule had developed in this direction for centuries, no emperor before him had claimed to be the 'living law'.⁴²

As the ensouled source of law, the emperor had a couple of ways to issue imperial constitutions, namely *decreta*, *rescripta*, *edicta* and *leges generales*. Each of them carried the official word of the emperor and was, therefore, law. Most of them were in some way a response to (legal) cases laid before the emperor and from the Dominate onwards the sharp distinctions between the categories tended to disappear.⁴³ Originally, *decreta* were judgements

⁴⁰ O. Hekster, *Emperors and Ancestors. Roman Rulers and the Constraints of Tradition* (Oxford 2015) 26-28.

⁴¹ Nov. 105.2.4: Πάντων δὲ δὴ τῶν εἰρημένων ἡμῖν ἢ βασιλείως ἐξηρήσθω τύχη, ἢ γε καὶ αὐτοὺς ὁ θεὸς τοὺς νόμους ὑπέθηκε νόμον αὐτὴν ἔμψυχον καταπέμψας ἀνθρώποις.

⁴² C. Pazdernik, 'Justinianic Ideology and the Power of the Past' in Maas ed., *Cambridge Companion* 185-212: 202.

⁴³ Troianos, *Die Quellen* 9.

made verbally by the emperor when trying a case in high court. *Rescripta* were answers to questions from judges (*relationes* or *consultationes*) or to petitions of private (communities of) citizens (*libelli* or *preces*). *Libelli* could also be answered by a *subscriptio*, a brief response written underneath the text of the *libellus*, which was then made known by public notice. *Edicta* were public notices directly addressed to the people at large. These were not necessarily a response to an individual case but could of course be provoked by specific circumstances. Finally, there were *leges generales*. The *Novellae* are comprised of these ‘general laws’ and thus it is the *leges generales* with which I am primarily concerned in this thesis. They were letters mostly addressed to praetorian prefects, who were instructed to distribute them to provincial governors, who in turn published them in the cities throughout the empire.⁴⁴ The question whether these laws should also be seen as responses to individual cases will be discussed below.

So how were these laws created? In this chapter, I will lay out complementary theories on the process of law-making by Millar⁴⁵, Honoré⁴⁶ and Harries⁴⁷. Together, these scholars cover the entire process and allow us to come to a comprehensive understanding of the legislative context in which the *Novellae* should be placed. In most cases, the theories do not treat the entire process and they focus on different periods.⁴⁸ However, I will demonstrate that theoretical concepts brought to light by these scholars are still relevant in the age of Justinian and adjust the theories when necessary. To ensure it is clear where in the process every step took place and thus when each theory is applicable, I will first give a brief overview of the different stadia through which an imperial law arose in Late Antiquity.

From prima facie to manu divina (and beyond)

For convenience’s sake, I have divided the process through which an imperial *lex generalis* was made into eight steps. These stakes take us from the original cause that set the procedure in motion – the *prima facie* – to the moment the emperor gave his blessing to the law confirming he had read it – signing with his *manu divina* – and even somewhat beyond this point to the distribution and following reception of the law with ‘fear and trepidation’. Let’s jump right into it.⁴⁹

1) *Prima facie*. An imperial law is initiated when an issue is deemed important enough for the emperor’s attention. In an oration to the Senate in 426, Valentinian III claims laws could arise in four ways: either from the emperor’s own spontaneous initiative (*spontaneus motus*), as being

⁴⁴ Jones, *The Later Roman Empire 470-473*; Harries, *Law and Empire* 36.

⁴⁵ F. Millar, *The Emperor in the Roman World (31 BC – AD 337)* (London 1977).

⁴⁶ T. Honoré, *Law in the Crisis of Empire 379-455 AD. The Theodosian Dynasty and its Quaestors* (Oxford, NY 1998) and T. Honoré, *Tribonian* (London 1978).

⁴⁷ J. Harries, *Law and Empire in Late Antiquity* (Cambridge, NY 1999).

⁴⁸ Millar focuses on the Principate and the Diocletian period until Constantine, Harries and Honoré pick up from the Theodosian period, with Harries reaching into the age of Justinian and Honoré finishing with a book on the quaestor of Justinian, Tribonian.

⁴⁹ I follow quite closely the process as described in a law of 446: CJ 1.14.8. Scholars agree on the general outlines of this procedure.

occasioned by a petition from a subject (*precatio*), by reference from a judge (*relatio*), or by a lawsuit (*lis mota*).⁵⁰ The *leges generales* are sometimes argued to be a strong indicator of imperial policy, but only the spontaneous initiative differs from the way the *rescripta* came into being. Like the *rescripta*, the general laws were often occasioned by petitions from subjects or questions from a judge. Their legal validity on the other hand was aimed to be empire-wide instead of case-specific.⁵¹ If it was decided an individual case laid bare a systematic problem, a general law was created to fix it. This was definitely still current practice under Justinian, as the preamble of *Novella* 88 shows:

Toen Wij onlangs kennis namen van een proces – hetgeen Wij tijdens openbare zittingen in het keizerlijk paleis dikwijls doen – rees een vraag die Wij meteen hebben opgelost. Omdat Wij hebben vernomen dat dergelijke kwesties veelvuldig voorkomen, hebben Wij het juist gevonden om die met een voor ieder geldende en algemene wet te regelen.⁵²

If something was a recurring problem, it needed to be fixed with a general rule. In *Novella* 10, Justinian appointed new officials to deal with this great influx of petitions. According to emperor, more petitioners came to him than ever before.⁵³

2) Discussion of content. When creating a new law, first the content had to be determined. Whether this was solely the emperor's doing, solely his officials' or something in between is debated. However, most scholars agree that most of the work was done by a couple of high officials led by the *quaestor* in the consistory (the imperial council), although the emperor probably had some degree of involvement in the process.

3) Drafting of the text. When the legal content of the law was determined, the text had to be drafted. This was probably the task of the *quaestor*, but, again, the emperor might have done some writing himself. The consistory came together once more to discuss and edit a law further until a unanimous consensus was reached.

4) Accord. The definitive version of the law was read out in the presence of the emperor and he approved it by signing the document in purple. Although technically the creation of the law was now complete, it only gained validity when it was promulgated. If the Roman people had not had the opportunity to take notice of a new law, it could not be enforced.⁵⁴

5) Distribution. When the law was approved by the emperor, it had to be sent to the relevant officials in identical copies (*scripta exemplaria* or *ισότυπα*). The law-letter would be adapted to

⁵⁰ CJ 1.14.3.

⁵¹ Despite this aim, the rescripts were often used more generally and could serve as precedents for other cases. In 398 it was resolved that rescripts could no longer be used as 'general'. Codex Theodosianus 1.2.2; Matthews, *Laying Down the Law* 13-17; Harries, *Law and Empire* 30.

⁵² Nov. 88.pr: Δίκης ἔναγχος ἀκροωμένων ἡμῶν (τοῦτο ὅπερ ἐπὶ τῶν βασιλείων δημοσίᾳ καθήμενοι πολλάκις πράττομεν) ἀνεφύη τις ζήτησις. ἦν διελύσαμεν αὐτίκα· τοιαῦτα δὲ μαθόντες ἐπισυμβαίνειν πολλὰ κοινῶ καὶ γενικῶ νόμῳ διορίσαι ταῦτα δίκαιον ὑπελάβομεν; compare also Nov. 1.pr and 66.pr.

⁵³ Nov. 10.pr.

⁵⁴ W. Kaiser, 'Zum Zeitpunkt des Inkrafttretens von Kaisergesetzen unter Justinian', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 127 (2010) 172-201.

this official with the correct addressee. Whether this was also the moment the preamble and epilogue were personalised is not clear; this is again often seen as the *quaestor's* or the emperor's doing.

6) Publication. The official that received the law-letter was instructed to make it known to his relevant subordinates, who in turn had to pass it on or were to publish it in the cities. In the *Novellae*, the emperor addresses the relevant official always directly:

Uwe Excellentie dient zich te beijveren om hetgeen derhalve door Ons besloten is, in werking te stellen en tot uitvoering te brengen en dit door middel van haar eigen edicten aan allen bekend te maken, om te bereiken dat dit in alle steden die Ons Gezag onder zich heeft, rechtskracht heeft en voor allen duidelijk wordt, in overeenstemming met hetgeen door Ons verordend is.⁵⁵

In the city, it was usually displayed in a public place where it could be seen by everyone, probably on the forum, for 30 days. Additionally, the law would be displayed at the palace or, in earlier times, at the current residence of the emperor.

The publication of a law was dependent on the fervour of a provincial governor or even of city councils and presumably not all officials were similarly eager to spent money on the publication of all Justinian's *Novellae*. We see some frustration on the emperor's part in the preamble of *Novella* 66. He complains many testaments were in danger of not being enforced, because:

ook al zijn de wetten tot stand gekomen, zij toch niet bekend zijn bij de mensen in de provincie of zelfs hier [in Constantinople], omdat zij misschien nog niet gepubliceerd en bekend geworden zijn

To fix this problem, the law set the time limit for new laws to become valid to two months. After this time, there could be no more excuses for disobeying the law.

7) Reception. We don't know much about the actual reception of a law in a local community. Was the publication of a law a big deal? Was the text read aloud? Did everybody come together to listen? We know lawyers came to copy new laws, so they could stay up to date in their legal cases, but in the case of regular audiences we are in the dark. Corcoran argues that the physical presence of a lengthy document in a significant position in the city, might have had more impact than any attempt to read it in detail.⁵⁶ However, we have some indications the reception of imperial laws *was* a big deal. In his article on Roman legal institutions in rabbinic literature, Lieberman argues we should take seriously this third-century remark used as a parable to

⁵⁵ Nov. 2.ep: Τὰ τοίνυν παραστάνα ἡμῖν ἢ σὴ ὑπεροχὴ ἔργῳ καὶ πέρατι παραδοῦναι σπευσάτω, καὶ φανερὰ πᾶσι διὰ προγραμμάτων οἰκείων ποιησάτω, ὥστε ἐν ἀπάσαις ταῖς πόλεσιν, ὅσας ὁ ἡμέτερος κατέχει θεσμός, ταῦτα κρατεῖν καὶ δῆλα πᾶσι γενέσθαι κατὰ τὸ παρ' ἡμῶν διατεταγμένον.

⁵⁶ S. Corcoran, *The Empire of the Tetrarchs. Imperial Pronouncements and Government AD 284-324* (Oxford 1996) 246-247.

illustrate Jerome 36.23, where it is stated that the king tore to pieces the scroll of Jeremiah and burnt it⁵⁷:

In every city, when the king's letters arrived the people embraced and kissed them, rose to their feet, uncovered their heads and read them in fear, in awe, in trembling and in trepidation.⁵⁸

This passage is mirrored by John Chrysostom in the fourth century, who compares the reading of the Bible to the reading of imperial rescripts:

A profound silence reigns when those rescripts are read. There is not the slightest noise; every one listens most attentively to the orders contained in them. Whoever makes the slightest noise, thereby interrupting the reading, runs the greatest danger. All the more should one stand with fear and trepidation (...) in order to understand the contents of what is read to you.⁵⁹

Although we have no other evidence that can support these strong reactions, we should keep in mind the impact the word of the emperor could have in local communities.

8) *Prima facie*, again. Step 8 in the process is the bonus round. The law is promulgated, and people are starting to invoke it when they feel they have been wronged, or they think the new law itself is unfair. They go to court and their tricky case is referred to higher up or they try to reach the emperor more directly with a petition. Novella 86 suggests people ask the bishop interfere if a governor would not listen.⁶⁰ Eventually, the issue is deemed important enough for the emperor's ears and the process starts all over again. Sometimes, this happens very quickly, for example in *Novellae* 106 and 110 about interest on loans of naval merchants. *Novella* 110 retracts *Novella* 106 completely, according to the (somewhat unreliable) dates even before 110 is promulgated, or in any case before it had reached the whole empire. *Novella* 110.1 reads:

Aangezien Wij echter, nadat Ons naderhand verzoekschriften hebben bereikt, gelast hebben dat de hierboven genoemde wet [nov. 106] niet van kracht is, waarbij Wij gelast hebben dat deze bij Uw gerecht opgeheven wordt, maar beseffen dat deze wet ook in sommige provincies reeds bekend geworden is, verordenen Wij om die reden dat de onderhavige wet volstrekt buiten werking is en dat deze, indien zij eventueel naar de provincies is gestuurd, ook daar geen gelding heeft, maar zonder rechtskracht is.

The old law had set subjects and officials in motion and was quickly repealed by a new law 'as if the mentioned law itself had not been written'.⁶¹ The law had come full circle.

⁵⁷ S. Lieberman, 'Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum', *The Jewish Quarterly Review* 35.1 (1944) 1-57: 7-10.

⁵⁸ Esther Rabbah, 'Proemion' 11: translation in Lieberman, 'Roman Legal Institutions' 8.

⁵⁹ John Chrysostom, *Homilia XIV* (Ὁμιλία ἰδ') [107] β in: J.-P. Migne ed., *Patrologia Graeca* 53 (1862) 112, translation in Lieberman, 'Roman Legal Institutions' 7-8.

⁶⁰ Nov. 86.pr.

⁶¹ Nov. 110.1: ὡς εἰ μηδὲ γραφεῖς ἐτύχανε ὁ εἰρημένος νόμος.

The responsive emperor and symbolic source of legislation

Although Jones had already said emperors ‘usually did not plan their course of action in advance, but dealt with problems as they arose, or rather as they were brought to their notice’, Millar has famously turned earlier scholarship around by emphasising the responsive character of imperial rulership.⁶² Jones had made clear emperors were no absolute autocrats drawing up their policies in an ivory tower – even though he still believed that especially major reforms and administrative enactments came from the initiative of the emperor or a high legal official.⁶³ Millar goes a step further and emphasises a responsive imperial attitude was not just a matter of practice, it was a matter of principle. He agrees with Jones that the emperor’s role was typically passive, but added that ‘he normally made his pronouncements in response to initiatives from below’ and ‘it was not merely a fact but a general expectation that the emperor would give ear to his subjects’.⁶⁴ Responding to these ‘initiatives from below’ by giving judgement was a significant element of the role of the emperor. It made him into the symbolic source of justice for all his subjects.⁶⁵

This symbolic role explains why an emperor busies himself with so many small individual issues. Millar argues the main significance of the imperial jurisdiction did not lie in the execution of political enemies or confiscation of property, but in its routine nature and often insignificant subject-matter. It was this very unimportance that reflected the people’s conception of the emperor as a source of law and justice.⁶⁶

Justinian would agree wholeheartedly, apart from Millar classifying the issues of his subjects as ‘insignificant’ of course. No subject could be too small for him to care about and every citizen had to know that: ‘alle zaken van groot tot klein, ja zelfs de allerkleinste, Ons ter harte gaan, en dat er niets is wat Wij aan Onze aandacht laten ontsnappen.’⁶⁷

According to Millar, the office-holders were the ones that initiated correspondence with the emperor and similarly their letters ‘might be provoked by a letter to him from another – and this in its turn by an initiative from below.’⁶⁸ Each issue was ultimately provoked by a specific matter important to an individual, city or other group in the area concerned.⁶⁹ Therefore, the emperor regularly took the time to answer *libelli* his subjects presented to him. This practice is confirmed by Dio Cassius, who said giving judgement (ἐδίκαζε) was part of the daily salutations of emperor Severus:

⁶² Jones, *Later Roman Empire* 348; Millar is praised for example in Harries, *Law and Empire* ix.

⁶³ Jones, *Later Roman Empire* 348-349.

⁶⁴ Millar, *Emperor in the Roman World* passive emperorship: 266, expectation to give ear: 271.

⁶⁵ *Ibidem* 549.

⁶⁶ *Ibidem* 240.

⁶⁷ Nov. 15.ep: ὅπως ἂν γινώσκοιεν ἅπαντες, ὅτι καὶ τῶν μεγίστων καὶ τῶν μέσων καὶ τῶν σμικροτάτων ἡμῖν μέλει, καὶ οὐδὲν ἔστι τοιοῦτον ὅπερ ἔξω τῶν ἡμετέρων φροντίδων ποιούμεθα.

⁶⁸ Millar, *Emperor in the Roman World* 321.

⁶⁹ *Ibidem* 322.

Then he [Severus] would hold court, unless there were some great festival. Moreover, he used to do this most excellently; for he allowed the litigants plenty of time and he gave us, his advisers, full liberty to speak. He used to hear cases until noon⁷⁰

The conception of the emperor as the source of justice was manifested in this routine duty. I imagine Justinian did the same. The *Novellae* breathe the idea of the emperor as the source of law.⁷¹ Moreover, the epilogue of *Novella* 6 makes clear it was the emperor in general, not necessarily Justinian, who played this role.

Voorts geven Wij alle mensen, in welke positie en levensomstandigheden zij ook maar verkeren, verlof om, wanneer zij zien dat een van de bovengenoemde bepalingen wordt overtreden, dit bij Ons en bij wie er in de toekomst ook maar keizer is, aan te geven, met het doel dat Wij die de desbetreffende regels hebben vastgesteld volgens de instructie van de heilige voorschriften en de apostolische overlevering, de overtreders ook op passende wijze kunnen straffen.⁷²

In this law on the ordination of bishops, people were encouraged to help enforce it by reporting the perpetrators to the emperor, the supreme judge and maker of the law, for their verdict.

Already in the Principate public offices were created to deal with the enormous number of petitions and letters addressed to the emperor, like the *a libellis* and *ab epistulis* (later evolving into the *magister libellorum* and *magister epistolarum*). Although many scholars have tried to assign these officials a clearly demarcated task, the distinctions remain vague. In theory, the *a libellis* dealt with *libelli* and trials, whereas the *ab epistulis* was working on *epistulae* and receiving embassies. Technically, a *libellus* was a judicial complaint (or ‘petition’) addressed specially to the emperor as an instance of appeal. Its response came in the form of a *rescriptum* (rescript) or a simple *subscriptio*. However, the *epistulae* too could result from a previous enquiry or ‘petition’ (*preces*) and if the aim of the enquiry was to receive legal advice, the response would likewise be called a *rescriptum*. Additionally, the difference between *preces* and *libelli* is not quite clear – the *a libellis* dealt with *preces* too. The fifth-century *Notitia dignitatum*, designed as an overview of Roman offices, does little to enlighten us. It only adds the *magister memoriae* to the mix (assumed to be a continuation of an earlier *a memoria*-office). His business was generally concerned with the scheduling of matters of appointments and pardons, but he also dealt with *adnotationes* and *preces*. *Adnotationes* are in turn not clearly

⁷⁰ Dio Cassius, *Historia Romana* (Ρωμαϊκή Ἱστορία) LXXVII 17.1-2 (Loeb). εἶτ' ἐδίκαζε, χωρὶς εἰ μὴ τις ἐορτὴ μεγάλη εἴη. καὶ μέντοι καὶ ἄριστα αὐτὸ ἔπραττε· καὶ γὰρ τοῖς δικαζομένοις ὕδωρ ἰκανὸν ἐνέχει, καὶ ἡμῖν τοῖς συνδικάζουσιν αὐτῶ παρρησίαν πολλὴν ἐδίδου. Ζῆκρινε δὲ μέχρι μεσημβρίας.

⁷¹ See for example the preambles of Nov. 1, 72, 73, 75=104, 113, 143=150 and Nov. 6.ep.

⁷² Nov. 6.ep.pr: Ἄδειαν δὲ πᾶσι δίδομεν ἐν ὁποῖα δέποτε τάξει καθεστᾶσι καὶ σχήματι βίου θεωμένοις τι τούτων παραβαινόμενον μηνύειν ἡμῖν τε καὶ εἰς τὴν αἰ βασιλείαν, ὅπως ἂν ἡμεῖς οἱ ταῦτα κατὰ τὴν τῶν θείων κανόνων ὑφήγησιν καὶ τὴν ἀποστολικὴν παράδοσιν διατάξαντες πρέπουσαν καὶ ἐπὶ τοῖς παραβαίνουσιν ἐνέγκομεν ἀγανάκτησιν.

different from *subscriptiones*, originally interpreted as a direction to the chancellery, but developing into an independent document, a rescript, used by the emperor to give favours.⁷³

I think judicial and civilian distinctions made in modern historiography have contributed to muddying the ancient waters. Just like a modern ‘research executive’, ‘research consultant’, and ‘client consultant’ can have a lot of overlap in their job responsibilities with just a different emphasis on certain activities, we should see the *a libellis*, *ab epistulis*, and *a memoria* as working together for the same company.⁷⁴ Furthermore, all documents sent to the emperor are letters of some kind requesting favours or advice. Contrariwise, all answers to these requests are equally letters and ‘rescripts’ in the most literal sense. Sometimes differences in form are evident, for example when comparing an *epistula* to a high official to a brief *subscriptio* written underneath the draft of a petition. However, *edicta* parallel rhetorical orations in structure and many *libelli* look like *epistulae* without a formula of address.⁷⁵ Moreover, rescripts often adopt a lot of the language of *libelli* they are responding to, thus ensuring great continuity between documents to and from the emperor.⁷⁶

Taking this perspective, it is quite easy to understand the simultaneously legal and literary office of *quaestor*, the official responsible for drafting imperial constitutions under Justinian. According to Zosimus, the *quaestor* was superimposed on the *magister memoriae, epistularum and libellorum* by Constantine and it is clear he had a leading role in the preparation of imperial legislation in the period from Theodosius II onwards.⁷⁷ His power grew quickly and provoked 4th-century rhetor Himerius to exclaim:

What humane laws were not issued through him? What men in danger did not escape through him? What men with petitions to make did not resort to him? He stood between the emperor and those he ruled, conveying to him the requests of his subjects and to them the commands of the emperor.⁷⁸

Just like the men holding the subordinate offices, the *quaestor* was initially recruited among men with great literary talent.⁷⁹ In succession of the *ab epistulis*, he became the ‘mouth of the emperor’ (στόμα βασιλέως), the imperial spokesman, and at the time of the *Notitia Dignitatum* (early 5th century) he had become the editor of imperial constitutions and rescripts. That is, their language, not necessarily their content.⁸⁰ In 440 Theodosius II gave the *quaestor*, together with the praetorian prefect, the power to judge in his place. Legal training had become much

⁷³ New Pauly, ‘libellus’, ‘a libellis’, ‘ab epistulis’, ‘rescriptum’, ‘rescript procedure’, ‘subscriptio’, ‘a memoria’, ‘adnotatio’; Cf. *Notitia Dignitatum* ‘Orientis’ 19; Adnotatio: R.W. Mathisen, ‘Adnotatio and Petitio: the Emperor’s Favor and Special Exceptions in the Early Byzantine Empire’ 23-32.

⁷⁴ Example taken from research company Kantar Public.

⁷⁵ Parallel structure: Benner, *The Emperor Says* 15-17 following Fridh, *Terminologie et formules; Libelli like epistulae*: Millar, *Emperor in the Roman World* 242.

⁷⁶ D. Feissel, ‘Pétitions aux empereurs et formes du rescrit dans les sources documentaires du IV^e au VI^e siècle’ in: D. Feissel and J. Gascou ed. *La pétition à Byzance* (Paris 2004) 33-52.

⁷⁷ Zosimus, *Historia Nova* (Ἱστορία Νέα) V 32.6.

⁷⁸ Himerius, *Orationes* XIV 28-30; translation taken from Millar, *Emperor in the Roman World* 103-104.

⁷⁹ Millar, *Emperor in the Roman World* 104-105.

⁸⁰ *Notitia Dignitatum* ‘Orientis’ 12, ‘Occidentis’ 10; Noailles, *Les Collections de Nouvelles* 4.

more important and thus jurists were increasingly appointed to the office.⁸¹ Tribonian, the *quaestor* during Justinian's early reign, was the pinnacle of this process of professionalisation, working together closely with praetorian prefect John the Cappadocian. Shortly after their deaths in the early 540s, the *quaestor* and the praetorian prefect lost their imperial judging rights. They could still judge cases, but only in their own name.⁸²

Despite the existence of officials taking care of the correspondence of the emperor, the emperor's decisions and pronouncements were expected to remain – and did remain according to Millar – his own in both external form and in fact.⁸³ Anyone in close attendance on the emperor might exercise a temporary or continuing influence over him and heeding advice was nothing to be ashamed of. Nevertheless, the emperor's *eloquentia* should be in some way his own. Practice might have developed towards a procedure where the emperor merely indicated main points of a letter, leaving the composition to others like the *ab epistulis*, but in literary accounts he is usually still involved himself.⁸⁴ The *Life of Severus Alexander* illustrates this point:

He always gave up the afternoon hours to subscribing and reading letters, with the *ab epistulis*, *libellis* and a *memoria* always in attendance... the *librarii* and those in charge of the *scrinium* reading back everything, so that Alexander could add whatever was necessary in his own hand, but always on the basis of the opinion of whoever was regarded as the more learned.⁸⁵

The *Life* is highly unreliable and this passage might be a more certain reference to the 'subscription' of a letter by the emperor than of adding substantial points of his own, but apparently a closely involved emperor does reflect the ideal.⁸⁶ We should understand the personal tone of the *Novellae* in the same manner. For example, the laws constantly make use of royal plural to describe 'Our verdict' and the activities of 'Our Emperor'.⁸⁷ Whether the emperor was actually involved did not really matter for this principle. Millar concludes:

Even if it could be shown – which it cannot – that the replies were composed and issued by his staff in his name without his personal involvement, it would hardly decrease the significance of his symbolic role as the source of justice for individual subjects. His responsibility for written responses issued in his name should be seen in the light of him continuing to receive embassies, hear cases and pronounce verdicts in person.⁸⁸

⁸¹ Jones, *Later Roman Empire* 505-507; Harries, *Law and Empire* 43; Honoré, *Law in the Crisis of Empire* 11; Honoré, *Tribonian* 38. *Novella* 126 strips the *quaestor* and praetorian prefect of this power.

⁸² Nov. 126, dated to 546 but possibly earlier.

⁸³ Millar, *Emperor in the Roman World* 270.

⁸⁴ *Ibidem* 219-223.

⁸⁵ *Historia Augusta* 'Severus Alexander' 31 I; translation taken from Millar, *Emperor in the Roman World* 220-221.

⁸⁶ Millar, *Emperor in the Roman World* 221.

⁸⁷ For an emphasis on the emperor's 'personal' verdict, see for example Nov. 113.1.pr.

⁸⁸ Millar, *Emperor in the Roman World* 549.

The quaestor and moral laws

Not so much concerned with the symbolic role of the emperor – a subjects' point of view – Honoré dives deeper into the technical writing process of the *leges generales* and the purpose of their prose from an imperial perspective. His analysis of the procedure taking place at the imperial centre has shown how imperial legal texts were created. He affirms the description given in *Codex Iustinianus* 1.14.8 (17 October 446). After discussion by the leading palace officials in the consistory, the *quaestor* dictated the law. When the body met again, the text was read aloud, discussed and amended. If everybody agreed, it was read out at a third meeting so that the consensus might be confirmed by the emperor, who then subscribed the law.⁸⁹

This practice is mirrored in Justinian's time by a description in Novella 62. This law adds senators to those responsible for debating a lawsuit. For the Senate had few things to do and their help was urgently needed.

nu sommige rechtszaken, na het instellen van hoger beroep bij de rechters, worden ingebracht bij de keizerlijke raad van Onze Hoogheid [the consistory] en door Onze vooraanstaande aanzienlijken worden onderzocht, hebben Wij daarom besloten dat niet alleen Onze rechters, maar ook de senatoren, tezamen met de bloem van Onze andere aanzienlijken, in de consultatieprocedure bijeenkomen en de feiten waarop de geschillen betrekking hebben, onderzoeken (...) allen zullen in een gezamenlijke zitting, met de heilige Evangelien ter tafel, hun besluit én vaststellen én aan Ons ter kennis doen komen én de beschikking van de keizerlijke Waardigheid afwachten (...) Het ware recht en het licht der gerechtigheid worden immers beter en op weloverwogener wijze gevonden wanneer meer mensen in plaats van weinigen het onderzoek doen.⁹⁰

Cases of appeal to the emperor were debated among officials – the more the better – but the emperor had the final say. Although this law says the senators had to convene for 'any case' (*alicuius causae*), we might question whether this really happened or if their opinion was only asked in trials of more importance.⁹¹ Furthermore, it is not entirely clear where in this process it was decided an individual rescript had to become a general law. Probably someone proposed this when reporting to the emperor, or the emperor would decide it himself at that point. Thereafter, the consistory would be in charge of the examination and subsequent creation of the new law.

The *quaestor* was first and foremost responsible for the style of the text, not for its content, although he naturally had some influence on the latter as part of the consistory. However, as more men with a legal education were appointed, the legal content of the laws became more

⁸⁹ Honoré, *Law in the Crisis of Empire* 13.

⁹⁰ Nov. 62.1.2: quaedam autem causae post appellationes iudicibus porrectas in sacrum nostri numinis consistorium inferuntur et a nostris proceribus examinantur, idcirco nobis <placuit> non solum iudices nostros, sed etiam senatores ad examinandas lites in consultationibus convenientes una cum aliis florentissimis nostris proceribus litium facta trutinare, (...) tamen eos convenire et omnes consedentes quod eis visum fuerit sub sacrosanctorum evangeliorum praesentia et statuere et ad nostram referre scientiam et augustae maiestatis dispositionem expectare: (...) Melius enim et perpensius amplioribus quam paucis examinantibus ius merum et iustitiae lumen invenitur.

⁹¹ Jones, *Later Roman Empire* 505-507.

important for his job. Moreover, the *quaestor* did concern himself with legal content in other areas of his work. He checked, for example, the 'quality' of petitions, probably meaning that he determined whether they were legally proper and so in principle admissible. In addition, as was already mentioned, he was given jurisdiction to hear certain appeals in the emperor's name in 440. Honoré describes the *quaestor* as a kind of 'minister of justice' or 'minister of legislation and propaganda'.⁹² This leading role played by the *quaestor* in the preparation of imperial legislation has now been generally accepted.⁹³

Like the term 'minister of legislation and propaganda' implies, Honoré argues laws did more than just communicate rules. Roman law had always had a purpose of distributing the social *mores* of upper-class Romans. Initially, this function originated from a religious concern for averting the gods' anger by way of observing rules that would preserve the state and family. Emerging from this 'pontifical cocoon', the law would concentrate on preserving social harmony, on the appeasement of men rather than gods. Roman law grew strict ties to the Roman idea of civilization, making the legal profession the living justification of Rome's claim to rule.⁹⁴ The interpenetration of Roman law and social *mores* ties in with Millar's idea of responsive emperorship. Subjects were looking up to the emperor not only as the source of legislation, but also as the source of moral guidance.

Although Honoré might not go quite that far, he does reject earlier scholarship saying the recurring laws on the immorality of greedy governors and impious bishops are symptoms of a later Roman empire that was corrupt to the bone.⁹⁵ Honoré argues those laws were issued to constantly remind people the emperor did not approve of these abuses of power and that they should be weary of these practices and report them – Justinian actively asks bishops to keep an eye out for him.⁹⁶ Furthermore, the amount of practicing lawyers increased and that only made sense when the legal system functioned correctly and petitions were granted and enforced.⁹⁷ Harries adds that the repetition of laws strengthened the law, because citizens looking for justice required to know what the most recent thinking on the law was. It was a form of reassurance when they learned there was a recent enactment relevant to their case and emperors had reached the same decision multiple times. Now they knew whether they could count on imperial support if necessary and what the emperor thought was important.⁹⁸

⁹² Honoré, *Law in the Crisis of Empire* responsible for style: 14, more juristic: 11, 164-165, evaluating petitions: 15, minister of justice: 11; minister of legislation and propaganda: Honoré, *Tribonian* xiii.

⁹³ Matthews, *Laying Down the Law* 173-179.

⁹⁴ Honoré, *Tribonian* 32-35.

⁹⁵ R. MacMullen, *Corruption and the Decline of Rome* (New Haven, CT and London 1988) ch. 3 and in more moderate vein Jones, *Later Roman Empire* viii, 8-9.

⁹⁶ Nov. 8.edict: 'Nu is het dus aan Uwe Godlievendheid en de overige bisschoppen op de naleving van deze bepalingen toe te zien, en als er een overtreding wordt begaan door provinciegouverneurs, dient u dit aan Ons te rapporteren, opdat geen van Onze heilige en rechtvaardige wettelijke bepalingen wordt veronachtzaamd.' See also Nov. 86.

⁹⁷ Honoré *Law in the Crisis of Empire* 25-26.

⁹⁸ Harries, *Law and Empire* 86-87; Louth, 'Justinian and his Legacy' 108.

Justinian addresses this concern regularly and stresses that it was important his subjects were aware of the most recent laws.⁹⁹

Despite his acknowledgment of the propagandistic function of laws and his attention to the style, Honoré does not take the preambles of the *Novellae* primarily as a way of crafting an imperial image.¹⁰⁰ Instead, he calls the ‘precedents and pretexts’ in the preambles a ‘conservative aura’ to push forward an agenda of ‘Christian welfare legislation’.¹⁰¹ Although Honoré does not enter in much detail on this, I think the rhetoric creating this ‘conservative aura’ is exactly why the preambles were important. They provide innovations in legislation with a history and a social context and embed them into the beliefs and values of Roman citizens. They are ‘marrying Christian present to the pagan past’ in a prime example of anchoring innovation.¹⁰²

Nevertheless, Honoré generally maintains an image of a very passive emperor. The emperor himself had little to do with the ‘superfluous verbiage’ of his laws, perhaps agreeing to the message they conveyed but not much more.¹⁰³ Justinian specifically might have been more involved in matters concerning the Church and Honoré admits the emperor did indeed write some laws in the absence of his *quaestor* Tribonian, but Procopius must have strongly exaggerated when he claimed Justinian constantly settled documents himself instead of justly instructing his *quaestor* to do this for him.¹⁰⁴ For Honoré, the *quaestor* was the ultimate mastermind behind the imperial laws.

Legislative dialogue and collective drafting

While the *quaestor* was technically responsible for the language of the law, Harries emphasises that the creation of laws, as a combination of form and content, was a collective exercise. ‘By the mid-fifth century,’ she says, ‘law was a product of a lengthy process of consultation within the palace administration, which allowed for the voicing of competing views’.¹⁰⁵ Regardless of whether the ‘unanimous consent’ a law needed in the consistory was mere rhetoric, the formalised procedure of going through this consistory itself makes assigning responsibility for the process to one person, a futile task. Even legislation by ‘*spontaneus motus*’ of the emperor, was no longer ‘his’ personally, but the creation of a collective.¹⁰⁶

⁹⁹ See for example Nov. 31.pr or 89.pr.

¹⁰⁰ With ‘propagandistic’ I mean propaganda defined as ‘The deliberate attempt to influence public opinion through the transmission of ideas and values for a specific purpose’ in: N.J. Cull, D. Culbert and D. Welch, *Propaganda and Mass Persuasion: A Historical Encyclopedia, 1500 to the Present* (Santa Barbara 2003) 318. However, as this chapter shows, the choice for the ideas and values transmitted is not unilaterally coming from the imperial administration.

¹⁰¹ Honoré, *Tribonian* 254.

¹⁰² *Ibidem* 254.

¹⁰³ *Supervacanea verba*, taken from Nov.Th. 1.1.1.

¹⁰⁴ Honoré, *Tribonian* 25 n.270; A.M. Honoré, ‘Some Constitutions Composed by Justinian’, *The Journal of Roman Studies* 65 (1975) 107-123: 121-122; Procopius, *Historia Arcana* (Ἀποκρύφη Ἱστορία) or *Anecdota* (Ἀνέκδοτα) 14.2-3.

¹⁰⁵ Harries, *Law and Empire* 37.

¹⁰⁶ *Ibidem* 41, 47.

Even before the discussion in the consistory, a law could have had a long history of negotiated content to end up there. Harries calls a proposal by a court official a *suggestio* and explains, like Millar, how this *suggestio* could be a response to pressures from below. Responding to the *suggestio* with a law was just the next step in an ongoing process.¹⁰⁷ Many of the *Novellae* make notice of some form of information received (at least in the rhetoric of the text) by the emperor. Sometimes, the text mentions ‘discord’ (ἀμφισβήτησις) has arisen around an existing law (i.e. Nov. 19.pr, 20.pr). At other times, the emperor says he ‘knows’ or has ‘discovered’ something, for example ‘after all, We know that this is the cause’ (Nov. 3.pr: Ἴσμεν γὰρ παρὰ τὴν τοιαύτην πρόφασιν) or ‘Presently however, We come to the discovery’ (Nov. 51.pr: ἀλλ’ ἐπὶ τοῦ παρόντος εὕρομεν). In addition, there are examples the preliminary knowledge is only implied, when the law just states something is happening.¹⁰⁸ The preamble of *Novella* 4 presents the confusing situation the emperor *does* know a law is not lived up to, but he does not know *how* this could be. I distinguish three ways in which the *Novellae* say this ‘intelligence’ came to the ears of the emperor: (1) through unspecified information or a report (μῆνυσις), presumably brought to Justinian’s attention by the consistory; (2) through petitions or lawsuits (coming down to the same) the emperor hear himself, whether this was actually true or not; and (3) through lobby efforts, categorised as such when a homogenous group (i.e. of the same occupation) is mentioned as the petitioner and the new regulation is beneficial to this group.

25 *Novellae* fall in the first category.¹⁰⁹ Often the intelligence was implied and the emperor was just well aware of present malpractices and introduced a remedy for them. However, sometimes Justinian responds to a report brought before him by one of his officials. A very lucid example of this, is provided by *Novella* 151:

Aan Ons is een rapport toegezonden van Uwe Excellentie [praetorian prefect John the Cappadocian] waarin wordt medegedeeld dat het niet wenselijk is dat uit verscheidene provinciale gerechten raadsleden of stafmedewerkers, hetzij naar deze welvarende Stad [Constantinople] worden overgebracht om een proces te voeren, hetzij naar een andere stad worden gestuurd, en dat vaak ook nog keizerlijke bevelen van Ons die dit willen, worden overlegd; en U hebt verzocht dat dit door een keizerlijke gelegenheidsverordening wordt verhinderd, (...) en dat, mochten hierover keizerlijke bevelschriften tot stand komen, deze bij het gerechtshof van Uwe Excellentie kenbaar worden gemaakt en een passende bekrachtiging krijgen.¹¹⁰

¹⁰⁷ Harries, *Law and Empire* 47.

¹⁰⁸ For example, Nov. 57.pr: ‘Het komt zeer veel voor dat geestelijken (...) hun gebruikelijke vergoeding ontvangen en vervolgens (...) helemaal vertrekken uit de heilige kerk waarin ze aangesteld zijn.’

¹⁰⁹ Nov. 3, 4, 14, 19, 20, 32=34, 35, 40, 45, 48, 54, 55, 63, 67, 69, 71, 80, 117, 133, 139, 143=150, 145, 151, 154 and 157.

¹¹⁰ Nov. 151.pr: Μήνυσις ἡμῖν ἐστάλη τῆς σῆς ὑπεροχῆς. λέγουσα μὴ χρῆναι ἐκ διαφορῶν δικαστηρίων βουλευτὰς ἢ ταξεώτας ἢ πρὸς ταύτην ἄγεσθαι τὴν εὐδαίμονα πόλιν δικασομένους ἢ εἰς ἕτερον πέμπεσθαι, πολλάκις δὲ καὶ θείας ἡμῶν πορίζεσθαι κελεύσεις τοῦτο βουλομένας· καὶ ἤτις θείῳ πραγματικῶ τύπῳ τοῦτο κωλυθῆναι, (...) εἰ δὲ θεῖαι γένωνται συλλαβαὶ περὶ τούτου, ταύτας ἐμφανεῖς γενέσθαι τῶ δικαστηρίῳ τῆς σῆς ὑπεροχῆς καὶ ψήφους ἀκολούθους λαμβάνειν.

The praetorian prefect requested the emperor for a specific law and even had the nerve to ask him to discuss his decisions concerning this matter before he ordered another person to travel across the empire on a whim, presumably making the prefect's job a lot harder. In the following text, Justinian complies to John's request because it had to be prevented that people would neglect their 'fiscal tasks' (τὰ δημόσια πράττοντες; read: pay their taxes) while traveling.

The second category of petitions directly heard by the emperor show Justinian in direct dialogue with his subjects. These are laws we might expect to follow the cases he heard during his morning salutations. Harries argues Romans did not really obey the law, they rather invoked it when it was in their own interest.¹¹¹ There were many ways to settle a dispute outside of court and an ordinary lawsuit might take several years and was expensive. Moreover, delays of justice were a constant complaint.¹¹² So, when this step was taken, it had to be important to the litigant and his livelihood could depend on it. Nevertheless, this category is even more prevalent than the first one with 31 *Novellae* that mention individual petitions.¹¹³ Sometimes, the text remains rather vague and says the emperor had heard of 'many cases' with similar problems, thus a general law was necessary. In more poignant laws, an individual case was taken as an example and the story could be quite personal including names and a tragic family history:

Ons is een verzoekschrift voorgelezen van Thecla, die ook Mano wordt genoemd, waarin wordt medegedeeld dat een zekere Thecla is overleden met achterlating van een onvolwassen dochter Sergia en dat het kind, nadat het zijn moeder nauwelijks zestien dagen overleefd had, gestorven is tijdens de onlangs opgetreden mensenvernietigende ziekte [the plague of 541-542]; en degene die het verzoek tot Ons richtte, zegt een zuster van Sergia's vader te zijn; en dat Cosmas, de broer van Thecla, aanspraak heeft gemaakt op Sergia's nalatenschap en een proces tegen haar daarover aanhangig heeft gemaakt¹¹⁴

And so on, and so forth. Thecla had asked for the help of lawyer John, who double-crossed her in collaboration with Asclepius, the lawyer of Cosmas, justifying his actions with a law of Theodosius II that seemed to be in contradiction with recent laws of Justinian himself. This sad story provided the emperor the opportunity to be the hero and solve a legal conundrum at the same time.

Where Thecla might have been happy with a private rescript, the petitioners in the last category had an invested interest in changing the existing general law. 17 *Novellae* include this

¹¹¹ Harries, *Law and Empire* 37-38, 52, 81.

¹¹² Jones, *Later Roman Empire* 494-499.

¹¹³ Nov. 1, 2, 37, 39, 44, 48-50, 53, 56, 59, 60, 72-74, 84, 88, 90, 91, 93, 98, 106, 108, 115, 125, 135, 137, 146, 155, 158, and 159.

¹¹⁴ Nov. 158.pr: Δέησις ἡμῖν ἀνεγνώσθη Θέκλας τῆς καὶ Μανοῦς, διδάσκουσα Θέκλαν τινὰ καταλῦσαι τὸν βίον ἐπὶ Σεργία θυγατρὶ τὴν ἄνηβον ἡλικίαν ἀγούση, ἑκαταίδεκά τε μόλις ἡμέρας ἐπιζήσασαν τῇ μητρὶ τὴν παιδα τελευτῆσαι ἐπὶ τῆς ἐναγχος συμβάσης τῶν ἀνθρώπων φθορᾶς· καὶ ἀδελφὴν μὲν τὴν ἡμῶν δεηθεῖσαν καθεστάναι φησὶ τῷ Σεργίας πατρὶ, Κοσμᾶν δὲ τὸν Θέκλας ἀδελφὸν ἀντιποιήσασθαι τοῦ Σεργίας κλήρου καὶ δίκην αὐτῇ ὑπὲρ τούτου λαχεῖν.

category of lobby petitions.¹¹⁵ *Novella* 35 for example was devoted to *adiutores* that helped create the *Codex Iustinianus* but could not stay in imperial service because their amount exceeded the historical maximum. In response to their pleas, Justinian made an exception:

Kortom, omdat Wij thans hebben vernomen dat degenen die hun diensten hebben verleend bij het tot stand brengen van de wetten waaraan door Ons de laatste hand is gelegd en die door Uwe Excellentie [*quaestor* Tribonius] in een stelselmatige ordening zijn samengebracht, waardig zijn om het ambt van hulpambtenaar te bekleden, zijn Wij, hoewel het Ons na aan het hart ligt dat de voornoemde groep hulpambtenaren tot het voor deze vastgestelde aantal terugkeert, toch van oordeel dat het op geen enkele wijze gerechtvaardigd zou zijn om deze personen, die zo bekwaam zijn bevonden, van een dergelijke verwachting te beroven.¹¹⁶

The lobby efforts of the *adiutores* had paid off. Another interesting example is preserved in the preamble of *Novella* 38. Here, Justinian accuses members of city councils to consciously frustrate his attempts to keep them in their councils. Those wretched men had even succeeded in getting a law promulgated that allowed them to do something ‘against the law’.¹¹⁷ As council members, they were obliged to contribute to the communal treasury. However, they wanted to avoid this by giving their money to family members or friends that were not in the council, but could not because permission of the council was needed for such transactions. In some way, though, they had a law passed that allowed them to gift their property without the council’s consent anyway, leaving the council penniless. Nonetheless, having that law passed in the first place was great lobby work.

In spite of all these actors wanting something from the emperor, the imperial response cannot simply be classified as ‘passive’. The administration still had to decide what to do with incoming requests and petitions. Would it act upon them? Would it respond with a simple *rescriptum* answering the individual case? Or would the response be made into a general law, not just confirming the status quo but bringing innovation to the system? This choice went beyond ‘action’ and ‘reaction’ and can be seen as a type of policy.¹¹⁸ The response was determined by the emperor's will, precedent, advice, the existing law, and of course the original request.

Just as the requests and petitions were tools of subjects to influence the emperor, his responses could be a tool for the emperor to influence his subjects. By communicating in his letter-laws what he thought was important – by choice of content and by rhetorical dress-up –

¹¹⁵ Nov. 61, 64-66, 73, 76, 79, 83, 87, 101, 112, 121, 136, 153, 156, 160 and 162.

¹¹⁶ Nov. 35.4: Cum igitur in praesenti comperimus eos, qui confectioni legum a nobis elimatarum et in ordinem per tuam excellentiam digestarum suum ministerium praebuerunt, dignos esse fungi adiutoris officio, quamvis cordi nobis est praedictum adiutorum numerum in sua stabilitate decurrere, tamen eos idoneos constitutos huiusmodi spe defraudari nullo modo iustum esse aestimamus.

¹¹⁷ Nov. 38.pr.1; see for similar behaviour of city council members ‘against the law’ (κατὰ τοῦ νόμου) Nov.87.

¹¹⁸ S. Schmidt-Hofner, *Reagieren und Gestalten: der Regierungsstil des spätromischen Kaisers am Beispiel der Gesetzgebung Valentinians I* (München 2008) 339-341.

he influenced the requests he would get, because litigants would in turn adapt their petitions to the themes the emperor apparently liked to win his favour.¹¹⁹

According to Harries, the occurrence of repetitive laws should also be seen in this light. In principle, laws remained in effect as long as no new law contradicted them. Yet a petitioner was more likely to get what he was after when he was backed by a recent law. It meant his case had contemporary relevancy and recent thinking on the law was on his side. Moreover, his position was stronger when emperors had come to the same decision multiple times. For the emperor, reiteration of laws had the additional benefits of having the authority of precedent for this particular law and having an opportunity to propagate his image as guardian of the law.¹²⁰

It should be clear by now that no sole person can be held responsible for the whole legislative process from beginning to end. The creation of law is a complex, multilateral process and 'the powerful and the weak alike actively exploited the content and the language of imperial law to further their own ends'.¹²¹ Imperial general law was more often negotiated than imposed and arose from a dialogue between subject and legislator and a collective drafting procedure in the consistory.

Conclusion

After the completion of the second edition of his *Codex*, Justinian might have hoped he had established Roman law once and for all. In vain, of course. Changing circumstances demanded new laws and Justinian kept finding fault with his corpus. Above all, the entire process of law-making was an integral part of Roman society. It incorporated patronage, petitions, policy and propaganda. It provided weak and powerful with a way of communication, a way to influence one another and to win favour. Together, this established a never-ending circle of law.

The 'law-letters' were a legal, a socio-political and a literary source. Millar demonstrates *epistulae*, *libelli*, *rescripta* and *leges generales* and the offices responsible for them shared a common ancestry. Their genres cannot be kept strictly separate, but inevitably interpenetrated each other. Ultimately, legal and rhetorical training came together in the office of *quaestor*. Honoré shows this official was the central figure in the preparation of legislation and that he was especially important for the style of the text. However, to say the *quaestor* bore sole responsibility goes too far. Harries rightfully points out drafting a law was the result of teamwork. Led by the *quaestor*, different officials together with the emperor drafted the law in consistory considering the input of the petitioner and others fighting for their favour. The creation process of the Theodosian age described by Honoré and Harries is mirrored in the *Novellae* of Justinian. Senators might have been added to the mix and the emperor seems to have been truly involved. This is at least how he was described by contemporary sources and

¹¹⁹ Harries, *Law and Empire* 44.

¹²⁰ *Ibidem* 78-87.

¹²¹ *Ibidem* 5.

the *Novellae* alike. He worked closely together with the consistory, especially with the praetorian prefect and *quaestor*. The praetorian prefect gave his opinion on practical, administrative matters, the *magister libellorum* gave legal advice, the patriarch lobbied for more church influence, etc. An example of collaborative and collective law-making can be seen in the preamble of *Novella* 106:

Wij hebben kennis genomen van een verslag van Uwe Hoogheid [praetorian prefect] waartoe Wijzelf de aanleiding hebben gegeven. U hebt Ons namelijk in kennis ervan gesteld dat Petrus en Eulogetus een verzoekschrift tot Onze keizerlijke Hoogmogendheid gericht hebben (...) Derhalve hebben Wij U opgedragen de aard van het meningsverschil te achterhalen en Ons daarover te berichten (...) En nadat Uwe Illusterheid door Ons gelast was dit te doen, heeft Zij de schippers die zich met dergelijke leningen bezig houden, bijeengebracht en [uiteindelijk] vernomen wat deze oude praktijk was (...) En dit hebben allen verklaard, terwijl zij onder ede hun getuigenverklaring aflegden.¹²²

The emperor claims he himself had asked for a rapport to find out if the petition of a certain Petrus and Eulogetus was unto something bigger. The praetorian prefect brought people together, who gave their information under oath, and he reported back to the emperor. It had become clear a *lex generalis* was needed. The issue was supposedly discussed in consistory, after which the *quaestor* wrote the law, introducing it with this short report about how it came into being.

The *Novella* also makes clear that the content of the law was determined by many factors and persons. The text of a *novella* was the battleground for the interests of simple petitioners, diplomatic middlemen, shrewd advisers and ambitious imperial officials alike. While the emperor had a symbolic role as the source of justice (Millar) and laws were expected to give some moral guidance (Honoré), stakeholders mostly wanted the law to serve their needs (Harries). Harries emphasised its complex process of creation ensured a law was more often negotiated than imposed. The responsive and ethical emperor was definitely still present in Justinian's administration.

Yet the communication of political ideas in the *Novellae* cannot be denied. While petitions might have presented problems in a way the petitioners thought would appeal to the imperial administration, this administration could take their petition and give it an imperial spin. The petition could even serve for a purpose that went way beyond the original goal of the petitioner, as we can see in *Novella* 2 on marital and inheritance law. The petition of a certain 'Gregoria' was treated and the law was framed as a *rescriptum* made into a *lex generalis*.¹²³ First,

¹²² Nov. 106.pr: Μηνύσεως ήκούσαμεν τής σής ύπεροχής, ής τήν πρόφασιν ήμεις αὐτοὶ παρεσχόμεθα. ἐδίδαξας γάρ, Πέτρον καὶ Εὐλόγητον ἰκετεῦσαι τὸ θεῖον ήμῶν κράτος (...) τοιγαροῦν ήμᾶς ἐγκελεύεσθαί σοι τήν τής ἀμφισβητήσεως φύσιν μαθεῖν καὶ ταύτην εἰς ήμᾶς ἀγαγεῖν (...) καὶ τήν σήν ἐνδοξότητα ταῦτα πράξει παρ' ήμῶν κελευσθεῖσαν συναγαγεῖν τοὺς ναυκλήρους, οἷς δὴ τὰ τοιαῦτα τῶν δανεισμάτων μέλει, καὶ πυθέσθαι ποῖόν ποτε τὸ ἀρ χαῖον ἔθος ήν. (...) καὶ ταῦτα ἅπαντας εἶπεῖν ἔνορκον ποιησαμένους τήν μαρτυρίαν. ἄπερ εἰς ήμᾶς ἐμήνυσας, ὥστε ήμᾶς νομοθετησάι τὸ ήμῖν δοκοῦν, καὶ ἐπὶ τούτοις ἔφασκες ταῦτα τῷ ήμετέρῳ προσαγγεῖλαι κράτει.

¹²³ Feissel, 'Pétitions aux empereurs' 42.

the *Novella* justifies reacting to this request by a reference to earlier legislators. ‘De verscheidenheid aan opkomende rechtszaken gaf aan de Ons voorafgaande Romeinse wetgevers aanleiding tot voortdurende wetgeving’, it says, implying this was an established tradition (which it was) and therefore was the right thing to do.¹²⁴ However, this small request was taken as an inciting incident for a law that covered a much wider range of subjects:

Nadat Wij dit langdurig en grondig onderzocht hebben en het gehele leerstuk van dergelijke uitverkiezingen en [daarmee samenhangende] erfopvolgingen opnieuw overwogen hebben, hebben Wij het nodig gevonden om daarover een algemene wet op te stellen, op grond waarvan ook de onderhavige vraag een eindbeslissing krijgt.¹²⁵

Here, I think we can see the real importance of the ideal of a responsive emperor who listened to his subjects. Even for laws that lacked a real instigating petition, a woman was brought up to frame the entire law as a response. Moreover, the extremely personal story played up the humaneness of the emperor. The text is saying: don’t worry, Justinian cares for his subjects.

Next chapters will deepen the analysis of the literary qualities of the *Novellae* and show how their rhetoric provided the content with a history and social context. How did the *Novellae* anchor their innovations?

¹²⁴ Nov. 2.pr.

¹²⁵ Nov. 2.pr.1: Ταῦτα ἡμεῖς ἐπὶ πολὺ κατεξετάσαντες καὶ τὴν ὅλην τῶν τοιούτων ἐπιλογῶν τε καὶ κληρονομιῶν θεωρίαν ἀνασκοπούμενοι δεῖν ᾤθημεν κοινὸν ἐπὶ τούτοις γράψαι νόμον, καθ’ ὃν καὶ ἡ παροῦσα ζήτησις δέχεται πέρας.

Chapter 2: The power of precedent

As the previous chapter has shown, a general law did more than tell people how to live. Subjects were involved in the creation of laws by sending petitions to the emperor and in his turn the emperor made clear he was responding to their calls. He presented himself as the champion of the people, protecting them against the evil intentions of their peers and government officials alike.

This ties in neatly with the ideal of rule by popular consent.¹²⁶ Since the time of Diocletian, imperial constitutions had become more persuasive in style, supposedly because rulers had to make an extra effort to convince their subjects of their authority and the rightness of their decisions. This style is known as the ‘chancery style’, most famously studied by Vernay and Honig.¹²⁷ This style should undoubtedly be regarded as a way to legitimise the position of the emperor and express the ideological relation between ruler and ruled.¹²⁸ However, we should be careful not to fall into the trap of thinking this relation was solely defined by the emperor or his officials. Since all communication is subject to a ‘feedback loop’ and subjects are often involved in the process of law creation, as explained in the previous chapter, the discourse of the image of the emperor and his relation to his subjects is influenced by both parties. Precedence and tradition retained a strong hold on this discourse, as they were providing ‘the shared field of experience’ through which ruler and ruled could communicate. Nevertheless, the imperial administration was in a position of power and authority that gave it more room for manoeuvring in and steering of this discourse. It was the consistory, after all, that decided which petitions it would make into a general law and thus how the dialogue would continue. The *Novellae* represent the imperial side of the conversation, interacting with the other side, attempting to influence its beliefs, yet unable to simply dictate the rules of the game.

This inability to impose the ideas of the emperor on his subjects can be seen in the apologetic tone regularly adopted by the *Novellae*. Take for example *Novella* 8:

Want Wij constateren, dat een grote onrechtvaardigheid haar intrede heeft gedaan in het staatsbestel: die onrechtvaardigheid brengt niet van oudsher, doch sedert een aantal jaren Onze onderdanen in de verdrukking en drijft hen tot armoede; daardoor bestaat het gevaar dat zij in de meest behoeftige omstandigheden terecht komen en zelfs niet in staat zijn om zonder in grote problemen te komen de gebruikelijke en wettige, ja de werkelijk heilige staatsbelastingen te betalen, in overeenstemming met de officiële registratie. Immers, keizers uit het verleden waren voortdurend uit op winst uit de aanstelling van magistraten, en de illustere prefecten zijn hen hierin gevolgd, zoals te verwachten was. Hoe zouden de belastingbetalers gezien de daaruit voortspruitende onrechtvaardigheid dan nog de kracht moeten hebben opgewassen te zijn tegen zowel de extra lasten als de wettige heilige belastingen?

¹²⁶ Benner 15-17, 176; Ries, *Prolog und Epilog* 191-192; Honig, *Humanitas und Rhetorik* 39.

¹²⁷ E. Vernay, ‘Note sur le changement de style dans les constitutions impériales de Dioclétien à Constantin’, *Etudes d’histoire juridique offertes à P.F. Girard* (Paris 1913) 263-274; Honig, *Humanitas und Rhetorik* 39.

¹²⁸ Benner, *The Emperor Says* 190.

Derhalve hebben Wij bij Onszelf een afweging gemaakt om door één algemene ingreep al het schadelijke in Onze gebiedsdelen ten goede te keren.¹²⁹

This law was really necessary. Subjects were living in such dire circumstances that they could not even pay their taxes. What else could the emperor do than to search for a remedy that solved this situation at once? The text responds to the expectation of the subjects that the emperor would only introduce new laws when this course of action was unavoidable. And when he did, it had to solve a problem in the most efficient way. While the emperor's right to issue a law was never called into question, he did disrupt the default state of living: things staying the same. He made changes, he innovated, and innovations had to be justified. Especially when these innovations were small. For why would one disrupt the natural state of the world for an insignificant thing?

Taking into consideration the persuasive chancery style, the multilateral nature of communication, the force of tradition, the position of power of the imperial administration, and the apologetic tone of the *Novellae*, I will approach these texts as imperial attempts to favourably present their innovations using themes that resonated with their audience. In other words: the *Novellae* and their imperial promulgator were anchored in a sixth-century worldview. In this and the next chapter, I will analyse the preambles, first chapters and epilogues of the *Novellae*. In the next chapter, I will focus on horizontal anchoring and analyse how certain values were used in the text to present the emperor and his laws in a favourable light. But first, in this chapter, I will show how they were vertically anchored. The way innovations make use of the power of precedence plays a huge role in their acceptance. Placing new laws in a traditions can provide them with familiarity and legitimacy. So how was the past used in the *Novellae*?

Historiography of the past

The rhetoric of the *Novellae* has not yet received much scholarly attention. While *topoi* concerning imperial values (see next chapter) are discussed in more general works on *Selbstdarstellung* in imperial constitutions, the use of the past was more peculiar to Justinian and thus less researched. Throughout his book on Justinian's attitude towards classicism, Schindler comments on the use of previous laws in the emperor's legislation.¹³⁰ He gave an analysis of the *quinquaginta decisions* and the *constitutiones ad commodum propositi operis*

¹²⁹ Nov. 8.pr-1: Εὐρίσκομεν γὰρ πολλὴν ἐπεισελθοῦσαν τοῖς πράγμασιν ἀδικίαν, καὶ ταύτην οὐκ ἄνωθεν, ἀλλ' ἐκ τινῶν χρόνων, βιασαμένην τοὺς ἡμετέρους ὑπηκόους καὶ εἰς πενίαν ἐλαύνουσαν, ὡς εἰς τελειοτάτην αὐτοὺς ἀπορίαν κινδυνεύειν ἔλθειν καὶ μηδὲ τὰ συνήθη καὶ νομομισμένα τῶν δημοσίων καὶ ταῖς ἀληθείαις εὐσεβῶν φόρων κατὰ τὴν δημοσίαν ἀπογραφὴν δύνασθαι χωρὶς μεγάλης ἀνάγκης τιθῆναι. Πῶς γὰρ ἂν ἴσχυον οἱ συντελεῖς, τῶν τε ἕκ τινος χρόνου βεβασιλευκότων ἀεὶ τι κερδαίνειν ἐκ τῆς ἐπὶ ταῖς ἀρχαῖς προαγωγῆς βουλομένων, εἰκότως τε τούτοις ἀκολουθούντων καὶ τῶν ἐνδοξοτάτων ὑπάρχων, ἕκ τε τῆς ἐντεῦθεν ἀδικίας ταῖς τε ἔξωθεν ζημίαις ταῖς τε νομομισμέναις εὐσεβέσιν ἐπαρκεῖν εἰσφοραῖς; Ἐννοία τοίνυν ἡμῖν γέγονε, τί ποτε ἂν πράξαντες ἅπαν, ὅσον ἐν ταῖς ἡμετέραις ἐπαρχίαις ἐστὶν ἐπιβλαβές, πράξει μιᾷ κοινῇ πρὸς τὰ κρεῖττω μεταστήσοιμεν.

¹³⁰ K.-H. Schindler, *Justinians Haltung zur Klassik. Versuch einer Darstellung an Hand seiner Kontroversen entscheidenden Konstitutionen* (Köln 1966) passim, esp. 341-344.

pertinentes, laws that were promulgated between the completion of the first version of the *Codex* and the completion of the *Digesta*. He thinks Justinian tried to legitimise his legal decisions by presenting innovations as simple steps in a long standing discussion. He adds that a reform measure might have been hidden behind classical language so that it seemed nothing new was promulgated. However, as we shall see in the next paragraphs, Justinian embraced innovation. The idea that Justinian would shy away from claiming his innovations as his own is a recurring theme in scholarly literature. However, as I will argue below, it is based on a superficial reading of the text and is coloured by the idea of a 'Grand Design' of restoring the Roman Empire, an ambition that had supposedly been a driving force in Justinian's reign.

Schindler continues that the laws followed classical argumentation and presented the outcome of the discussion in a classical or post-classical spirit. In spite of this, the conclusion was not always reached in a 'classical' manner and classical law was not automatically deemed right because it was classical. The *Novellae*, Schindler writes, were a mess in this aspect. Their treatment of classical and unprecedented topics was inconsistent and they talked about complicated legal discussions in an elaborate style with unprecise legal terminology.¹³¹ Indeed, not every *Novella* discusses previous legislation, but my analysis will show there was some unexpected order behind the chaos. However, whether specific legal topics can be linked to the use of previous legislation goes beyond the scope of this study.

Another author who has studied Justinian's legislation is Noethlichs. His article resembles the intent of this thesis: he discusses the political '*Propaganda*' and practical politics of Justinian in the light of imperial legislation and contemporary historiography.¹³² In his treatment of the imperial constitutions, he distinguishes three ways the legislation was systematised: (1) the past was honoured, (2) previous legislation of other emperors or of Justinian himself was improved upon, or (3) a completely new law was needed due to the fickleness of Nature (more on this in the next chapter).¹³³ This distinction is very useful and will be reflected in my analysis below, but the article lacks a deeper interpretation of these different uses of the past.

Noethlichs notices two other, related things. First, he claims that despite the fact that Justinian's laws were grounded in the past, a past practice *an sich* was not enough to legitimise those laws.¹³⁴ We will have to keep this in mind while reading the historical preambles discussed in this chapter. Second, Noethlichs discerns an interesting category: that of 'public administration' (*öffentliche Verwaltung*).¹³⁵ The laws he categorises as such belong to the category I will call '*Novellae* of appointment' (see paragraph 'Once upon a Roman past').

¹³¹ Schindler, *Justinians Haltung zur Klassik* 343-344.

¹³² K.L. Noethlichs, 'Quid possit antiquitas nostris legibus abrogare? Politische Propaganda und praktische Politik bei Justinian I. im Lichte der kaiserlichen Gesetzgebung und der antiken Historiographie', *Zeitschrift Fur Antikes Christentum* 4.1 (2000) 116-132.

¹³³ Noethlichs, 'Quid possit antiquitas nostris legibus abrogare?' 120-125.

¹³⁴ *Ibidem* 131.

¹³⁵ *Ibidem* 126.

However, I will take the idea of ‘public administration’ a step further and include *Novellae* not previously brought together. As we will see, the laws in this category share an important characteristic: they all make use of historical context.

Wisdom of the forefathers

The development of the chancery style since Diocletian brought, among other things, a renewed deference for the Roman past, known as *reverentia antiquitatis*. Different emperors have used this deference of the past for different purposes and with a varying degree of subtlety. It could refer to the legal tradition, although it did this usually in very general terms.¹³⁶ The preface of Theodosian *Novella* 21 speaks for example of ‘our fathers’ promulgating an earlier law. This was a very standard way to refer to the legislation of double emperors or predecessors in the same line. A more specific example can be found in *Novella* 5 of the same emperor, which gives a limited review of prior legislation of Constantine on the same topic. However, this was an exception to the rule. Normally, references to the ‘wisdom of the forefathers’ barely amounted to more than the first example.¹³⁷

Justinian’s *Novellae* provide a strikingly different picture. They constantly referred to earlier legislation and often presented a clear picture of how a new law related to earlier ones.¹³⁸ *Reverentia antiquitatis* was displayed throughout their texts, although it was concentrated in the preambles just like it was in pre-Justinianic legislation. The frequency of referring to previous legislation in the *Novellae* is remarkable. 42 of the preambles of the 155 original laws referred explicitly to legislation of earlier legislators. This happened in laws covering all kind of subjects, from inheritance law to laws providing improvements in the legal system. However, laws concerning the church are underrepresented in this sample. This might be taken as an indication that Justinian was acting without precedent in this realm, which he indeed was. Reference to earlier legislation is also practically absent in laws concerned with magistracies. In these laws, the Roman past was used in another way, as we shall see in the next paragraph.

The *Novellae* mention previous legislators in general or they refer to specific emperors. Sometimes it does not get more specific than ‘previous legislators’. The exact words used might differ slightly, but they came down to the same thing: for example, ‘earlier legislators’¹³⁹, ‘the Roman legislators before Us’¹⁴⁰, or ‘the old laws and the recent emperors’¹⁴¹. This general use signalled that Justinian was following up on a subject that had been the concern of earlier

¹³⁶ Maas, ‘Roman History and Christian Ideology’ 18-19.

¹³⁷ Admittedly, not many complete laws including preambles have survived from before Theodosius. However, besides the abovementioned law, the only other *Novellae* I could find that referred explicitly to previous legislators was Marcian *Novella* 5.1. Its preamble mentions a law of Valens, Valentinian and Gratian and a constitution of Valentinian, Theodosius and Arcadian.

¹³⁸ See appendix.

¹³⁹ Nov. 1.pr.1: τοῖς πάλαι νομοθέταις/veteribus legislatoribus.

¹⁴⁰ Nov. 2.pr: τοῖς πρὸ ἡμῶν νενομοθετηκόσι Ῥωμαίοις/ante nos legislatoribus romanis.

¹⁴¹ Nov. 14.pr: τοῖς παλαιοῖς νόμοις καὶ τοῖς πρῶην βεβασιλευκόσι.

emperors and that the new law was not a complete innovation, but a change of an existing practice. At other times, previous legislators were referred to specifically. In these cases, the *Novellae* were often reacting to a law of a recent emperor that was included in the *Codex*. The emperors mentioned most frequently were Constantine, Theodosius (II), Leo (I) or Anastasius. The presence of these emperors is not surprising. Leo and Anastasius were recent emperors and their constitutions were best represented in the *Codex*. The absence of short-reigning recent emperors Leo II and Basiliscus again makes sense, although we might have expected Zeno to have appeared more often. As the long-reigning promulgator of the previous great code, Theodosius could not have been lacking. Finally, the presence of the first Christian emperor and thus first Christian legislator Constantine would not have taken anyone off guard. Moreover, he had been equally prominent in the *Codex Theodosianus*.

In addition to 42 preambles mentioning constitutions of earlier emperors, 61 of the preambles explicitly mention an earlier law of Justinian himself. Often this was a law included in the *Codex*, but sometimes it was about an earlier *Novella*. No distinction was made in legitimacy, irrevocability or validity between laws from the *Codex* and later additions. Both remained in force as long as they sufficed, but both could be changed when circumstances necessitated that. Mention of the emperor's own laws again happened across all subjects, including laws about the church – this time, Justinian provided his own precedent. Only the *Novellae* dealing with magistracies are still mostly exempt. They rarely refer back to earlier laws, with the exceptions of Nov. 38, 75, 80, 102, and 103. Of the 61 *Novellae* referring to Justinian's own laws, 14 also mention constitutions of previous legislators.

All these allusions to earlier legislation suggest that every *Novella* is consciously positioned in its legal tradition.¹⁴² Since the promulgation of the *Codex Iustinianus*, it was clear for everyone what the prevailing law was (at least in theory). Hence, whenever a new law was created, it was evident that either something changed, or something new was added. The prominent legal precedents and the recent codification created the sense of a living tradition; law was part of Roman culture. The past was not distant and there was no gap that needed to be bridged, it was a past people were still part of and with which they could still actively engage.

In addition, constantly referring back to the old, established legislation, was an effort to keep the complete body of law consistent and perhaps explain away what appeared to be contradictions. It was an attempt to maintain clarity about which law was valid. A theme of clarity (*σαφήνεια*) and order pervades all *Novellae*.¹⁴³ The first lines of *Novella* 31 could easily be taken as the motto of the whole corpus:

Indien al wat doelloos en verstrooid ligt, tot een passende organisatie zou komen en fraai ingericht zou worden, zouden de zaken in plaats daarvan er anders uitzien, van slechter

¹⁴² Honoré, *Tribonian* 27-28.

¹⁴³ See also Hungers comments: Hunger, *Prooimion* 108-109.

beter, van ongeordend geordend en van wat voorheen in wanorde en ordeloosheid verkeerde, gesystematiseerd en gerangschikt.¹⁴⁴

Everything should be ordered and systematised, and this would make things better. We see this message put into practice by the *Novellae* that collected all legislation about a specific subject. Just like in other ordinances, existing law was changed. However, because this subject was scattered across different laws, and the overview was lost, this *Novella* centralised regulations and brought them back into order. *Novella* 89 concerning ‘natural children’ provides a good example. At the end of the preamble, it tells us its topic was already discussed in some constitutions by previous emperors that had been included in the *Codex*, in some of Justinian’s own laws on this or related topics (also already included in the *Codex*), and in some ordinances ‘μετ’ αὐτό’, his *Novellae* 18.5, 19, and 74. So they were scattered. And ‘to prevent this subject would be spread out’, the emperor thought it wise to bring them together ‘in their entirety in one ordinance’ that ‘in the place of all others has to suffice to improve and lay down the issues concerning natural children.’¹⁴⁵

In accordance with this search for clarity, obscurity was a reason to give criticism. In the *Novellae*, certainly not every mention of previous legislators was reverent. On the contrary, Justinian portrayed himself often as better than his predecessors, fixing their mistakes and improving upon them. In *Novella* 107 for example, the text first seems to praise Constantine for a law about the last will of children ‘based on ancient simplicity’, but this law obviously could not stand the test of time. This idea of a law ‘defeated’ (*vicerit*) by time was already present in the aforementioned *Novella* 5 of Theodosius II, but Justinian goes a step further.¹⁴⁶ In fact, according to Justinian Constantine’s law brought shame upon parents (*αἰσχύνεται*) because it allowed for an ambiguous explanation. The text continues that a later law of Theodosius II had made the situation even worse:

Na deze vrijheid aangegrepen te hebben, zijn de mensen tot zo’n grote onduidelijkheid vervallen dat die beschikkingen eerder waarzeggers dan uitleggers nodig hebben.¹⁴⁷

Of course, Justinian would help his subjects to make sense of the world. Once more, he expressed his wish for clarity:

Wij willen derhalve dat alles helder en duidelijk is – wat is namelijk zo eigen aan wetten als duidelijkheid (*σαφήνεια*)?¹⁴⁸

¹⁴⁴ Nov. 31.pr: Τὰ μάτην κείμενα καὶ ἐκκεχυμένως εἰ πρὸς τὴν προσήκουσαν ἀφίκοιτο τάξιν καὶ διατεθεῖν καλῶς, ἕτερά τε <ἀν> ἀνθ’ ἑτέρων τὰ πράγματα φαίνοιτο καλλίω τε ἐκ χειρόνων ἐξ ἀκόσμων τε κεκοσμημένα διηρθρωμένα τε καὶ διακεκριμένα ἐκ τῶν ἔμπροσθεν ἀτάκτων τε καὶ συγκεχυμένων.

¹⁴⁵ Nov. 89.pr.

¹⁴⁶ Th.Nov. 5.1.2.

¹⁴⁷ Nov. 107.pr: ταύτης ἐπιλαβόμενοι τῆς ἀδείας ἄνθρωποι εἰς τοσαύτην ἀσάφειαν ἐξήλθον, ὥστε μάντεων μᾶλλον ἢ ἐρμηγέων ταῦτα προσδεῖσθαι.

¹⁴⁸ Nov. 107.1: Ἡμεῖς τοίνυν πάντα σαφῆ τε καὶ ἀναπεπταμένα καθεστάναι βουλόμενοι (τί γὰρ οὕτως ἴδιον νόμων ὡς σαφήνεια, μάλιστα ἐπὶ ταῖς τῶν τελευτώντων διατυπώσεις;) βουλόμεθα.

The presumed obscurity of the legislation of the emperor's predecessors was not simply a farce to create an opportunity to criticise them and improve his own standing in the process. His own laws were not beyond scrutiny either. When Justinian referred to his own earlier laws in *Novella 22*, he was evidently aware he was treating the same topic, but:

Wij schamen Ons er niet voor om, als Wij nog iets mochten vinden dat beter is dan zelfs hetgeen Wij zelf eerder hebben verklaard, dit tot wet te maken en de tweede, passende correctie uit eigen beweging toe te voegen aan Onze eerdere bepalingen in plaats van af te wachten tot de wet door anderen wordt verbeterd.¹⁴⁹

The emperor wanted the law to be perfect, no matter whose laws he had to change to achieve this.

Reminding the audience of old laws served as a kind of warning. It told people: 'Pay attention, something is changing.' At the same time, people should not forget a *Novella* contained just an emendation of previous law related to specific circumstances. Therefore, the explanation of the new law was often followed by the cautionary phrase that existing legislation remained valid. This phrase could be placed right after the preamble that had explained how the *Novella* would alter previous legislation, as in *Novella 39.1*:

Daarom nu brengen Wij de onderhavige wet uit, met dien verstande dat Wij willen dat alle andere bepalingen van de onlangs door Ons uitgebrachte verordening gelding blijven, maar dat Wij alleen op dat punt de vernieuwing aanbrengen dat [here follows an explanation of the new law]¹⁵⁰

Or the message of caution was placed at the end of a *Novella*, just before or in the epilogue that stated how the present law should be published:

Ook hier moet hetgeen voorheen aangaande de tgewin en de erfopvolging verordend is, verordend is, van kracht zijn. Wij brengen immers geen enkele vernieuwing, behalve dit ene punt dat Wij uitdrukkelijk in de onderhavige wet hebben vastgelegd.¹⁵¹

People could rest assured: not much had changed.

By now the communicative function of Justinian's use of *reverentia antiquitatis* is evident. Previous legislation was employed to create a legal context for the audience that would illuminate the new law. The need for clarity defined the relation between subject and emperor: the latter made sure the world of the former would be as orderly as it could be. The assumption is of course that the emperor was the most eligible candidate to do so and that he, with Gods help (as we shall see in the next chapter), knew what was best for his subjects. Possibly the

¹⁴⁹ Nov. 22.pr: οὐ γὰρ ἐρυνθισόμεν, εἴ τι κάλλιον καὶ ὧν αὐτοὶ πρότερον εἶπομεν προσεξεύροισιν, τοῦτο νομοθετεῖν καὶ τὴν προσήκουσαν τοῖς πρότερον δευτέραν ἐπιτιθέμεναι διόρθωσιν οἰκοθεν, ἀλλὰ μὴ παρ' ἐτέρων ἀναμένειν ἐπανορθωθῆναι τὸν νόμον.

¹⁵⁰ Nov. 39.1: Διὰ τοι τοῦτο τὸν παρόντα τίθεμεν νόμον, τὰ μὲν ἄλλα πάντα τῆς πρώην παρ' ἡμῶν τεθειμένης διατάξεως κύρια μένειν βουλόμενοι, τουτὶ δὲ καινίζοντες μόνον, ἵνα [explanation of new law].

¹⁵¹ Nov. 98.2.2: κἀνταῦθα δὲ τὰ περὶ τῶν κερδῶν καὶ τῶν διαδοχῶν ἔμπροσθεν διατεταγμένα κρατεῖται· οὐδὲν γὰρ αὐτῶν καινίζομεν, πλὴν ἢ ἐκεῖνο μόνον ὅπερ ῥητῶς ἐν τούτῳ τῷ νόμῳ γεγράφαμεν.

emperor projected his own concerns about clarity unto his subjects. Nevertheless, his efforts did portray him as ‘the master of law and order’ in the most literal sense.

In addition, showing that previous legislators had issued laws about the same subjects was a way to persuade the audience of the importance of these subjects. Justinian made clear he was not alone in his concern, because many emperors before him had already deemed the issue worthy of legislation. Legal precedent suggested relevance, especially when combined with a report of a petitioner coming before the emperor. This anchored a *Novella* in a legal tradition and in the subjects’ daily lives, and thus increased its legitimacy.¹⁵²

Yet there was a twist. Instead of solemn reverence for the past or simply imitation of it, the *Novellae* showed a past that could be enhanced, and the emperor would make sure it was. There was no mention of the restoration of old customs or ancient regulations. Instead, innovation was embraced.

To be clear – the language of the *Novellae* is already rubbing off on this thesis – previous legislation was not always criticised. We find a very traditional example of *reverentia antiquitatis* in *Novella 14*:

Ook de oude wetten en de vroegere keizers hadden al een hartgrondige afkeer van het woord en het verschijnsel souteneurschap, en wel in die mate dat er dan ook een hele reeks wetten werd uitgevaardigd tegen de mensen die dit misdrijf begingen. Op Onze beurt hebben Wij de straffen die al waren vastgesteld tegen degenen die een zo goddeloos bedrijf uitoefenden verzwaaard¹⁵³

However, immediately following this approval of past emperors, Justinian did not miss the opportunity to show he transcended them:

bovendien hebben Wij, wanneer er door Onze voorgangers iets over het hoofd was gezien, ook dat verholpen door middel van andere wetten.¹⁵⁴

To conclude, the preambles of Justinian’s *Novellae* made use of references to previous legislation very frequently and they did so in both similar and strikingly different ways compared to pre-Justinianic laws. Besides following in the footsteps of vaguely defined ‘earlier legislators’, there was room for innovation. In contrast to what some historians have claimed, Justinian did not shy away from openly claiming he did something new.¹⁵⁵ Admittedly, the innovations discussed here were based on older legislation, but they were not disguised as restorations. Secondly, the *Novellae* were interspersed with the ideal of a body of law that was

¹⁵² On legitimisation of the state by using previous legislation, see: Troianos, *Die Quellen* 12-13.

¹⁵³ Nov. 14.pr: Καὶ τοῖς παλαιοῖς νόμοις καὶ τοῖς πρώην βεβασιλευκόσι σφόδρα μεμισημένον ἔδοξεν εἶναι τὸ τῆς πορνοβοσκίας ὄνομά τε καὶ πράγμα, καὶ τοσοῦτον, ὥστε καὶ πολλοὶ κατὰ τῶν τὰ τοιαῦτα πλημμελούντων ἐγράφησαν νόμοι. Ἡμεῖς δὲ καὶ τὰς ἤδη τεθειμένας κατὰ τῶν οὕτως ἀσεβούντων τιμωρίας ἠῤῥήσαμεν.

¹⁵⁴ Nov. 14.pr: καὶ εἴ τι παραλελειμμένον ἦν τοῖς πρὸ ἡμῶν, καὶ τοῦτο δι’ ἑτέρων ἐπηνωρθωσάμεθα νόμων.

¹⁵⁵ Recent: M. Maas, ‘Roman Questions, Byzantine Answers: Contours of the Age of Justinian’ in: Maas ed., *The Cambridge Companion* 3-27 and Pazdernik, ‘Justinianic Ideology’. Their idea is based on selective sources and incorrect generalisations.

clear and well-ordered. Previous legislation was used to show how a new law related to existing regulations. The *Novellae* tell exactly what changed and what remained the same. Furthermore, references to previous legislation created a living legal tradition that incorporated both the laws of earlier legislators and those of Justinian himself. Their legislative activity was a way of being a Roman emperor and let the emperor actively engage with the past. Finally, this legal tradition provided an anchor that helped persuading the audience of the importance of the discussed subjects and gave the laws more legitimacy. Making room for improvement, providing clarity and anchoring innovation – all you could build on the wisdom of your forefathers.

Once upon a Roman past...

Besides in the guise of legal precedent, there was another way the past appeared in the preambles of the *Novellae*. This was the most remarkable use: in certain *Novellae* the Roman past provided not a legal, but a historical context for the new law. Sometimes this context showed why the step taken in the *Novella* is only natural. It was not necessarily an inevitable next step in a process, but was definitely not out of place either. Other times, the historical context tried to justify the innovation of the *Novella* by claiming it to be a return to how it once was. An old and better way of doing things was unjustly disrupted and was now restored. These histories were not always strictly factual. They could be embellished, selectively presented or – in exceptional cases – untrue. The past was something the emperor could pick and choose from without any consequences that we know of. We might wonder whether people did not know what the actual history had been, or they just did not mind hearing a different version. Was it generally accepted to mould to past to one's own purposes? Whatever the answer, these histories were evidently imagined by the imperial administration and employed with specific purposes in mind.

Justinian's reign saw quite an elaborate reorganisation of provincial administration. During 535 and 536, a bunch of *Novellae* were promulgated with the goal to eliminate corruption, streamline judicial appeal, redefine relations between civil and military administrators, and enhance the status and authority of provincial governors.¹⁵⁶ Especially the latter two received great attention in the preambles of these laws. The *Novellae* were often framed as a letter of appointment to the new regional leader, often the so-called 'Justinianic *pretor*' (πρῶτος Ἰουστινιανός), and would in their content elaborate on his tasks and the new way in which the province had to function. These *Novellae* of appointment provide the clearest examples of the use of historical context.¹⁵⁷ It seems they truly formed a unified policy: they dealt with similar changes, were mostly issued in a relatively short period, and they referred

¹⁵⁶ Maas, 'Roman History and Christian Ideology' 17.

¹⁵⁷ *Novellae* concerned with the reorganisation of the provinces: Nov. 24-30, 41, 102, 103 and we might group Edict 4 and 13 with them. Other *Novellae* categorised as '*Novellae* of appointment' (see Appendix) that make use of historical context in their preambles are: Nov. 13, 15, and 80.

to each other as examples of the new administration. They were, however, all tailored to the region the new leader would take charge of.

The preamble of *Novella* 25 gives a very good example how both the history of the office of *pretor* and regional history were used. Because it would also help to get a feeling for the language of these text, I will quote the preamble here in full:

Wanneer Wij terugblikken op de eerste ambten waaronder – zoals degenen die de oude instellingen beschreven en uitlegden, het ons overgeleverd hebben – dit volk georganiseerd was, hebben Wij het gerechtvaardigd geacht het volk der Lycaoniërs te sieren met een ambt van hogere rang dan het huidige, ook omdat het zeer nauw verwant is met de Romeinen en op de grond van vrijwel dezelfde oorzaken zich als kolonie gevestigd heeft. Immers, Lycaon die eertijds koning van Arcadië in Griekenland was, is het ten deel gevallen eveneens het grondgebied van de Romeinen te bewonen en door de vroegere Oinotroi in te lijven de basis van het Romeinse bestuur te leggen – Wij doelen dan op die gebeurtenissen uit het verleden die veel ouder zijn dan de tijden van Aeneas en Romulus – en hij heeft, na naar die verre streken een kolonie te hebben gezonden, aan Pisië een gedeelte ontnomen, aan dat gebied zijn eigen naam gegeven en de streek naar zichzelf Lycaonië genoemd. Derhalve zou het juist zijn ook dit gebied met een ambt te sieren onder toewijzing van de oude onderscheidingsteken van de Romeinse staatsorde en de huidige gouverneurs – Wij bedoelen degene die het civiele bestuur uitoefent en degene die aan het hoofd van de gewapende macht gesteld is – in één persoon te verenigen en te sieren met de benaming ‘*pretor*’. In het bestuur der Romeinen was dit een traditionele benaming en in de grote stad der Romeinen was zij zelfs al in zwang vóór die van de consuls zelf. De vroegere Romeinen plachten namelijk hun eigen leiders ‘*pretoren*’ te noemen, droegen hun op het bevel te voeren over de legers en gehoorzaamden aan de door hen opgestelde regels. Het was een uit twee elementen samengesteld ambt en het droeg in zichzelf en toonde naar buiten zowel kracht in zijn militaire slagvaardigheid als zin voor orde in zijn wetten.¹⁵⁸

The text first addresses the history of Lycaonia and quickly establishes a relation between the provincial founder and the Romans. Lycaon created the foundations of Roman rule, even before Aeneas! In a strange yet mostly seamless transition, the foundation of Lycaonia or

¹⁵⁸ Nov. 25.pr: Τὸ Λυκαόνων ἔθνος μείζονι τῆς νῦν οὔσης ἀρχῆς κατακοσμησαί δίκαιον ᾤθημεν, ἀποβλέποντες εἰς τὰς πρώτας ἀρχὰς ὅθεν αὐτὸ συστήναι παρέδοσαν ἡμῖν οἱ τὰ παλαιὰ συγγράφοντές τε καὶ διηγούμενοι, καὶ ὅτι συγγενέστατόν ἐστι Ῥωμαίοις καὶ σχεδὸν ἐκ τῶν αὐτῶν συνωκισμένον προφάσεων. Λυκάωνι γὰρ τῷ πρώτῳ Ἀρκαδίας τῆς ἐν Ἑλλάδι βασιλευκότητι καὶ τὴν Ῥωμαίων οἰκῆσαι γέγονε γῆν, καὶ τοὺς πρώτῳ Οἰνώτρους προσλαβόντι τῇ Ῥωμαίων ἀρχῇ δοῦναι προοίμιον (φαμέν δὲ ταῦτα δὴ τὰ παλαιὰ τὰ πολλῶν τῶν Αἰνείου τε καὶ Ῥωμύλου χρόνων πρεσβύτερα), καὶ ἀποικίαν ἐπὶ τὰ τῆδε στείλαντι μέρη μοῖραν τινα τῆς Πισιδίας ἀφελέσθαι, ταύτην τε δοῦναι τὴν αὐτοῦ προσηγορίαν Λυκαονίαν τε ἐξ αὐτοῦ καλέσαι τὴν χώραν. Δίκαιον τοίνυν ἂν εἴη καὶ αὐτὴν ἀρχῇ κατακοσμησαί τὰ παλαιὰ τῆς Ῥωμαϊκῆς τάξεως ἐπιγραφομένη σύμβολα, καὶ τοὺς νῦν αὐτῆς ἡγουμένους, τὸν τε ἄρχοντα φαμέν τὴν πολιτικὴν ἀρχὴν τὸν τε ἐφεστῶτα τοῖς ὅπλοις, εἰς ἓν τι συναγαγεῖν καὶ τῇ τοῦ πραιτῶρος κοσμησαί προσηγορίᾳ. ὄνομα γὰρ τοῦτο πάτριον τῇ Ῥωμαίων ἀρχῇ καὶ πρό γε αὐτῶν τῶν ὑπάτων κατὰ τὴν μεγάλην τῶν Ῥωμαίων πολιτευσάμενον πόλιν. Ῥωμαῖοι γὰρ οἱ πάλαι τοὺς σφῶν αὐτῶν στρατηγούς πραιτῶρας ὠνόμαζον, τῶν στρατευμάτων τε ἡγεῖσθαι παρεῖχον καὶ τοῖς ὑπ’ αὐτῶν γραφομένοις ἐπέιθοντο νόμοις· καὶ ἦν ἀρχὴ τις ἐξ ἀμφοῖν κεκραμένη καὶ ἐν ἑαυτῇ περιφέρουσα τε καὶ δεικνύσα τὴν τε ἐν ταῖς παρατάξεσιν ἰσχύϊν τὴν τε ἐν τοῖς νόμοις εὐκοσμίαν.

perhaps its long past was presented as the reason it was worthy of a *pretor*. Strangely enough, the true and stronger historical connection of Lycaonia with Rome – annexed in the late second century B.C. – was completely overlooked, maybe because it was not ruled as an independent province but by the governor of Asia.¹⁵⁹ In the second part, the preamble elaborates on this traditionally Roman, two-fold office.

Regional histories

Although we might not be convinced by the line of argumentation of *Novella* 25, it was one of the more successful attempts to justify why a specific region should have a *pretor* that combined civil and military powers. Another way to do this, was by linking the office to the character of the people of the region. See for example the first lines of *Novella* 26:

Men is het er algemeen over eens dat, indien men het gebied van de Thraciërs ter sprake brengt, met die naam meteen de gedachte aan strijdvaardigheid, krijgsmacht, oorlogen en strijd voor de geest komt. Die begrippen zijn namelijk in dit gebied inheems en traditioneel. Bijgevolg is bij Ons al eerder de gedachte opgekomen om ook de aangelegenheden inzake die gebieden te regelen¹⁶⁰

Thracians were traditionally presented as a fierce people and it was befitting for them to have a leader dealing with both civil and military affairs in analogy to the other reorganised provinces – although those regions ‘are not as warlike and do not need a military garrison’.¹⁶¹ Why it was exactly that the appointment of a *pretor* fit the combative nature of the Thracians is not completely clear. The imagined link and the well-sounding connotations were enough justification.

The regional histories rather set the scene than actually explained why the regions needed an official that combined civil and military powers. They did however make two other points: they honoured the region and defined the historical relation between the province and Roman rule. The *Novellae* presented the appointment of the official as an honour. It was an acknowledgement of a region’s history and its valued long-standing relationship with Rome. The office itself was also honourable and was, in the case of a *pretor*, decorated with the name of ‘Our Piety’ (ἡ ἡμετέρα εὐσεβεία/*nostra pietas*).¹⁶² On the other hand, the historical relationship with Roman rule was clearly one of subjugation. The reorganisation of a province itself was of course already indicative of the power relations. The emperor imposed his idea of a well-ordered administration on the region and the region had no say in the matter.

¹⁵⁹ Maas, ‘Roman History and Christian Ideology’ 20.

¹⁶⁰ Nov. 26.pr: Ἐκεῖνο τῶν ἀνωμολογημένων ἐστὶν ὅτι περὶ, εἰ τις τὴν Θρακῶν ὀνομάσειε χώραν, εὐθὺς συνεισέρχεται τῷ λόγῳ καὶ τις ἀνδρείας καὶ στρατιωτικοῦ πλήθους καὶ πολέμων καὶ μάχης ἔννοια· ταῦτα γὰρ ἐγγενῆ τε καὶ πάτρια τῇ χώρᾳ καθέστηκεν ἐκεῖνη. ὥστε ἡμῖν <καὶ> πρότερον γέγονεν ἔννοια καὶ τὰ περὶ ἐκείνων καταστήσασθαι τῶν τόπων.

¹⁶¹ Nov. 26.1.pr: καίτοιγε οὐχ οὕτω μαχίμοις οὐδὲ στρατιωτικῆς φρουρᾶς δεομένοις.

¹⁶² Nov. 26.1.1

Nevertheless, we might speculate about the reorganisation being (partly) desired by locals that would have appealed to the emperor to make this a reality. We can imagine the status of 'Justinianic *pretor*' and the close bond with the emperor it expressed could be a cause worth fighting over by provincial communities. Using real and imagined historical claims was a traditional element of this competition for honour and status. Moreover, I think we can extend to provinces what Roueché has shown for cities of the eastern empire, that this struggle for pre-eminence became increasingly a struggle to be invested with the authority of central government.¹⁶³

We might be distracted by the administrative emphasis of the preambles, but a couple of the epilogues stress the honour that was bestowed on the new governor:

Nu Uwe Excellentie derhalve van dit alles kennis neemt, dient Zij de pretor zijn ruime bezoldiging te verschaffen en dient Zij [the governor] zich ervan bewust te zijn dat zijn ambt zo respectabel is geworden, dat het op goede gronden voor velen zeer begerenswaardig zal zijn door hun verlangen naar de nu door Ons eraan verleende glans en waardigheid.¹⁶⁴

The office had become extremely desirable – and thus honourable – now it was decorated with imperial brilliance and dignity. And although the honour was concentrated on the individual official, a dignified leader meant a dignified province.

Interestingly, the *Novellae* of appointment did not betray any sign of pleas asking for these honours. Where they were generally eager to show the responsiveness of the emperor to external pleas, this practice evidently did not fit this context of competition for honour. *Novella* 102 is the only exception. Its preamble does indeed mention an overload of pleas. It states the emperor wonders 'why a throng of petitioners surrounds Us'.¹⁶⁵ However, these pleas were the usual individual petitions concerned with robberies (*κλοπαῖς*), injustices (*ἀδικίαις*) and other harmful practices (*ἄλλας ζημίας*). The reorganisation of the province was presented as the solution for all its ills.

The preambles of the *Novellae* of provincial appointment presented Roman rule as inevitable or at least just. In *Novella* 25 the justice of Roman rule was implied by Lycaon already laying the basis of Roman rule in a time before Aeneas and Romulus. Other *Novellae* were less subtle. The preamble and first chapter of *Novella* 28 talk in length about the geography of Helenopontus and emphasise how it was a Roman administrative area. Later it takes it a step further and suggests the inhabitants of the region could call their new regent (*moderator*)

¹⁶³ C. Roueché, 'Floreat Perge' in: M.M. Mackenzie and C. Roueché ed., *Images of authority: papers presented to Joyce Reynolds on the occasion of her 70th birthday* (Cambridge 1989) 206-228; with thanks to dr. L.E. Tacoma for preventing me to dismiss the 'competition for honour'-element.

¹⁶⁴ Nov. 28.ep: Ταῦτα τοίνυν ἅπαντα ἢ σὴ ὑπεροχὴ γινώσκουσα τοσαύτας τε αὐτῆ τὰς σιτήσεις ἐπιδιδότω οὕτω τε αὐτὴν ἴστω σεμνὴν γενομένην, ὡς πολλοῖς εἰκότως ἔσεσθαι περισπούδαστον τῆ τοῦ νῦν αὐτῆ δοθέντος παρ' ἡμῶν ἄνθους τε καὶ ἀξιώματος ἐπιθυμία; see also Nov. 29.ep and 30.ep for nearly the same text.

¹⁶⁵ Nov. 102.pr : δι' ἣν (...) πλῆθος ἡμᾶς τῶν προσιόντων περιστάται.

'harmostes' (ἀρμοστής) after the governor sent out by Sparta to subjugated areas (ἐπὶ τὸ ὑπήκοον στελλόμενος).¹⁶⁶ *Novella* 30 is especially blunt:

Hoe groot de naam en het volk van de Cappadociërs is, en hoezeer dit volk de Romeinen aanvankelijk moeite heeft bezorgd om het te onderwerpen, is aan de liefhebbers van de wetenschap der oudheid welbekend. Dit volk heerste namelijk niet alleen over vrijwel geheel Pontus, maar ook zijn er mannen van geduchte naam, die het waard bleken de volle aandacht van de Romeinen te krijgen, van hieruit hun carrière begonnen. Hun land is uitgestrekt en fraai en is bij de keizers dermate in de smaak gevallen dat zij ook over het grondgebied aldaar een eigen bestuur hebben ingesteld, dat niet lager is dan het bestuur over Pontus, maar veeleer hoger.¹⁶⁷

In the past, the Cappadocians were a formidable adversary, but the Romans prevailed nonetheless. At the same time, this preamble honours the Cappadocians for their (past) strength *and* it makes clear the Romans were superior and that they were the ones who were running the show by now.

Office histories

Let us return to *Novella* 25. I have discussed the first part of the preamble dealing with the 'regional history' of Lycaonia in detail, but have left the second part largely untouched. This second part contains the origin story of the office of *pretor*. It stood on its own, independent of the regional history, and tells about the Roman roots of the office. In *Novella* 25, we find a quite elaborate version of this story. However, it stayed more or less the same across the different *Novellae* appointing a *pretor*.

Going back to the roots of an office also happened in other *Novellae* appointing an official. This amounted to some kind of 'office histories'. In laws that appointed an official that was not a new provincial governor of some sorts, the office history was the most prominent application of the Roman past.¹⁶⁸ *Novella* 13 gives a perfect example:

De statige benaming van de hoogedelachtbare leiding van de wacht, een benaming die bij de oude Romeinen bovendien algemeen bekend was, is op voor Ons raadselachtige wijze overgegaan in een andere aanduiding en heeft een andere positie verkregen. (...) Omdat nu de oude Romeinen een sterke voorkeur hadden voor de naam 'pretor', daarom hebben Wij gemeend de personen die zijn belast met het houden van de wacht en het handhaven

¹⁶⁶ Nov. 28.2.

¹⁶⁷ Nov. 30.pr, my italicisation: Ὅπόσον ἐστὶ τὸ Καππαδοκῶν ὄνομά τε καὶ ἔθνος, καὶ ὅπως τὴν ἀρχὴν ἵνα κτηθεῖη πράγματα παρέσχε Ρωμαίοις, οἱ τῆς ἀρχαίας πολυμαθείας οὐκ ἠγνοήκασιν ἐρασταί. τοῦ τε γὰρ Πόντου σχεδὸν παντὸς ἐξῆρχε, καὶ ἄνδρες ὀνομαστότατοί τε καὶ φροντίδος ἄξιοι Ρωμαίοις γενόμενοι μεγάλης ἐκεῖθεν ἤρθησαν. γῆ τε αὐτοῖς ἐστὶ πολλή τε καὶ θαυμαστή καὶ οὕτως ἀρέσασα τῇ βασιλείᾳ, ὡς καὶ ἀρχὴν ἐπιστῆσαι ταῖς ἐκεῖσε κτήσεσιν ἰδίαν, τῆς Ποντικῆς ἀρχῆς οὐκ ἐλάττω, μᾶλλον μὲν οὖν καὶ μείζω.

¹⁶⁸ The *Novellae* concerned are Nov. 13, 15, 41, 75=104, and 80.

van de openbare orde en die de bevoegdheid hebben volksopstootjes te beteugelen
'pretoren van het volk' te moeten noemen.¹⁶⁹

The preamble tells the story of an honourable office of which the true meaning had been lost. Instead of 'prefect of the watch' (*praefectus vigilum*), the people called him 'prefect of the night' (*ἐπάρχος τοῦ νυκτοῦ*) in Greek, eliciting all kinds of dark and misty connotations. Accordingly the status of the position declined. In comes the emperor, who, after doing 'thorough research into the past', wanted to restore the office to its former glory.¹⁷⁰ He renamed it 'pretor of the people' (*πραιτώρ δήμων/praetor plebis*) after the ancient *tribunus plebis* and this pretor would work together with the pretors of the Senate like the *tribunus plebis* had worked with the consuls: one lead the people, the others the Senate.¹⁷¹

Similar to the office of Justinianic pretor, the pretor of the people was rooted in a Roman office of the past. This office was lost in time and was now restored to its former place of glory by the emperor. *Novella* 13 is a very elaborate example, but in other cases the heart of this message was expressed in only one sentence:

Aan dit ambt nu en degene die het op zich neemt, geven Wij de naam 'inquirent' (*quaesitoros*); zo namelijk noemden ook zij die het ambt zelf hebben uitgevonden – Wij doelen ook op de vroegste tijden – degenen die tot die positie toetraden, 'inquirenten'.¹⁷²

A new office was created and got the name of an ancient precursor. The origin was traced back to 'the earliest times' (*τοις ἀνωτάτω χρόνοις*) and now the office was 'more or less renewed' (*σχεδόν τι καινουρουμένην*) by the emperor.¹⁷³ Again, the Roman past served as an anchor for a new office.

The appearance of a historical context was remarkably consistent across all *Novellae* of appointment. All of them were using historical context in their preamble, often extending into the first chapter of the *Novella* and sometimes the past was paid attention to throughout.¹⁷⁴ There was even one appointment of a church official, the archbishop of Justiniana I, that got the same treatment.¹⁷⁵ The only exception was *Novella* 27 that appointed the *comes* of Isauria. The preamble of this law merely claims that Justinian did what had only 'come to the mind'

¹⁶⁹ Nov. 13.pr-13.1.1: Τὸ τῶν λαμπροτάτων τῆς ἀγρυπνίας ἀρχόντων ὄνομα, σεμνόν τε καὶ τοῖς πάλαι Ῥωμαίοις γνωριμώτατον ὄν, οὐκ ἴσμεν ὅπως εἰς ἀλλοίαν μετέστη προσηγορίαν καὶ τάξιν. (...) Ἐπειδὴ δὲ τοὺς πάλαι Ῥωμαίους σφόδρα τὸ τοῦ πραιτώρος ἤρρεσεν ὄνομα, διὰ τοῦτο ᾤθημεν αὐτοὺς praetoras plebis δεῖν ὀνομάσαι τοὺς ἐπὶ τῇ φυλακῇ τε καὶ εὐταξία τεταγμένους καὶ τὴν δημῶδη καθιστᾶν ἰσχύοντας ἀταξίαν.

¹⁷⁰ Nov. 13.2: πάντα διερευνώμενοι τὰ γενόμενα πρόσθεν.

¹⁷¹ Nov. 13.1.

¹⁷² Nov. 80.1.pr: τῇ μὲν οὖν ἀρχῇ καὶ τῷ ταύτην παραλαμβάνοντι τὸ τοῦ quaesitoros ἐπιτίθεμεν ὄνομα· οὕτως γὰρ δὴ καὶ οἱ τὴν ἀρχὴν αὐτὴν ἐξευρόντες (φαμὲν δὲ καὶ ἐν τοῖς ἀνωτάτω χρόνοις) ἐρευνάδας ἐκάλουν τοὺς εἰς ταύτην ἀφικνουμένους τὴν τάξιν.

¹⁷³ Nov. 80.1.pr.

¹⁷⁴ Only exceptions: 27 (just referring to other reorganisations). 11 (starting only in chapter 1). In addition, three that slightly deviate: 31, 70 (see later) and 75=104 (see later). I treat these three separately in this chapter.

¹⁷⁵ Nov. 11.1-3. Admittedly, the historical context is strictly not placed in the preamble. But because this *Novella* is quite short, the distinction between 'paragraph' and 'chapter' is less obvious. Moreover, this distinction is made by later collectors anyway and the historical context is firmly in the introductory part of the text.

(ἤλαθεν ἐπὶ νοῦν) of emperors before him as ‘images and schemes’ (ἐν εἰκόνι καὶ σχήματι). In the same breath, he referred to the other *Novellae* of reorganisation and stated Isauria would undergo the same change.

Institutional histories

The third type of *Novellae* that made use of the Roman past concerned laws dealing with the moral degeneration of ancient institutions. We have already seen a glimpse of this in *Novella* 13 about the *pretor* of the people. Its history of the office told us that its precursor, the prefect of the watch, had declined in status due to its confusing name ‘prefect of the night’. However, this was not the full story. According to Justinian, some people in close proximity to the emperor had gladly accepted this office not too long ago. However:

Beetje bij beetje echter is men het ambt gaan beschouwen als zo minderwaardig en onaanzienlijk, dat de benoeming zelfs niet meer door middel van Onze benoemingsbrief tot stand komt, maar berust bij de illustere prefecten van deze welvarende Stad, en dat het meestal hun stafleden zijn die dat ambt gaan bekleden en het op de slechtst denkbare manier vervullen.¹⁷⁶

Slowly the office had degenerated into something for simple members of the imperial bureaucracy, who – it was added – fulfilled their role in the worst possible manner. The current officials failed and in some way so had the elite: the former in their function, the latter in their disregard of the honourableness of the title.

The idea of members of the elite failing to uphold honours and the subsequent deterioration of offices was especially prevalent in *Novellae* treating the institutions of consulship, the Senate and the city councils.¹⁷⁷ In the ‘institutional histories’ of these *Novellae*, the theme of restoration was similar to that in the office histories, but manifested itself slightly differently. Where the office histories stated that an ancient office was rediscovered after being lost in time, the institutional histories were more concerned with behaviour that was never completely lost, but morally compromised. Time had affected both and both were restored, but in the first case the office was saved from oblivion and in the other virtuous behaviour was reinvigorated.

The shift in emphasis from the office to the behaviour of the officials caused a similar shift in the use of the past: the past was not only used to anchor the solution the *Novella* provided to a problem in society, it also explained the origin of the problem. When a region was reorganised, the problem was the malfunctioning of the province. The new office, a new system, would be established to fix this and the track record of this office proved it was the right combination of powers for the job. In the case of a restoration of values, the

¹⁷⁶ Nov. 13.1.2: Κατὰ μικρὸν δὲ οὕτω τὸ πρᾶγμα εὐτελὲς ᾤφθη καὶ ἄξιον οὐδενός, ὥστε οὐδὲ ἐκ συμβόλων ἡμετέρων γίνεσθαι, κείσθαι δὲ ἐπὶ τοῖς ἐνδοξοτάτοις ἐπάρχοις τῆς εὐδαίμονος ταύτης πόλεως, καὶ τὰ πολλὰ τοὺς ἐκ τῆς τάξεως τῆς αὐτῶν ταύτην παραλαμβάνειν τὴν ἀρχὴν καὶ διαχειρίζειν αὐτὴν τὸν πάντων κάκιστον τρόπον.

¹⁷⁷ The *Novellae* concerned are Nov. 38, 62, 70, and 105.

malfunctioning institution had to be fixed by internal renewal. To be fair, the past could show the institution had functioned perfectly well before, but at the same time it was clear it no longer did. The problem was internal to the system and the new law had to tweak the system to reverse the degeneration and prevent it in the future.

Another illustration might help to shed some light on the subtle differences. This is the first part of the very lengthy preamble of *Novella* 38 on the emptying city councils:

Degenen die vroeger voor Ons de staat hebben ingericht, hebben gemeend dat het nuttig zou zijn om naar het voorbeeld van Onze keizerlijke Stad de welgeborenen in iedere stad te verenigen en aan iedere stad een senaatsraad te geven (...) Dit stelsel nu kwam zodanig tot bloei, had zo'n uitstraling dat de aanzienlijkste en kinderrijkste families die van de raadsleden waren. Enerzijds was er een overvloed aan potentiële raadsleden en anderzijds was de als last beschouwde plicht tot publieke dienstverleningen, voor volstrekt niemand ondraagbaar; (...) Maar omdat geleidelijk sommige leden begonnen zich uit de registers van raadsleden te laten schrappen en voorwendsels te bedenken waardoor zij op een of andere manier daarvan vrij zouden zijn, namen de raden vervolgens langzamerhand in omvang af (...) Nu daardoor de publieke dienstverleningen nog maar op weinig mensen neerkomen, hebben zij ook voor dezen de vermogens op een dieptepunt gebracht (...) Zo heeft het dus kunnen gebeuren dat de staat midden in financiële tekorten, midden in algehele ongerechtigheid verzeild is geraakt.¹⁷⁸

The *Novella* starts with a brief 'office history' of the city council, but quickly turns to the flourishing times of these councils and their subsequent degeneration. The decline was caused by members who tried to escape their responsibilities and sought private gain above collective prosperity. Financial troubles and 'overall injustice' (πάσης ἀδικίας) were the outcome. The preamble continues on the measures the emperor had already taken and how the council members had constantly found ways to circumvent these measures. Eventually, the text reaches the purpose of the law: childless council members should leave three quarters of their property to the council after their death. That is quite a run-up.

The text was not without the elements we have seen in the office histories. The origin of the institution was traced and its offices were presented as honourable positions. However, the emphasis had shifted to a history of the problem. In the first part of the preamble, this problem was defined. In the parts following the citation, it blended with references to previous legislation to make up a history of an emperor fighting for justice and virtue against a

¹⁷⁸ Nov. 38.pr.pr: Οἱ τὴν πολιτείαν ἡμῖν πάλαι καταστήσαντες ᾤθησαν χρῆναι κατὰ τὴν τῆς βασιλευούσης πόλεως μίμησιν ἀθροῖσαι καθ' ἑκάστην πόλιν τοὺς εὖ γεγονότας καὶ ἑκάστη σύγκλητον δοῦναι βουλήν (...) οὕτω τοίνυν τὸ πρᾶγμα ἤνθησεν, οὕτως ἐφάνη λαμπρόν, ὡς τὰς μεγίστας τε καὶ πολυανθρωποτάτας οἰκίας βουλευτῶν εἶναι, πλήθους μὲν ὄντος τοῦ βουλευόντος, τῆς δὲ δοκούσης εἶναι τῶν λειτουργημάτων βαρύτητος οὐδενὶ παντελῶς ἀφορήτου καθισταμένης. (...) Ἐπεὶ δὲ κατὰ μέρος ἤρξαντό τινες ἑαυτοὺς ἐξαιρεῖν τῶν βουλευτικῶν λευκωμάτων καὶ ἐξευρίσκειν προφάσεις δι' ὧν πως ἐλεύθεροι τούτων ἔσονται, εἶτα κατ' ὀλίγον ἠλαττώθη τὰ βουλευτήρια (...) διὰ τοῦτο εἰς ἄνδρας ὀλίγους περιστάντα τὰ λειτουργήματα κάκεινους τὰς οὐσίας κατέσεισε (...) συμβέβηκεν οὖν τὸ πολίτευμα μεστὸν μὲν ἐλλειμμάτων, μεστὸν δὲ πάσης ἀδικίας γενέσθαι.

malicious but cunning enemy. Justinian may have longed to restore the old ways, but he did not explicitly say so. Rather, he wanted to ‘remedy’ (*θεραπείαν*) a sick system.¹⁷⁹

No reference to the Roman past was made in any of the preambles or first chapters of *Novellae* dealing with other subjects than those discussed above.¹⁸⁰ The only passages that come close are two phrases from the first chapters of *Novellae* 74 and 89. They refer to the rules of Nature in an age ‘before written law’. However, this was not a Roman past, neither a history of a region, office or institution.

All in all, we have seen three ways the preambles of the *Novellae* made use of the past, especially of the Roman past: (1) to give historical context of a region, (2) to tell of the origin of an office or institution and how the emperor saved it from oblivion, and (3) to restore old values after moral degeneration. Although *Novellae* dealing with different topics seem to prefer different ways, all uses were closely linked and appeared in most of these laws in some degree. The question is: why did specifically *these Novellae* make use of the past and how did all these uses of historical context fit together?

A Grand Design flaw

The most influential article on the past in Justinian’s legislation is ‘Roman History and Christian Ideology in Justinianic Reform Legislation’ written by Maas. The article focuses on historical context featuring in the preambles of Justinian’s ‘reform legislation’, corresponding to the regional variants of what I have called ‘*Novellae* of appointment’. Maas argues for an interpretation of the rhetoric of the *Novellae* where Roman historical and Christian ideological themes are mixed to create an unprecedented type of legal theory. To arrive at this interpretation, the author first analyses the use of the past in the ‘reform legislation’ and then connects this with Christian themes from other *Novellae*. I think his failure to make a distinction between on the one hand laws that use the Roman past, and on the other hand laws that do not, results in a flawed interpretation. However, Maas does make some excellent points and is praised for his analysis by other historians.¹⁸¹ I will return to his ideas on Roman-Christian

¹⁷⁹ Nov. 38.pr.1.

¹⁸⁰ There are some special cases that at first sight do not seem to fit the history-types described above, but do fit the scheme when we look past a confusing title or brusque preamble (see Nov. 17, 31 and 75). We can find an example in the preamble of *Novella* 47, introducing a new way to note the date; the traditional dating using the consuls and tax periods should be preceded by the name of the emperor and his year of rule. The fact that this was an innovation, was made very clear. The preamble starts by stating the goal that dating should be comprehensive. Its method should leave no doubts and must thus strive for clarity, a theme we have discussed for the first time in the paragraph ‘wisdom of the forefathers’. Then the historical narrative begins. This time, the Roman past did not provide an ‘irrelevant’ regional history, an origin story, or a tale of moral degeneration. This time it gave a true justification for the proposed innovation. Except for the Republic (visible in its absence), all periods of Roman rule had had a single ruler. Yet this supreme being was not included in the method of dating. Preposterous! Luckily, Justinian was here to remedy this absurd incongruity.

¹⁸¹ P. Sarris, *Economy and Society in the Age of Justinian* (New York, NY 2006) 209 n.47; P.N. Bell, *Social Conflict in the Age of Justinian: Its Nature, Management, and Mediation* (online 2013) 105 n.250, 304; J. Moore, *Procopius of Caesarea and Historical Memory in the Sixth Century* (dissertation 2014) 296.

legal theory in the next chapter. For this chapter, discussion of his treatment of the 'reform legislation' suffices.

Maas rightly sees a 'striking emphasis on ancient titles of magistracies, methods of provincial administration, and ties between Rome and the provinces in the Roman Republic and earlier times' in the reform legislation.¹⁸² As I have shown, this emphasis can also be found in other *Novellae* dealing with the appointment of officials or with ancient Roman institutions. This, however, must have escaped the Maas's notice, because he tries to answer the question why the 'historical preface' is limited to the specific programme of reform legislation.¹⁸³

Maas places this programme in the context of the idea of *restoratio imperii*, the theory that Justinian wanted to restore the Roman Empire in territory and in image. Except this time, it would be elevated to greater heights as a Christian empire. These kind of grandiose schemes of restoration would supposedly appeal to the classically educated elite.¹⁸⁴ In the introduction of my thesis, I already shortly discussed the theory of 'Grand Design', which states that Justinian already had this objective when he ascended to the throne. His immense legislative activity, especially the creation of the *Codex*, is seen as 'perhaps the most convincing evidence' of the three parts of the plan of restoration: the codification of Roman law, the reconquest of lost provinces, and the restoration of glory in the form of an extensive building programme.¹⁸⁵ Maas does not claim Justinian had already planned everything the moment he became emperor, but he does place the ambition quite early in the emperor's reign. After the Nika Riot, in which Justinian's reign barely survived, the emperor saw his survival as a sign that God still supported him. This gave him new confidence and made the emperor embark on his Christian restorative mission. He immediately started to rebuild the Hagia Sophia in Constantinople after it had burned down during the revolt. According to Maas, the church 'embodied the spirit of Christian renovation that Justinian wished to be characteristic of his reign.'¹⁸⁶ Soon after, the emperor would fight the Vandal War, motivated 'as much by a desire to eliminate heresy as to regain Roman territories'.¹⁸⁷

However, whether Justinian indeed had the ambition to restore the Roman Empire is heavily disputed. Louth gives a good overview of the practical reasons why an imperial dream of *renovatio imperii* was unlikely. First, the number of troops the emperor dedicated to the invasion of Italy was too low to be seen as a serious attempt to conquer this quintessential Roman territory. 7,000 troops were involved in the invasion of Italy compared to 10,000 in the conquest of Africa. In fact, in the year of the Italian invasion, 6,000 soldiers were sent to Alexandria just to protect the monophysite patriarch Theodosius (535–536). The conquest of

¹⁸² Maas, 'Roman History and Christian Ideology' 18.

¹⁸³ *Ibidem* 19.

¹⁸⁴ *Ibidem* 26.

¹⁸⁵ Louth, 'Justinian and his Legacy' 107-119, quotation on p. 108.

¹⁸⁶ Maas, 'Roman Questions, Byzantine Answers' 7.

¹⁸⁷ *Ibidem* 7.

Italy might have been more of an optimistic hope than a settled conviction.¹⁸⁸ Our principal source for Justinian's building programme is the panegyric *De Aedificia* (Περὶ Κτισμάτων) of Procopius of Caesarea. In this work of praise, the building achievements of Justinian were inevitably embellished and at least in some cases not corresponding to archaeological finds.¹⁸⁹ Indeed, part of the building projects had already been started by Emperor Anastasius (r. 491-518). Justinian certainly had his fair share of achievements – think only of the grand Hagia Sophia – but whether we should see them as part of a restoration programme is questionable.¹⁹⁰

Besides these practical objections, we could wonder if Justinian's rhetoric of restoration was indeed very new. A fascination with the Roman past undoubtedly antedated Justinian; *reverentia antiquitatis* was a recurring theme in Roman legislation for a reason. Antiquarian works similar to the *De magistratibus reipublicae Romanae* (Περὶ ἀρχῶν τῆς Ρωμαίων πολιτείας) of John Lydus that is often used to support the claim of Justinianic restoration, already existed. Not long before Justinian's reign, for example, the *Synecdemus* was written, an antiquarian work written for bureaucrats with its final editing at the latest in 529.¹⁹¹ Another parallel can be found to Justinian's 'restorative' appointments. Before him, Emperor Anastasius had already created a new official with a title going back on Roman history, called 'Vindex'.¹⁹² Conversely, an ancient title lost during Justinian's reign was that of 'consul'. Already in 541 the consulship elapsed after an attempt to keep it alive in 537 (Nov. 105). If anything, this was not very in line with the idea of *restoratio imperii*, but the office simply no longer worked to maintain Roman power.¹⁹³ To conclude, Justinian took the opportunity to present his achievements in a classicising way if he could, but he did not do so to reach a greater goal. Meier gives an alternative, reasonable interpretation of the prevalence of the rhetoric of restoration. He discerns a growing sense of invincibility and the accompanying ambitions in Justinian, because of the successes of his early reign, especially after his smooth victory over the Vandals.¹⁹⁴ Nevertheless, a state conquering something because it supposedly had an ancient right to the territory, has to be the most universally used justification for a war ever.

Regarding the *Novellae*, there are five passages that are regularly used to support the claim of *restoratio imperii*, in particular the territorial ambitions of the emperor. However, upon closer inspection, none of them hold up without heavy qualification. First, the preamble of *Novella* 1 is mentioned. Here, the emperor said he would pay attention to the minor problems of individual petitioners despite the fact that he also had bigger fish to fry:

de vraag hoe de vrede met de Perzen bewaard wordt, de Vandalen zich samen met de Mauren onderwerpen, de Carthagers hun vroegere vrijheid terugkrijgen en behouden en

¹⁸⁸ Louth, 'Justinian and his Legacy' 109.

¹⁸⁹ K.G. Holum, 'The Classical City in the Sixth Century: Survival and Transformation' in: Maas ed., *Cambridge Companion* 87-112: 90.

¹⁹⁰ Louth, 'Justinian and his Legacy' 111-114.

¹⁹¹ C. Roueché, 'Provincial governors and their titulature in the sixth century', *Antiquité tardive* 6 (1998) 83-89: 87.

¹⁹² Roueché, 'Provincial governors' 87.

¹⁹³ *Ibidem* 88.

¹⁹⁴ Meier, *Das andere Zeitalter Justinians* 101-182, esp. 165-168.

de Tsanen, nu zij voor het eerst deel zijn gaan uitmaken van de staat der Romeinen, ten langen leste onderdanen worden – een geschenk dat God zelfs tot op heden, behalve tijdens Onze heerschappij, de Romeinen nog nooit gegeven heeft¹⁹⁵

The aftermath of the Vandal War was still keeping the emperor busy and recently the *Τζάνοι* had joined the empire. Yes, there is talk of territorial expansion, but this was not restoration. On the contrary, the *Τζάνοι* were a gift from God the Romans *had never received before*.

In *Novella 69* the emperor lectured his subjects on the virtue of justice and reminded everyone they had to obey their governors. In chapter 1, he made it crystal clear this applied to the whole empire:

Wij schrijven voor aan allen die in de provincies wonen en allen die aan Onze scepters gehoorzaamheid zijn verschuldigd, in heel het Ons onderhorig gebied – zowel het gebied dat naar de opgaande als het gebied dat naar de ondergaande zon ziet en het gebied dat tussen beide ligt¹⁹⁶

This description of an empire stretching out from sunrise to sundown is interpreted as the extent of the ‘restored empire’ by Pazdernik.¹⁹⁷ However, the text makes it clear the territory discussed was the area where the authority of the emperor already applied. In addition, the epilogue of this *Novella* also uses a similar elaborate description. It says the praetorian prefects had to make the law known ‘in the dioceses under their authority, in the whole of Italy, as well as in Libya [Africa], on the islands, in the East, and everything in Illyria’.¹⁹⁸ This echo of the earlier description shows ‘the empire where the sun never set’ was just a florid way to describe all provinces of the existing imperium.

Closer to a form of *restoratio imperii* came *Novella 131.4* on privileges on the church. It equalled the position of the archbishop of Africa to that of the archbishop of Justiniana I: ‘since God has restored (*ἀποκατέστησε/restituit*) this land [the diocese of Africa] for Us in its earlier state’.¹⁹⁹ The rhetoric of restoration cannot be denied here. However, it was used after the conquest and did not indicate any intention of restoring the rest of the ancient Roman empire. The imperial administration simply saw the opportunity to present what was done in a classicising way and took it.

¹⁹⁵ Nov. 1.pr: ἀλλ’ ὅπως ἂν Πέρσαι μὲν ἡρεμοῖεν. Βανδίλοι δὲ σὺν Μαυρουσίοις ὑπακούοιεν, Καρχηδόνιοι δὲ τὴν παλαιὰν ἀπολαβόντες ἔχοιεν ἐλευθερίαν, Τζάνοι τε νῦν πρῶτον ὑπὸ τὴν Ῥωμαίων γενόμενοι πολιτείαν ἐν ὑπηκόοις τελοῖεν (τοῦτο ὅπερ οὐπω καὶ νῦν πλὴν ἐπὶ τῆς ἡμετέρας βασιλείας δέδωκε Ῥωμαίοις ὁ θεός).

¹⁹⁶ Nov. 69.1: καὶ προαγορεύομεν πᾶσι τοῖς ἐν ταῖς ἐπαρχίαις οἰκοῦσιν, ὅποσοι τῶν ἡμετέρων κατακούουσι σκήπτρων ἐπὶ τῆς ὑπηκόου πάσης τῆς τε εἰς ἀνίσχοντα βλεπούσης τῆς τε πρὸς δυόμενον ἥλιον τῆς τε ἐκατέρωθεν οὔσης.

¹⁹⁷ Pazdernik, ‘Justinianic Ideology’ 211 n.85.

¹⁹⁸ Nov. 69.ep: ἐν ταῖς ὑπ’ αὐτοῦσ διοικήσεσιν, ἐπὶ τε Ἰταλίας ἀπάσης ἐπὶ τε Λιβύης ἐπὶ τε τῶν νήσων ἐπὶ τε τῆσ Ἐώας καὶ ὅσον ἐν Ἰλλυριοῖς ἐστί.

¹⁹⁹ Nov. 131.4: ἐξ οὐπερ ὁ θεὸς ταύτην ἡμῖν ἀποκατέστησε; Compare also Nov. 36.pr ‘Onlangs hebben Wij daarom in Ons Africa, dat God door Onze inspanningen [weer] aan de Romeinse heerschappij heeft onderworpen’ and Nov. 37.pr ‘sinds zij [the churches of the diocese Africa] door de hulp van God aan de tirannen zijn ontrukkt en herenigd zijn met Onze staat’. However, I have not come across historians using these phrases for their argument of Grand Design or *restoratio imperii*.

Quite vague support came from *Novella* 8.10.2. The law reorganised the whole system of selling and paying for offices. From this time on, magistrates would no longer try to exploit people to get as much profit as they could, because they would be paid a salary by the emperor. This could, however, end up in a less forceful tax collection. Therefore, Justinian urged his subjects to pay their full taxes voluntarily and without delay:

aangezien Wij niet van zins zijn lijdzaam toe te kijken hoe het grondgebied van de Romeinen wordt verkleind: integendeel, Wij hebben immers heel Africa [Libië] heroverd [*ἀνακτησαμένων/reparavimus*], en de Vandalen onderworpen en Wij leven in de hoop met Gods hulp vele nog grotere wapenfeiten dan de zojuist genoemde te mogen verrichten²⁰⁰

The emperor hoped to receive from God even greater things than the recovery of Africa.²⁰¹ Although this text was primarily used to convince subjects of the need for taxation, the emperor did express a territorial ambition. Not necessarily to reconquer the lost provinces though – he might have been satisfied with a victory over the Persians as well.

The most often used phrase from the *Novellae* used to support the idea of *restoratio imperii* is in Nov. 30.11.2. This *Novella* appointed the new proconsular governor of Cappadocia and almost at the end of the text emphasised this new official would treat the people with integrity:

Voorts zal hij [the proconsular governor] Onze onderdanen – dit hebben Wij al heel vaak gezegd – op integere wijze behandelen, een zaak waarvoor Wij Ons veel moeite getroosten en die Ons ertoe gebracht heeft om van grote sommen geld af te zien, alhoewel dit gebeurt ten tijde van zulke omvangrijke uitgaven en grote oorlogen, waardoor God Ons heeft vergund vrede met de Perzen te sluiten, de Vandalen en Alemannen en Moren te onderwerpen en heel Africa en bovendien Sicilië in bezit te nemen en *goede hoop te mogen koesteren dat God Ons ook de heerschappij over de overige gebieden zou vergunnen waarover de oude Romeinen heersten tot aan de kusten van de beide oceanen en die zij door hun latere onverschilligheid kwijtgeraakt zijn.*²⁰²

This piece of text presumably displayed the ambition of Justinian to conquer the lost provinces, regain territory from one ocean to the other, and recover ‘the ancient Roman birthright’.²⁰³ And

²⁰⁰ Nov. 8.10.2: οὐδὲ ἡμῶν αἰρουμένων περιορᾶν τὴν Ῥωμαίων γῆν ἐλαττωθεῖσαν, ἀλλὰ Λιβύην τε πᾶσαν ἀνακτησαμένων καὶ Βανδύλους καταδουλωσάντων καὶ πολλά γε ἔτι καὶ μείζονα τούτων ἐλπίζόντων παρὰ τοῦ θεοῦ λαβεῖν τε καὶ προᾶξαι.

²⁰¹ Louth, ‘Justinian and his Legacy’ 203.

²⁰² Nov. 30.11.2, my italicisation: Καὶ καθαρῶς τοῖς ἡμετέροις ὑπηκόοις (τοῦτο ὅπερ πολλάκις εἰρήκαμεν) χρήσεται, προᾶγμα διεσπουδασμένον ἡμῖν καὶ χρημάτων ἀμελήσαι παρασκευάσαν μεγάλων, καίτοιγε ἐν τοσαύταις δαπάναις καὶ πολέμοις μεγάλοις, δι’ ὧν δέδωκεν ἡμῖν ὁ θεὸς πρὸς Πέρσας τε ἄγειν εἰρήνην Βανδύλους τε καὶ Ἀλανοὺς καὶ Μαυρουσίους χειρώσασθαι, καὶ Ἀφρικὴν ὅλην καὶ πρὸς γε καὶ Σικελίαν κατακτήσασθαι, καὶ ἐλπίδας ἔχειν ἀγαθὰς ὅτι καὶ τῶν λοιπῶν ἡμῖν τὴν ἐπικράτειαν νεύσειεν ὁ θεὸς ὧνπερ οἱ πάλαι Ῥωμαῖοι μέχρι τῶν πρὸς ἑκάτερον ὠκεανὸν ὀρίων κρατήσαντες ταῖς ἐφεξῆς ἀπέβαλον ὀρθυμίαις.

²⁰³ Louth, ‘Justinian and his Legacy’ 107, 205; Meier, *Das andere Zeitalter Justinians* 182; Pazdernik, ‘Justinianic Ideology’ 201 (‘birthright’); Where we might think of the Atlantic and the Mediterranean as the most likely bodies of water called ‘oceans’ in the text, ancient authors also regularly referred to the Black Sea as an ‘ocean’. Hence, we might be dealing with an empire surrounding the Mediterranean and the Black Sea, which Justinian’s Empire more or less did at this point. In addition, there is the possibility that the conquest of the Vandal Empire was seen as

indeed, there is certainly an ambition, or at least a good hope, to reconquer lost territories in these lines. However, I think this referred principally to Italy. At the moment of promulgation of this *Novella* (March 536), Belisarius had just taken over Sicily (late December) and Mundus had made great progress in Dalmatia this very month. In other words, Justinian was in the middle of conquering the core of the old Roman Empire. More importantly though, the point of this part in the *Novella* was not to proclaim the emperor's intention to restore the ancient empire, it was to show the pains he took to ensure his subjects were treated fairly. Despite all the territorial ambitions, he did not exploit his subjects for all money he could get – a nice contrast with the need for money in *Novella* 8. Instead, the cited passage was followed immediately by this statement:

Wij beijveren Ons, in vertrouwen op het bondgenootschap met God, deze [onverschilligheid] ten goede te keren en Wij schrikken nergens voor terug, zelfs niet als dit met de grootste moeilijkheden gepaard gaat, want Wij hebben bij voortduring met slaapgebrek en honger en met al die andere moeiten te kampen ten behoeve van Onze onderdanen.²⁰⁴

The emperor was working very hard because he cared so much for his subjects. They were more important than all those territorial ambitions combined.

Although three of the five phrases did make use of some rhetoric of restoration and might betray some further territorial ambition, they were not statements of imperial policy. Rather, they served as arguments to persuade the audience of the righteousness of the laws and the necessity to obey them. In the end, these few passages hidden in the bulk of Justinianic legislation were too insignificant to really convince as evidence for a greater plan to restore the old Roman Empire.

Romanitas in New Rome

If we return to Maas's article on the *Novellae*, we see *restoratio imperii*, if it holds at all, cannot give the whole story. But Maas gives another explanation for the use of historical context in the reform legislation. He claims the preambles were a deliberate propaganda effort in response to contemporary political conditions. Justinian had to reassure the senatorial class he respected ancient custom after a part of them had opposed the emperor during the heavily upsetting Nika riot.²⁰⁵ The reason the historical context remained limited to the reform legislation was that in later years, the mood in the city had changed and this type of antiquarianism was not needed anymore. Furthermore, these reforming measures were considered exceptionally innovative.

connecting the Byzantine Empire to the Atlantic. Which bodies of water are meant by *Novella* 30 thus remains obscure.

²⁰⁴ Nov. 30.11.2: ἄς ἡμεῖς τῇ παρὰ θεοῦ συμμαχίᾳ θαρροῦντες ἐπὶ τὸ κρεῖττον μεταβάλλειν σπεύδομεν οὐδέν τε ὀκνοῦμεν τῶν εἰς ἐσχάτην δυσκολίαν ἠκόντων, ἀγρυπνίαις τε καὶ ἀσιτίαις καὶ τοῖς ἄλλοις ἅπασιν πόνοις ὑπὲρ τῶν ἡμετέρων ὑπηκόων διηνεκῶς καταχρῶμενοι.

²⁰⁵ Maas, 'Roman History and Christian Ideology' 25-26.

However, Roueché shows the reforms were not always ‘exceptionally innovative’. Novel 8, for example, abolished vicariates that already had become redundant when the law was promulgated. Similarly, Novel 102 appointed a *moderator* to Arabia and claimed to redistribute power between civil and military administration, yet this ‘new situation’ had already been in place.²⁰⁶ The change-of-mood-argument is also not very convincing. The idea of Justinian as a restorator of the Roman Empire is based on literature from the early 550s.²⁰⁷ So if the opinion on antiquarianism had changed between the 530s and the 550s, it had rather become more favourable than less.

Nevertheless, there must be an explanation for this fascination with the past, since it remained different from the standard *reverentia antiquitatis* of previous legislators and was exceptionally apparent in a limited number of *Novellae*. I think we should look for the answer not in the revival of Rome, but in its continuation.

In 324, Emperor Constantine established a ‘New Rome’ on the shore of Asia Minor. He called it ‘Constantinople’ and dedicated it on 11 May 330. From its foundation it was the seat of government, sharing this status with Rome when the empire fell in half. Constantine remodelled the city of Byzantium into a Roman city worthy of its status, complete with a capitol, a mint, praetorium, hippodrome, forums and a palace complex. Furthermore, he brought older works of art and architecture from throughout the empire into the city.²⁰⁸ The link with old Rome and Roman culture was strongly established, although Rome’s status as ancient heart of the empire could not be disavowed. After the fall of the West, the connection with old Rome was weakened while at the same time it increased in importance to legitimise ‘Roman’ rule and to claim ‘Roman’ identity in the ‘Greek’ east. In addition, this crisis of identity was complicated by rising tensions between Christians and pagans, the latter of which were also called ‘Hellenes’, hence ‘Greeks’.

The discussion about ‘Byzantine’ (East-Roman) identity often revolves around language and is tended to be seen in terms of conflict between Greek versus Latin, with further sub-text to do with the assumed tension between classical and non-classical.²⁰⁹ This conflict also played a role in Justinian’s legislation. Although the eastern empire used Greek for the imperial administration, Roman law had always been practiced in Latin until after the promulgation of the *Codex*. Hereafter, Greek became the primary language to record law too. Honoré has discerned the decisive shift to Greek as the primary language of legislation in 535. He claims

²⁰⁶ Roueché, ‘Provincial governors’ 87.

²⁰⁷ Meier, *Das andere Zeitalter Justinians* 169-170 ; Roueché, ‘Provincial governors’ 87; L. van Hoof & P. van Nuffelen, ‘The Historiography of Crisis: Jordanes, Cassiodorus and Justinian in mid-sixth-century Constantinople’, *Journal of Roman Studies* 107 (2017) 275-300: 277-279. Whether these authors of the 550s really present Justinian as a restorator (in favourable texts) or – the antithesis – innovator (in critical texts) is contested. Noethlichs, ‘Quid possit antiquitas nostris legibus abrogare?’ 129 claims Justinian is a ‘Neurer’ not an ‘Erneurer’ and this fits better with what we have found in the *Novellae* so far.

²⁰⁸ I. von Bredow & G. Makris, ‘Constantinople’ in: C.F. Salazar ed., *Brill’s New Pauly* (online 2006), accessed 25-05-2018, http://dx.doi.org/10.1163/1574-9347_bnp_e619670.

²⁰⁹ A. Cameron, ‘Old and New Rome: Roman Studies in Sixth-Century Constantinople’ in: P. Rousseau and M. Papoutsakis ed., *Transformations of Late Antiquity. Essays for Peter Brown* (Cornwall 2009) 22.

the last Latin *Novella* comes from 541, even though Latin twin-*Novellae* 143 and 150 are dated to 563.²¹⁰ In any case, ‘Latin provinces’ would still receive their laws in Latin during the early reign and in all likelihood this practice continued in later years.

The antiquarian writer John Lydus, taken to represent a large portion of the members of the imperial administration, has used this shift to Greek to critique the imperial government or at least to explain the degeneration of the praetorian prefecture as he saw it.²¹¹ His work *De magistratibus* breathes a fear for discontinuity with the Roman past.²¹² One of the strongest expressions of this fear, is his presentation of an oracle claiming that ‘Fortune would depart from the Romans at the time when they should themselves forget their ancestral tongue’ – twice.²¹³ Before attributing too much value on this statement, we must remember a high-valued Latin language would have increased Lydus’ personal status as Latin connoisseur and strengthened his attack on his nemesis John the Cappadocian, the praetorian prefect who Lydus held responsible for the shift to Greek.²¹⁴

In his *Novellae*, Justinian himself addressed the language of the laws only in terms of clarity, a motive expressly denied by Lydus.²¹⁵ The office instructions of *Novella* 17 should be distributed in Latin or Greek ‘in accordance with the character of the area’ (*secundum locorum qualitatem*) to let the officials know what was expected of them.²¹⁶ Similarly, in *Novella* 7 on church property, Justinian added a Greek summary of a Latin law from his *Codex* to the preamble²¹⁷:

Wij verordenen namelijk, dat die wet algemene werking heeft jegens iedereen en van kracht blijft: dat is ook de reden dat Wij haar aan Onze eigen wet vooraf hebben laten gaan en de rechtsregel niet in de taal van Onze voorvaderen hebben laten opstellen, maar zoals U ziet in deze gemeenschappelijke taal, namelijk het Grieks, zodat iedereen er kennis van kan nemen omdat zij makkelijk te begrijpen is.²¹⁸

The most important thing for Justinian was that everybody could understand his laws. What else would have been the use of the elaborate rhetoric of the *Novellae*?

In a recent article, Dmitriev has analysed the question of Byzantine identity from an interesting new perspective. He analyses Lydus and notices that the author used the Greek-

²¹⁰ Honoré, *Tribonian* 124-138.

²¹¹ Representativity of Lydus: S. Dmitriev ‘John Lydus and His Contemporaries on Identities and Cultures of Sixth Century Byzantium’, *Dumbarton Oaks Papers* 64 (2010) 27-42: 30; M. Maas, *John Lydus and the Roman Past* (London 1992).

²¹² Maas, *John Lydus* 53.

²¹³ John Lydus, *De magistratibus reipublicae Romanae* (Περὶ ἀρχῶν τῆς Ῥωμαίων πολιτείας) 2.12.1-2 & 3.42.1-2.

²¹⁴ Lydus praised for his knowledge of Latin: *De magistratibus* 2.29.1-2; John the Cappadocian changing language *De magistratibus* 3.68.1-2.

²¹⁵ Lydus, *De Magistratibus* 3.68.2.

²¹⁶ Nov. 17.pr.pr.

²¹⁷ Spruit, *Corpus Iuris Civilis* (vol. X) 92 n.1.

²¹⁸ Nov. 7.1: ἐκείνην γὰρ κατὰ πάντων κρατεῖν καὶ κυρίαν εἶναι θεσπίζομεν, διόπερ αὐτήν καὶ προϋθήκαμεν καὶ οὐ τῇ πατρίῳ φωνῇ τὴν νόμον συνεγράψαμεν, ἀλλὰ ταύτη δὴ τῇ κοινῇ τε καὶ Ἑλλάδι, ὥστε ἅπασιν αὐτὸν εἶναι γινώριμον διὰ τὸ πρόχειρον τῆς ἐρμηλείας.

Roman dichotomy differently in different spheres. Roughly, 'Roman' related to Roman law and state administration, whereas 'Greek' concerned social and communal life. However, whether someone was 'Roman' or 'Greek' depended heavily on the context and the group the person was compared to. When talking about 'Roman' and 'Greek' authors, Lydus distinguished them on the basis of their language, Latin or Greek respectively. In matters of culture, Byzantines were 'Greeks' rather than 'Romans', because Greek culture was deemed superior. However, when juxtaposed with 'barbarians', Byzantines were Romans. When religion was concerned, being 'Roman' was being part of the Christian empire, while 'Greek' had a pagan connotation. Ethnically, Lydus only called people from Rome 'Romans' and Byzantines were again 'Greeks'. In general, the Byzantines were 'Greek' in the social-cultural sphere and 'Roman' in the political sphere. Dmitriev sees this stance also in other contemporary authors from east and west.²¹⁹

According to Dmitriev, we should see Lydus' critique on the language-shift from Latin to Greek as a warning for the danger of losing the political inheritance of Rome.²²⁰ Lydus justified the political *Romanitas* of the Byzantines by tracing the origin of the state to ancient Rome, and more specifically the origin of the praetorian prefecture.²²¹ The office of praetorian prefect would go back upon an office supposedly instituted by Romulus called the 'master of the horse'.²²² For Lydus, the Latin language, the history of Rome, and the exercise of political power were linked and he used the shift to Greek as an argument for his position in an ongoing debate about Roman identity and political goals. The demise of the praetorian prefecture was linked with the demise of *Romanitas*, and thus of the empire. The imperial administration apparently did not think language was critical for the connection with old Rome or denied it such relevance because it did not suit them. I think 'law' as an institution in itself was 'Roman' enough for the culturally Greek empire to serve the emperor's purpose. As an expression of the Roman state, they were important for the continuity of *Romanitas*. Where Lydus ironically placed the origin of law in Greece, the *Novellae* placed it firmly in Rome²²³: 'Aan het aloude Rome is het ten deel gevallen de oorsprong van het recht te herbergen'.²²⁴

The institution of law was more important to be a legitimate political inheritor of the *imperium Romanum* than was the language not spoken by most of its inhabitants.²²⁵ Nevertheless, the *Novellae* did repeatedly mention that Latin was Justinian's mother tongue.²²⁶ Moreover, the new officials (*pretor*, *moderator*, etc.) often got Latin names. Latin was still

²¹⁹ Dmitriev 'John Lydus and His Contemporaries' 27-42.

²²⁰ Ibidem 40-41.

²²¹ Ibidem 36; Maas, *John Lydus* 53ff.

²²² Lydus, *De Magistratibus* 1.14-15.

²²³ Ibidem 1.34.1-3.

²²⁴ Nov. 9.pr.

²²⁵ On the importance of the legal tradition for Roman identity and the *imperium Romanum*: Honoré, *Tribonian* 32; Mazal, *Justinian I. und seine Zeit* 96; Louth 108; Troianos 13. In addition, the theme of maintaining order is also very Roman: Maas, 'Roman Questions, Byzantine Answers' 6.

²²⁶ Nov. 146.1; 7.1; 13.1; 15.pr; 30.5; and 69.pr.

important as a tie to the Roman past, but for the practice law, considerations of clarity took the upper hand.

The need for continuity of Rome as legitimation for Byzantine rule was felt more widely than only in Lydus' history of the praetorian prefecture. It was only natural to search for things that could show an impression of cultural stability in times of profound change by linking new developments back to distant, shared heritage – that is, by anchoring innovation in the past. Take for example the treatment of the Palladium by the historian Malalas as a leitmotiv throughout his books. The Palladium was a statue of Athena that had been taken from Troy, was put up in Rome and finished its spectacular wanderings in its natural ending point: Constantinople. The Palladium emphasised the continuity between the mythical past of Troy, the imperial legacy of Rome and the city of Constantinople.²²⁷

Another way to establish the link with Rome was of course the terminology of 'old Rome' and 'new Rome'. Lydus attributed the phrase *Ῥώμη νέα* to Constantine, but he himself rather distinguished between 'our Rome' (*ἡμετέρας Ῥώμης*) and 'first Rome' (*τὴν πρώτην*).²²⁸ Agathias mentioned 'elder Rome' in his history and Paul the Silentiary wrote an elaborate allegory with the personification of Rome actually denoting Constantinople and 'old Rome' relegated to 'Latin Rome' and 'mother [of Constantinople-Rome] on the Tiber'.²²⁹ The *Novellae* too, mentioned 'former Rome', 'old Rome' and even 'new Rome' when the text needed to distinguish between the two places.²³⁰

Anchoring the Roman state

So tracing our steps, we look again at the topics of the *Novellae* using historical context. Although a very large part of the *Novellae* was concerned with inheritance, property, marriage, the church or legal procedures, none of those subjects was discussed in historical terms. So what did not just the reform legislation analysed by Maas, but all discussed *Novellae* about *pretors*, city councils, and imperial dating have in common? They were all faces of Roman rule.

Provincial governors, high officials, ancient institutions and methods of dating all reminded of a political system going back to times immemorial – or rather, remembered vividly as representing a political, constitutional link to the ancient Roman Empire. And this link is presented in a law, something particularly Roman. Rather than a restoration, the *Novellae* present a continuation.

Some historians have assumed an imperial fear of the accusation of 'innovator'. In their view, the opposition between innovation and restoration was a dominant theme in sixth-

²²⁷ R. Praet, 'Re-anchoring Rome's Protection in Constantinople: The pignora imperii in Late Antiquity and Byzantium', *Sacris Erudiri* 55 (2016) 277-319: 294-295.

²²⁸ All mentioned in Lydus, *De Magistratibus* 2.30.2-5. See also 2.20.1, 1.20.7.

²²⁹ Paul the Silentiary, *Description of the Hagia Sophia* (Ἐκφρασις τοῦ Ναοῦ τῆς Ἀγίας Σοφίας) 145ff. Translation in Bell, *Social Conflict in the Age of Justinian* 196 n.33.

²³⁰ Nov. 9.pr; 131.2 (545); 70.1 (535); 75.1=104.1.

century literature.²³¹ Hence, when Justinian was trying to restore the Roman Empire, they concluded his use of the past was to have innovations ‘in disguise’, to serve as pretexts.²³² However, as we have seen, Justinian was not afraid to say he was doing something new. If there was indeed a policy to disguise innovation, the theme of restoration should have been in other *Novellae* as well and it should have been more emphasised in the *Novellae* it was in. A constitutional link with ‘old Rome’ was important for the continuity of the empire, but there was no mistaking the emperor’s ‘Rome’ was new and improved.²³³

The only *Novella* really ‘disguising’ innovation as a restoration is *Novella* 28, which appoints a new *moderator* in Helenopontus. Here, the innovation of uniting Helenopontus and Polemonic Pontus in one region is explained by the historically inaccurate claim that they were one province in antiquity.²³⁴ In general, however, the innovations might be veiled by authenticity, but not disguised as restoration. *Novella* 80 on the appointment of a *quaesitoroc* is exemplary: the office of *quaesitoroc* was called that because it was already known by that name during ‘the earliest times’ (τοις ἀνωτάτω χρόνοις).²³⁵ Now, the office was ‘more or less renewed’ (σχεδόν τι καινουργουμένην) by the emperor and it was expected he would receive praise ‘because We have created a new office’ (ὅτι καὶ νέαν ἀρχὴν προσεθήκαμεν).²³⁶ Innovation and tradition went hand in hand in these matters of political *romanitas*.

So do we need to expect historical context in the preambles of every *Novella* treating a subject related to the Roman state? *Novellae* 8, 10, 35, 45, and 95 dealt with administrative changes inside the imperial bureaucracy, but lacked any historical context in their preambles: *Novella* 8 was about the pay for officials, 10 was concerned with the amount of clerks in the imperial cabinet, 35 treated the amount of servants of the *quaestor*, 45 dealt with membership of the *decuriones*, and 95 forbade governors to leave their province during office. However, these laws differ from the historical laws, because they did not have the same public character. The *Novellae* on governors and institutions were concerned with members of government who had a somewhat representative function for the state. They were representations of Roman authority on the ground. *Novellae* 8, 10, 35 and 45 rather dealt with changes internal to the imperial bureaucracy. They were, as it were, corporate memo’s.

In *Novella* 45 dealing with membership of the city councils, we might therefore expect a historical preamble. After all, the city council was an ancient institution. However, this law was not concerned with traditional duties of normal council members (and their neglect of them), but rather reprimanded the praetorian prefect for not forcing Jews and heretics to live up to their societal obligation as financial contributors to the councils. The *Novella* has a hostile

²³¹ This idea is contested by Noethlichs, ‘Quid possit antiquitas nostris legibus abrogare?’ 128-129, who claims both favourable and critical literary works frame Justinian as a ‘Neuerer’, aber nicht ‘Erneuerer’.

²³² Maas, ‘Roman History and Christian Ideology’ 28-29; Honoré, *Tribonian* 254; Pazdernik, ‘Justinianic Ideology’.

²³³ Justinian’s age was presented as a new and golden age, as shown elaborately and convincingly by Meier, *Das andere Zeitalter Justinians*.

²³⁴ 28.pr-1; Maas, ‘Roman History and Christian Ideology’ 22.

²³⁵ Nov. 80.

²³⁶ Nov. 80, more or less renewed in earliest times: 80.1, new office created: 80.ep.

religious tone that was in this context more important than emphasising a continuity with Rome.

I am left with categorising *Novella* 145 on the abolishment of the ‘police commander’ of the Phrygian provinces and of Pisidia. Despite its topic (an office), its preamble did not contain historical context. This law was of a much later date than the others: while the other historical *Novellae* end in 539 (Nov. 80), *Novella* 154 is dated to 553. Other historians have claimed there was no more ‘classicism’ after 542 and attribute it to the end of the reform program, the death of *quaestor* Tribonian, a change of mood in Constantinople or a shift of imperial priorities to theology due to the societal impact of diverse military setbacks and natural disasters.²³⁷ However, they have based this idea only on the reform legislation of Maas. Unfortunately, *Novella* 145 is the only law after 539 meeting the requirement of being a state-related law of public character, so we have no way to check whether it was classicism that disappeared or just state-related laws. If we should take this *Novella* as definitive proof, classicism would indeed have disappeared. However, there might have been another reason why this law lacked a historical note: it was neither a *Novella* of appointment, nor a ‘restoration’ of an institution. On the contrary, an earlier appointed official was abolished. The emperor did this, because he had gotten reports of the inhabitants of the concerned provinces about the official’s misbehaviour and his redundancy in changed circumstances. Or, in the emperor’s words:

Terwijl Wij voor de problemen die voortdurend opduiken telkens de passende oplossing vinden, keren Wij, zodra de noodzaak voorbijgegaan is, weer tot de vroegere orde terug, doordat Wij de helende maatregel beperken tot alleen het pijnpunt.²³⁸

The emperor responded to repeated appeals of his subjects in an effort to ease their lives by reversing by now superfluous measures, something entirely different from establishing a new office in line with traditional Roman rule. Thus, an explanation in terms of the disappearance of classicism is not necessary.

Conclusion

The *Novellae* were vertically anchored in two ways: by placement in a legal tradition and by placement in a historical context. New laws on virtually all subjects were presented as building upon the wisdom of Justinian’s forefathers. Sometimes the laws were building upon the emperor’s own wisdom, his own previous laws. The legal tradition legitimised the *Novellae* with the authority of tradition, but also presented a living past that one could actively engage with. In addition, it showed the audience the importance of the discussed subjects. In addition, the explicit placement in a legal tradition gave away an ideal of a body of law that was clear

²³⁷ Maas, ‘Roman History and Christian Ideology’ 28; Honoré, *Tribonian* 223-42; Meier, *Das andere Zeitalter Justinians* passim, esp. 104; Noailles, *Les collections des Nouvelles* 7.

²³⁸ Nov. 145.pr: Τοῖς ἀεὶ παρεμπύπτουσι τὴν προσήκουσαν ἐκάστοτε θεραπείαν εὐρίσκοντες, ἐπειδὴν τὰ τῆς χρεῖας παρέλθῃ, πάλιν τῆς προτέρας γινόμεθα τάξεως, μέχρι μόνου τοῦ πεπονηκότος τὴν ἰατρειάν ἰστώντες.

and well-ordered. Although not a diachronic anchoring device, the aim for clarity was definitely a structuring concept for Justinian's legislation.

The only type of *Novellae* structurally lacking references to previous legislation more than made up for it by introducing historical context to vertically anchor these laws. Three types of 'historical context' could be distinguished: regional histories, office histories and institutional histories. The *Novellae* on the appointment of provincial officials often involved regional histories explaining the historical relationship between the province and Roman rule. Sometimes this amounted to a clarification why this province got a particular office, although the argumentation was generally not very convincing. It was more important for the text to present the reorganisation as an honour, while at the same time making clear 'Rome' was dealing the cards. The provincial inhabitants should never forget that.²³⁹

The office histories traced the origin of the office that was newly established. They were combined with regional histories in the case of provincial officials, but they could stand on their own as well. In these *Novellae*, an office was saved from oblivion. Its name and nature was restored, although they were established in contemporary circumstances with a new purpose. Finally, institutional histories told about the moral degeneration of ancient institutions like the Senate and city councils. These institutions did not have to be dug up from a distant past – they were still in function – but they did need a revival. The new law would stop the degenerative trend and restore virtue and honour to the institution's members.

These three types of historical context were general tendencies, not a rigid scheme. *Novella* 70 on when *decuriones* were free of obligations shows there was no clear-cut division. It does not mention moral degeneration (although it is implied) as we would expect when talking about city council members. It is, however, at the same time introducing a new kind of magistracy:

Wij weten namelijk dat oudtijds een vorm van prefectuur bestond die men 'honorair' noemde, waarbij de benoemingsbrieven daarvoor vanuit het keizerlijk Gezag werden uitgereikt. Die prefectuur noemde men zo omdat aan hen die deze waardig werden geacht, niets anders werd verleend dan een loutere eretitel die de raadsleden niet van hun positie van raadslid bevrijdde als men de prefectuur niet metterdaad uitoefende. En precies zoals Wij ook bij de illustere opperbevelhebbers zien dat men evenmin op grond van het bevelhebberschap bevrijd kan zijn van de positie van raadslid, indien men dit niet daadwerkelijk uitoefent²⁴⁰

The text presents the 'office' of 'honorary prefect' rather in the style of an office history. The ancient custom was 'renewed' (*ἀνανεούμενοι*) and the emperor would make it irrevocably

²³⁹ Roueché, 'Provincial governors' 88-89.

²⁴⁰ Nov. 70.pr: ἴσμεν γὰρ ὡς τὸ ἀρχαῖον ἦν τινος ἐπαρχότητος σχῆμα, ἣν ὀνομασίαν ἐκάλουν, κωδικίλλων ἐκ τῆς βασιλείας ἐπ' αὐτῇ παρεχομένων· ταύτην δὲ οὕτως ὠνόμαζον ὡς οὐδενὸς ἑτέρου πλὴν ἢ ψιλῆς τιμῆς τοῖς ταύτης ἡξιωμένοις παρεχομένης, ἥτις τοὺς βουλευτὰς οὐκ ἀπήλαττε τύχης βουλευτικῆς, εἰ μὴ τις αὐτὴν ἐν αὐτῷ τῷ ἔργῳ διώκησατο. καὶ ὥσπερ ἐπὶ τῶν ἐνδοξοτάτων στρατηλατῶν ὀρωμεν, ὡς οὐκ ἂν τις οὐδὲ ἐκ στρατηγίας ἀπαλλαγείη τύχης βουλευτικῆς, εἰ μὴ ταύτην ἔργῳ πράξειε.

clear when the honoured official was exempted from his obligations as city council member. He would get the symbols of the office (σύμβολα τῆς ἀρχῆς) and the office of:

stadsprefectuur in het oude Rome en in het nieuwe – uiteraard dit bij Ons –, of op de pretoriaanse rechterstoel van het Oosten, Italië en Libië [=Africa] en evenzeer in Illyrië, die God alle onder Ons gezag heeft gesteld.²⁴¹

Along the way, the link between Constantinople and Rome was strengthened, which brings us to the reason why it was these laws that made such an extensive use of the past.

The East-Roman Empire had a continuous need to legitimise their Roman inheritance. It claimed to be a ‘Roman’ empire, but after the fall of the West and the loss of its symbolic centre Rome, this claim became harder to maintain. In addition, the East struggled with reconciling its Greek cultural identity with this Roman identity. When ‘Greek’ got pagan connotations in the face of Christianity, the situation became even more complex. Sixth-century literature and Justinian’s legislation seem to imply the solution laid in the distinction between political and socio-cultural identities, not very different from how Western commentators have reacted when stating the Roman Empire was politically one entity, but that culturally the identities of East and West diverged.²⁴² As inheritor of Rome’s political power, Justinian needed to stress constitutional continuity to gain legitimacy. And he would not be the historical force he was when he did not present himself as more than a continuator of the past, for he was also an optimiser, an improver. His Constantinople was a ‘new Rome’ and his officials were called after ancient Roman officials, but they would be better and more splendid than their predecessors.

All *Novellae* that featured one of the three types of historical context in their preambles dealt with topics related to the public Roman state. Conversely, all *Novellae* treating these topics featured historical context with a remarkable consistency. The laws were concerned with members of government who were representatives of the state. They were the faces of Roman rule. Even *Novella* 47 presenting a new method of dating can be seen in this light. It was an outward expression of Roman authority to the empire’s subjects.²⁴³

We can also approach the extensive use of previous legislation from the perspective of upholding continuity with Roman rule and improving upon it. Roman law was a matter of Roman identity too. Although as innovations laws necessitated an historical anchor, as public expressions of the Roman state they were important for the continuity of *Romanitas*. New laws produced and necessitated a vertical anchor at the same time.

Justinian was neither as liberal, nor as strict in his use of the past as is sometimes thought. He was neither obsessed with ‘restoration’ in all of his laws, nor did he solely refer to the past

²⁴¹ Nov. 70.1: ἡ τῆς πολιαρχίας τῆς ἐν τῇ πρεσβυτέρῃ Ρώμῃ καὶ τῇ νέῃ δὴ ταύτῃ τῇ καθ’ ἡμᾶς, εὔτε ἐπὶ τῶν πραιτωριανῶν βημάτων τῶν τε τῆς Ἑώρας τῶν τε τῆς Ἑσπέρας τῶν τε Λιβύης καὶ μὴν καὶ τῶν ἐπὶ τῆς Ἰλλυρίδος, οὐσπερ ἅπαντας ὑφ’ ἡμᾶς πεποιήκεν ὁ θεός.

²⁴² Dmitriev ‘John Lydus and His Contemporaries’ 34.

²⁴³ See n.173.

during a specific reform programme. The *Novellae* show historical context was deemed appropriate when the public character of the Roman state was addressed. This could have been a conscious, but also an unconscious choice. Because continuity with old customs was important, the laws definitely included elements of restoration. However, they were not used to disguise innovation.²⁴⁴ Instead, they anchored legislation vertically, emphasising Roman identity and, if a province was concerned, Roman superiority.

Sometimes historical rhetoric and concerns about social welfare tended to clash in the *Novellae* (i.e. Nov. 45 and 145). These distinct approaches seem almost mutually exclusive. Although the majority of the laws claimed to deal primarily with the well-being of the emperor's subjects, the rhetorical vocabulary used there was considerably less prominent in *Novellae* featuring historical rhetoric. The justification of these non-constitutional-political laws was approached rather differently: they were not anchored vertically, but horizontally. In the next chapter, I will take a closer look at this bulk of *Novellae*. Instead of in historical developments, they were anchored in contemporary values and ideas about what good emperorship should entail. As we have seen, there was a power in precedent, but there was a power in principles as well.

²⁴⁴ With the exception of the unification of Helenopontus.

Chapter 3: Christian father and Roman ruler

The themes of the preambles of the *Novellae* seem contradictory at first glance. On the one hand, more than half of the laws emphasised their link with previous legislation and state administration and placed the *Novellae* in a legal or historical tradition. On the other hand, the preambles stressed that the emperor's subjects and the utility of the laws for their benefit was the only concern of the emperor. And indeed, there was a certain tension between constitutional continuity on the one hand and responding to the subjects' immediate needs on the other. However, both strategies of anchoring worked together at providing legitimacy for the state as embodied in the person of the emperor. At the same time, they represented the corner stones of imperial policy.²⁴⁵

With the development of the 'chancery style' since the time of Diocletian, imperial constitutions had adapted a more persuasive style of writing. The language of the preambles was designed to secure the consent of subjects for new legislation.²⁴⁶ Preambles were important for getting the attention of listeners, ensuring their favourable disposition towards the law, and preparing them for the rest of the content. However, in my study of the *Novellae* I have found that the epilogues of the laws could similarly contain valuable ideological information. In these last few lines, the emperor could urge his audience to remember his good qualities one last time. The piety of the emperor and especially his *philanthropia*, themes that will be discussed in the paragraph below, seem to have been very suitable for this final effort of persuasion. The ultimate goal was that people would completely internalise the law, or in the words of Voss:

Das Ziel der Beeinflussung wäre erreicht wenn ohne Äußeren Zwang die Gesetze in der Bevölkerung positiv aufgenommen würden; wenn der, der nach ihnen lebte, allgemeine Anerkennung fände; wenn die Bevölkerung Unrecht von sich aus nicht mehr beginge und der Bürger selbst dafür sorgte, dass Übeltäter vor Gericht gebracht würden.²⁴⁷

But how was this goal achieved? What buttons did law-makers have to push for the people to accept the legislation?

Persuasion, regulation and self-presentation of the emperor were intimately connected in the *Novellae*. The emperor did not distinguish between a law-letter, an imperial policy pronouncement, or a pamphlet of blatant self-glorification. Already in the early fourth century, an official *epistula* could contain what would later be recognised as a 'general law', but might also be no more than a manifesto on a subject of which the emperor wished his subjects to become aware.²⁴⁸ The lack of distinction between different kinds of imperial texts meant general laws like the *Novellae* worked on different levels: the topic of the law, the manner in which it was initiated and the rhetoric used worked together to present a regulation, a policy,

²⁴⁵ See also Troianos, *Die Quellen* 12.

²⁴⁶ Benner, *The Emperor Says* 15-17; Ries, *Prolog und Epilog* 191; Honig, *Humanitas und Rhetorik* 39; Mazal, *Justinian I. und seine Zeit* 95; Spruit, *Corpus Iuris Civilis* (vol. X) XLV-XLVI; Humfress, 'Law and Legal Practice' 174.

²⁴⁷ W.E. Voss, *Recht und Rhetorik in den Kaisergesetzen der Spätantike. Eine Untersuchung zum nachklassischen Kauf- und Übereignungsrecht* (Frankfurt am Main 1982) 78.

²⁴⁸ Harries, *Law and Empire* 25, 44.

and a statement about the nature of the emperor. As we have seen in chapter 2, the use of historical context corresponded to state-related issues. In addition, the promulgation of laws in a Roman legal tradition was itself a way to present an image of continuity. Similarly, as we will see in this chapter, the promulgation of laws on inheritance or property rights of the weaker in society (women and children) was itself a way to present the emperor as protector of those people while presenting imperial policy c.q. what the emperor thought was important. On top of that, the text might say the *Novella* was a response to a petition, strengthening the image of an approachable, caring emperor. Finally, by pronouncing the law, implicitly or explicitly other behaviour was denounced as immoral. This made the emperor an educator in the good life, a moral guide to his subjects.²⁴⁹

In the previous chapter, I have discussed how vertical anchoring could increase the legitimacy of a law, of the emperor and even of Roman rule in general. In this chapter, I will analyse how the *Novellae* were horizontally anchored. The themes used in the preambles must have been appealing to a contemporary audience, otherwise they would not have been used. They must have been part of the shared field of experience of ruler and ruled. Furthermore, chapter 1 has shown that the language of the *Novellae* was influenced by a feedback loop between emperor and subject, each projecting their expectations of proper behaviour on the other and in this way also providing behavioural restraints. In addition, ‘middle men’ added their interests to the mix. As a result, the themes featured in the preambles were influenced by all parties involved, although we see only the imperial part of the conversation in the *Novellae*. Nevertheless, to be successful the *topoi* used had to be anchored in the worldview of their sixth-century audience. The better the law-makers succeeded in playing on the *Gefühlswelt* of the subjects, the faster the imperial initiative would be seen as successful and beneficial.²⁵⁰ The language had to perform almost like magic: the power of the word of the emperor was pushed to its limits with the purpose to make things happen in the real world. But like a spell, people had to believe in them.²⁵¹

The pious caretaker

Different *topoi* of imperial self-presentation can be discerned in the preambles, first chapters and epilogues of the *Novellae*. The most important work in this area is done by Hunger.²⁵² His study of the preambles of imperial constitutions from all Byzantine emperors is still very strong. He distinguishes between four categories representing different parts of the imperial image (*Kaiseridee*): the emperor and the divine, the emperor and his responsibility towards his subjects, the emperor as creator and ‘completor’ of the law, and the emperor as helper and giver of mercy. Since Justinian’s *Novellae* are the largest preserved corpus of *Novellae*, they constituted the principal source for Hunger’s analysis. It will not come as a surprise, therefore, that my analysis below reflects similar themes. I will place those themes in the legal context and theoretical framework I have discussed up to this point. This will shed new light on Hunger’s categorisation and show how the imperial image presented in the preambles relates

²⁴⁹ Harries ‘Superfluous Verbiage?’ 345-374.

²⁵⁰ Troianos, *Die Quellen* 27.

²⁵¹ Harries, ‘Superfluous Verbiage?’ 374, paraphrased quote of historical fiction writer Hilary Mantel.

²⁵² H. Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden* (Vienna 1964).

to the creation process of legislation and the importance of continuity with the Roman past, treated in the previous chapters. Eventually, this will result in a more comprehensive understanding of Justinian's *Novellae*.

God, the laws, and the emperor

No emperor before Justinian had portrayed the relationship between the emperor and God so strongly and never hereafter would this bond be trimmed back down.²⁵³ Justinian presented himself as the representative of God. In His absence on the mortal plane, the emperor was chosen to lead His subjects in the Roman state. Earlier emperors had relied less on their relationship with God and more on the traditional legal legitimation of their rule and on popular consent, although a strong bond between emperor and god had of course already been established during the Principate.²⁵⁴ Justinian certainly did not do away with these other elements – the *Novellae* regularly referred to the emperor's traditional *maiestatem*, *κράτος/potestas*, or *βασιλεία/imperium*²⁵⁵ – but showed his authority was both Roman and Christian, delegated by the Roman people and by God.²⁵⁶

However, while the consent of the people was something Justinian was constantly trying to gain by his behaviour (as I will show below), his authority from God was something the emperor simply claimed. As the emperor himself summarised it:

Met een niet aflatende wil spannen Wij Ons in om alles wat het nut en de glans van de door God aan Ons opgedragen staat regardeert, in werking te stellen.²⁵⁷

God had given the state in the emperor's care – which was presented as a fact – and the emperor had to work to improve this state to ultimately give the divine claim credibility.

In the *Novellae*, God specifically sanctioned the emperor's authority to create laws.²⁵⁸ He had put this responsibility on Justinian's shoulders and on his alone.²⁵⁹ Moreover, laws were promulgated 'in the name of Jesus Christ our Lord and God'.²⁶⁰ *Novella* 73 even presents the emperor as a prophet, sent by God to demonstrate exemplary behaviour and bringing the laws as his holy scripture:

Aangezien derhalve God het keizerlijk Gezag vanuit de hemel neerwaarts heeft gezonden, met de bedoeling dat het aan de lastige problemen zijn eigen goede normen oplegt en de wetten in overeenstemming brengt met de verscheidenheid van de natuur, hebben Wij

²⁵³ Meier, *Das andere Zeitalter Justinians* 107-108; J. Karayannopoulos, 'Der frühbyzantinische Kaiser', *Byzantinische Zeitschrift* 49.2 (1956) 369-384: 383-384.

²⁵⁴ Karayannopoulos, 'Der frühbyzantinische Kaiser' 381; Hunger, *Prooimion* 49-51.

²⁵⁵ *Novellae* 13, 43, 51, 53, 62, 70, 78, 80, 106, 136, 155, all from Tribonian's time as quaestor, combine these terms with *nos* to refer to the emperor as 'Our Authority'. *Maiestatem* only occurs in Latin texts without a Greek counterpart.

²⁵⁶ Pazdernik, 'Justinianic Ideology' 200.

²⁵⁷ Nov. 81.pr: Εἴ τι πρὸς ὠφέλειαν καὶ κόσμον ὄρα τῆς ὑπὸ τοῦ θεοῦ παραδοθείσης ἡμῖν πολιτείας, τοῦτο ἀεὶ βουλευόμενοι πρὸς ἔργον ἄγειν σπουδάζομεν.

²⁵⁸ Nov. 137.pr, 72.pr and 113.1.pr.

²⁵⁹ Nov. 143.pr=150.pr and 113.1.pr.

²⁶⁰ Originally, every law was introduced by this phrase, but the private collectors of the *Novellae* have generally left this out (Kaiser, 'Zur äußeren Gestalt' 162). The phrase is preserved in Nov. 7, 17, 43, 86, 134, 137, and 150.

daarom gemeend ook de onderhavige wet te moeten schrijven en te geven aan alle onderdanen gemeenschappelijk die God Ons eerder heeft toevertrouwd en er voortdurend geleidelijk bijgeeft²⁶¹

In just a few masterfully crafted lines, both the emperor's laws and his person were sanctioned by the divine. On top of that, a casual addition referred to Justinian's successful military efforts bringing more people under the Christian-Roman banner.

Together, God, the law and the emperor formed a triad of supreme authority. It was this 'trinity' that officials had to answer to according to the office instructions of *Novella* 17:

Welnu, U die onbesmet en zonder enige schenking het ambt gaat bekleden moet vóór al het andere voor God, voor Ons en voor de wet schone handen houden²⁶²

Officials must, before everything else, remain clear of conscience and free of corruption. They would serve society best by preventing financial damage to the people – otherwise subjects would not be able to pay their all-important taxes. In the last chapter of the *Novella*, the triad was invoked once more, yet in a slightly different order. When the officials obeyed the instructions, this would please 'God, the laws and Us'.²⁶³ In *Novella* 28 on Helenopontus, the phrase returned with again an emphasis on integrity combined with an uncharacteristically modest emperor. The new ruler of Helenopontus had to be aware of his greater responsibility now he was honoured with a new title:

Bijgevolg moet hij, nu hij ook in dit opzicht meer respectabel is, zich bewust zijn van de door Ons aan hem verleende vergroting [van zijn competentie] en zodanig van zijn bevoegdheden gebruik maken, dat hij zich als integer doet kennen jegens alle onderdanen en Onszelf en, vóór Ons, jegens God en de wet.²⁶⁴

God had sent the emperor to the empire to establish order in the lives of his subjects. Justinian did this by promulgating laws. He almost served as a prophet, a hatch passing along God's laws and moulding the state to make it resemble the eternal order of the divine kingdom. Officials were expected to fulfil their offices without going astray from the right path set by God, the laws and the emperor.

Servant of God

God not only authorised the emperor's right to make laws, but also stood by him in other areas as long as the emperor was pleasing Him. 36 *Novellae* offered an image of an explicitly pious

²⁶¹ Nov. 73.pr.1: Ἐπειδὴ τοίνυν βασιλείαν διὰ τοῦτο ὁ θεὸς ἐξ οὐρανοῦ καθῆκεν, ἵνα τοῖς δυσκόλοις ἐπιτίθησι τὰ παρ' ἑαυτῆς ἀγαθὰ καὶ τοὺς νόμους ἀρμόζη πρὸς τὴν τῆς φύσεως ποικιλίαν, διὰ τοῦτο ῥήθημεν χρῆσθαι καὶ τοῦτον γράψαι τὸν νόμον καὶ δοῦναι ἐν κοινῷ τοῖς ὑπηκόοις ὁπόσους ἡμῖν ὁ θεὸς πρότερόν τε παρέδωκε καὶ κατὰ μικρὸν αἰεὶ προστίθησι.

²⁶² Nov. 17.1: Δεῖ τοίνυν σε καθαρῶς παραλαμβάνοντα τὴν ἀρχὴν καὶ δόσεως ἀπάσης χωρὶς πρὸ τῶν ἄλλων ἀπάντων καθαρὰς φυλάττειν θεῶ τε καὶ ἡμῖν καὶ τῷ νόμῳ τὰς χεῖρας.

²⁶³ Nov. 17.17.

²⁶⁴ Nov. 28.8: ὥστε αὐτὸν καὶ κατὰ τοῦτο σεμνότερον ὄντα μεμνησθαι τῆς παρ' ἡμῶν δεδομένης ἀξίσεως αὐτῷ, καὶ οὕτω χρῆσθαι τοῖς πράγμασιν, ὡς ἄμεμπτον ἑαυτὸν πᾶσι τοῖς ὑπηκόοις καὶ ἡμῖν αὐτοῖς καὶ πρὸ γε ἡμῶν θεῶ τε καὶ τῷ νόμῳ παρέχειν.

emperor attempting to please God in their preambles and first chapters.²⁶⁵ In addition, 14 epilogues did the same, of which 6 had already made this point in the preamble.²⁶⁶ These laws were distributed across Justinian's complete reign with no sharp increase in the expression of piety after 542, a year sometimes presented as a watershed because of the death of Tribonian and other (disastrous) events invigorating the Christian faith.²⁶⁷ Sometimes the *Novellae* sufficed with calling the emperor 'Our Piety' (ἡ ἡμετέρα εὐσεβεία/*nos pietas*), but often his piety was more forcefully underlined.²⁶⁸ In *Novella* 109 on women who lost the faith, Justinian even makes the issue a matter of the salvation of his own soul:

Wij geloven dat Onze hoop op God gedurende het hele bestaan van Onze staat en keizerlijk Gezag voor Ons de enige bijstand betekent, in het besef dat dit Ons de redding van Onze ziel en van Ons keizerschap biedt. Daarop dienen bijgevolg Onze wettelijke bepalingen te berusten, daarop dienen zij gebaseerd te zijn en dit is hun begin, midden en einde.²⁶⁹

The state was embodied by the emperor and the salvation of his soul merged with the salvation of the empire. Saving the emperor was serving the common interest. The existence of the imperial authority and the Roman state laid in the hands of God and therefore it was only natural to create laws in His service. These laws came from a god-fearing emperor who propagated living a proper Christian life:

Om kort te gaan: elke overheidsdienst, civiel, publiek en militair, moet deze Onze wet [sic]²⁷⁰ handhaven omdat deze is uitgevaardigd in het algemeen belang en ten behoeve van de vroomheid van de hele wereld²⁷¹

The foremost representative of God told his people how to live. Obeying his *Novellae* served the 'piety of the whole world' (τῆς πανταχοῦ γῆς εὐσεβείας/*totius terrae pietate*).

While proper behaviour pleased God, every good deed could only take form with His help.²⁷² This also applied to military victories. Territories were conquered 'with God's help' or God himself was the one who 'subjected' the land.²⁷³ Military victories were a sign of God's enduring favour and his favour was searched for to gain military victories. This idea was made

²⁶⁵ Nov. 1, 3, 6, 8, 11, 14, 17, 18, 28, 32=34, 40, 42, 47, 51, 59, 65, 72, 73, 76-78, 80, 81, 85, 86, 90, 109, 116, 122, 132, 133, 135, 137, 141, 142 and 152.

²⁶⁶ Nov. 1, 6, 7, 14, 15, 18, 40, 54, 55, 57, 69, 72, 109, 137, see Appendix.

²⁶⁷ Meier, *Das andere Zeitalter Justinians* 608-614.

²⁶⁸ 'Our Piety' occurs in Nov. 28 and 76. Nov. 32=34 also attributes 'piety' to the emperor. All these *Novellae* are from before 542.

²⁶⁹ Nov. 109.pr.: Μίαν ἡμῖν εἶναι βοήθειαν ἐπὶ παντὶ τῷ τῆς ἡμετέρας πολιτείας τε καὶ βασιλείας βίῳ τὴν εἰς θεὸν ἐλπίδα πιστεύομεν, εἰδότες ὅτι τοῦτο ἡμῖν καὶ τὴν τῆς ψυχῆς καὶ τὴν τῆς βασιλείας δίδωσι σωτηρίαν· ὥστε καὶ τὰς νομοθεσίας τὰς ἡμετέρας ἐκεῖθεν ἠρτησθαι προσήκει καὶ εἰς αὐτὴν ἀφορᾶν καὶ ταύτην αὐτῶν ἀρχὴν τε εἶναι καὶ μέσα καὶ πέρας; another reference to the link between the salvation of the emperor's soul and doing things to please God can be found in Nov. 57.ep.

²⁷⁰ Rendition of 'τόνδε ἡμῶν τὸν νόμον' ('deze wet van Ons' would have been a better translation).

²⁷¹ Nov. 7.ep: καὶ ἀπλῶς πᾶσα πολιτικὴ τε καὶ δημοσία καὶ στρατιωτικὴ βοήθεια τόνδε ἡμῶν τὸν νόμον, ὡς κοινωφελὴ τε καὶ ὑπὲρ τῆς πανταχοῦ γῆς εὐσεβείας τεθειμένον.

²⁷² Nov. 59.pr: 'Elk goed werk moet door toedoen van Ons met Gods wil zijn aanvang nemen': Ἐκαστον τῶν ἀγαθῶν ἔργων ἢ παρ' ἡμῶν βουλήσει θεοῦ χρῆ λαβεῖν τὴν ἀρχήν.

²⁷³ 'With God's help': 'per dei praesidium' in Nov. 37.pr; 'God (...) subjected': 'deus (...) subiugavit' in Nov. 36.pr.

explicit in *Novella* 14, that presents territorial expansion as ‘gifts’ (*δωρεάς/dona*) from a pleased God. The law forbade panderers, who formed a danger to pious chastity, everywhere in the empire and paid special attention to just-conquered territories:

Immers, in de Heer God zijn Wij vol vertrouwen, dat door deze Onze inspanning betreffende de goede zeden Onze staat opnieuw een grote uitbreiding zal krijgen, omdat God dankzij dat soort optreden alles gunstig voor Ons zal doen verlopen.²⁷⁴

And again in the epilogue, the text claims prosperity for the empire was ensured when the emperor did good work. God’s blessing was implied:

Opdat dan u, Onze burgers, als eersten de vruchten zult kunnen plukken van Onze verstandige beschikking, daarom bedienen Wij Ons van dit keizerlijke edict: opdat u ervaart hoezeer Wij Ons om u bekommeren en Ons inspannen voor de goede zeden en de eerbaarheid, waardoor Wij hopen dat Onze staat in alle voorspoed behouden zal blijven.²⁷⁵

God’s favour was very much integrated in the presentation of successes, but also of disasters. When something went wrong, God was obviously displeased. When Justinian faced military defeats in the early 540s and the empire was struck by natural disasters, he was vulnerable for this kind of religious critique. Meier outlines an eschatological climate that took hold of society during these years and sees Procopius’ presentation of Justinian as a demon in his *Historia Arcana* as an example of this mood.²⁷⁶ *Novellae* 122 and 141 address this way of thinking within the context of these disasters. *Novella* 122 only speaks mysteriously about ‘the lesson’ (*τὴν παιδευσιν*) that was executed in accordance with the *philanthropia* (*φιλανθρωπίαν*) of God.²⁷⁷ The other *Novella* addresses the inhabitants of Constantinople directly and explicitly looked for an alternative scapegoat, a reason for God’s torn other than a demon-emperor. God had shown how furious He could be and what Judgement Day would look like, but in His kindness He had postponed that day desiring not the death of sinners, but conversion of the living. Now it was time for the people to cleanse themselves of sin:

Dus is het niet gerechtvaardigd dat wij (...) ons allen onthouden van slechte gewoonten en daden, in het bijzonder degenen die samenrotten in de afschuwelijke en met recht door God verafschuwde praktijk: uiteraard bedoelen Wij de ontucht van mannen die sommige

²⁷⁴ Nov. 14.pr.1: Πεπιστεύκαμεν γὰρ εἰς τὸν δεσπότην θεὸν καὶ ἐκ ταύτης ἡμῶν τῆς περὶ τὴν σωφροσύνην σπουδῆς μεγάλην ἔσεσθαι τῇ ἡμετέρᾳ πολιτείᾳ προσθήκη, τοῦ θεοῦ πάντα ἡμῖν αἴσια διὰ τῶν τοιούτων παρεχομένου πράξεων; see also Nov. 147.pr and a rare supplementary edict to *Novella* 159 created by the praetorian prefect to accompany the *Novella*. The edict proudly claims it was clear the people were praying for the emperor’s victories, a statement proved by Justinian’s successes piling ‘victory upon victory’ (*νίκας ἐπὶ νίκαις*).

²⁷⁵ Nov. 14.ep: Ὅπως ἂν οὖν ὑμεῖς πρῶτοι οἱ ἡμέτεροι πολῖται τῆς σώφρονος ἡμῶν ἀπολαύσαιτε διατυπώσεως, διὰ τοῦτο τῷδε τῷ θεῷ κηρύγματι χρώμεθα· ὅπως ἂν εἰδείητε τὴν ἡμετέραν περὶ ὑμᾶς σπουδὴν καὶ τὸν περὶ τὴν σωφροσύνην τε καὶ εὐσέβειαν πόνον ἡμῶν, δι’ ὧν ἐν ἅπασιν ἀγαθοῖς φυλαχθῆσθαι τὴν ἡμετέραν πολιτείαν ἐλπίζομεν.

²⁷⁶ Meier, *Das andere Zeitalter Justinians 427-443*.

²⁷⁷ Nov. 122.pr; Spruit, *Corpus Iuris Civilis* (vol. XII) translates *τὴν παιδευσιν* with ‘straf’ meaning punishment.

mannen op goddeloze wijze met mannen wagen te bedrijven, waarbij zij een schanddaad voltrekken.²⁷⁸

Homosexuality was chosen as the main sin that had triggered all those disastrous events of the later years of Justinian's reign. The emperor himself was, of course, free of charge.

In some *Novellae*, like this last one, the language tended to be more furiously religious than in others. The addressee and subject matter influenced this. Perhaps not surprisingly, laws treating subjects of heresy and blasphemy contained the most heavily religious language.²⁷⁹ Around fifty percent of the *Novellae* dealing with the church presented the emperor explicitly as a pious ruler, while other topics had lower percentages.²⁸⁰ Furthermore, this theme was deemed important for the image the inhabitants of Constantinople had of their emperor, for three out of the four laws addressed to them contained this image of piety.²⁸¹ The edicts supplementing *Novella* 8 illustrate the audience-targeting of the *Novellae* nicely. These edicts accompanied the law and were adjusted to their particular addressee. The edict directed at the Constantinopolitans emphasised the emperor's care for them and encouraged them to praise God and the emperor. The edict addressed to the prefect of Illyria contained instructions on the enforcement of the law and stressed this was the just and ethical thing to do. Finally, the edict sent to the bishops spoke of their monitoring function and presented this as their duty to God.²⁸²

The last way the emperor could please God was by taking good care of his subjects. In the epilogue of *Novella* 14 quoted above, we already saw good works of the emperor could secure God's favour. In the *Novellae*, these 'good works' manifested mainly as imperial efforts to improve the lives of his subjects. The preamble of *Novella* 85 shows how important God's help was for this immense task:

Onder het voortdurend aanroepen van de grote God en van onze Verlosser Jezus Christus en Zijn bijstand, ijveren Wij ervoor al Onze onderdanen over wie God Ons het bestuur heeft toevertrouwd, vrij van benadeling en onrecht te behouden²⁸³

Piety and *philanthropia* were very closely linked in the *Novellae* and you could even say looking after subjects was a way of being pious.²⁸⁴ However, *philanthropia* occurred in different forms and deserves closer attention as a theme on its own.

²⁷⁸ Nov. 141.pr: οὐ δίκαιον οὖν (...) πάντας μὲν τῶν πονηρῶν ἐπιτηδευμάτων καὶ πράξεων ἀποσχέσθαι, μάλιστα δὲ τοὺς τῆ μυσσαρᾶ καὶ θεῶ μεισημένην δικαίως ἀνοσίᾳ πράξει συναπέντας· λέγομεν δὴ τὴν τῶν ἀρρένων φθοράν, ἣν ἀθέως τολμῶσί τινες ἀρρενες ἐν ἀρρεσι τὴν ἀσχημοσύνην κατεργαζόμενοι.

²⁷⁹ Nov. 77, 109, 141 and 142.

²⁸⁰ Nov. 3, 6, 7, 40, 42, 55, 57, 65 and 137.

²⁸¹ Nov. 14, 69 and 141 against Nov. 13.

²⁸² Nov. 8, edict to bishops, edict to inhabitants of Constantinople, and edict to prefect of Illyria.

²⁸³ Nov. 85.pr: Τὸν μέγαν θεὸν καὶ σωτῆρα ἡμῶν Ἰησοῦν Χριστὸν καὶ τὴν αὐτοῦ βοήθειαν διὰ παντὸς ἐπικαλούμενοι σπεύδομεν πάντας τοὺς ἡμετέρους ὑπηκόους, ὧν τὴν διοίκησιν ὁ θεὸς ἡμῖν ἐπίστευσεν, ἀβλαβεῖς καὶ ἀνεπηρέαστους φυλάττειν.

²⁸⁴ Meier, *Das andere Zeitalter Justinians* 488; Hunger, *Prooimion* 67.

Servant of the people

The *Novellae* presented an image of an emperor who paid a great deal of attention to the needs of his subjects. He listened to them, protected them from misdeeds, and tried to make their lives better by introducing useful laws. *Philanthropia* (φιλανθρωπία), translated in Latin with *clementia*, *humanitas* or *miser cordia*, was besides piety (εὐσεβεία) one of the most admired qualities in an emperor during Late Antiquity.²⁸⁵ It was grounded in the Hellenistic ideas of *Soter* and *Euergetes* and later adapted to a Christian framework.²⁸⁶ Looking at the preambles, first chapters and epilogues of the *Novellae*, the theme is distributed proportionally across the reign and across different topics.²⁸⁷ Only laws dealing with the Church seem to stay behind. ‘Φιλανθρωπία’ is mentioned 15 times of which once in an epilogue and most of these mentions of *philanthropia* referred to the emperor.²⁸⁸ More importantly, 37 *Novellae* carry the message of the emperor looking after his subjects, which is distributed more or less fifty-fifty between preambles and epilogues.²⁸⁹ The passages, especially those in the epilogues, often urged subjects that they should not forget the emperor was looking after them. The emperor asked the addressee of the *Novella* to distribute the law and make it known:

opdat zij [the subjects] vernemen dat Wij Ons op elk moment om Onze onderdanen bekommeren, waarbij Wij de wetten uitvaardigen die tot hun voordeel strekken.²⁹⁰

The people had to realise that the law was promulgated for their convenience and that it was the emperor who made it happen. This attention to subjects also explains the relatively low frequency of the philanthropic theme in laws dealing with the Church. These laws were generally more concerned with gaining the acceptance of the clergy than that of the people at large.

It is possible that subjects could never take notice of these concerned words in the epilogues, because the publication instructions were left out when the law was published in physical form.²⁹¹ If this was indeed the case, we might wonder why the text took this effort at all. I propose that while the instructions were possibly not published, they might have been read aloud.

²⁸⁵ J.L. Booramra, ‘Christian *Philanthropia*. A Study of Justinian’s Welfare Policy and the Church’, *Βυζαντινά. Επιστημονικόν ὄργανον Κέντρου Βυζαντινῶν Ερευνῶν Φιλοσοφικῆς Σχολῆς Αριστοτελείου Πανεπιστημίου* 7 (1975) 345-373: 349; Mazal, *Justinian I. und seine Zeit* 96; Hunger, *Prooimion* 143.

²⁸⁶ Hunger, *Prooimion* 123.

²⁸⁷ Rubin, *Das Zeitalter Iustinians* 165 claims the theme of *philanthropia* only occurs in Justinian’s later reign as an expression of an apolitical passion after the saturation of early imperialistic predilections, but this is simply not true.

²⁸⁸ Nov. 2, 6, 22, 23, 32=34, 39, 46, 49, 66, 77, 78, 80, 81, 85, 86, 89, 94, 107, 114, 127, 129, 137, 141, 147, 159 and in epilogue in Nov. 78.

²⁸⁹ Nov. 1, 2, 4, 8, 10, 13, 14, 15, 18, 22, 23, 27, 39, 43, 46, 49, 66, 69, 72, 73, 77, 78, 80, 82, 85, 86, 92, 94, 107, 109, 114, 127, 128, 134, 137, 147 and 157; 20 times in a preamble, 2 times in a first chapter, and 18 times in an epilogue (3 times both in preamble and epilogue); 8 of these 38 *Novellae* actually mention ‘*philanthropia*’, see Appendix.

²⁹⁰ Nov. 78.ep: ὥστε μαθεῖν ὅτι τῶν ἡμετέρων ὑπηκόων ἐφ’ ἐκάστης κηδόμεθα τὰ πρὸς λυσιτέλειαν αὐτῶν νομοθετοῦντες.

²⁹¹ Corcoran, *The Empire of the Tetrarchs* 246-248.

It was no accident that the *Novellae* attributed ‘*philanthropia*’ not only to the emperor, but also to God.²⁹² The term was already ascribed to gods in classical Greek works and Christian authors had eagerly applied it to their God.²⁹³ The *Novellae* placed it in a close relationship with piety and used it to create an image of an emperor who was imitating God (*μίμησις Θεοῦ*). Although this was seldom made explicit, the previous sub-paragraphs have shown how close the link between God and Justinian was drawn.²⁹⁴

A related characteristic of the emperor that required praise was his ‘foresight’ (*πρόνοια/providentia*). Justinian created new laws and he foresaw how they would fit the greater scheme of things. Just like *philanthropia*, it carried a divine connotation. Although it was not exclusively applied to the divine sphere as in the English ‘providence’, it did remind people of God’s ‘greater plan’.²⁹⁵ Nevertheless, we should also not forget that *πρόνοια* was already a popular theme under the Tetrarchs.²⁹⁶ It occurs 13 times in the preambles and epilogues of the *Novellae*, mostly in the latter.²⁹⁷ It seems to have been a cautious warning asking people for some patience with the new and unfamiliar law. They had to have faith in the abilities of the emperor, in his foresight. Perhaps the change of law was frightening at first, but it would result in a better world in the long term. The identical epilogues of *Novellae* 89 and 74 was typical in its formulation. As usual, the praetorian prefect was asked to make the law known so that it would be clear to all and the people would realise:

op welke wijze zij in deze aangelegenheden bestuurd zullen worden en zij Onze vooruitziendheid in gedachten houden omdat Wij hun belang vóór elke andere werkzaamheid plaatsent.²⁹⁸

Again, subjects were urged to rest assured and keep in mind the emperor’s foresight, because for the emperor their interest was the highest interest.

To strengthen his philanthropic image further, Justinian used the ideal of the responsive emperor (see chapter 1). He was approachable and would respond immediately to the concerns his subjects expressed to him, and he did so explicitly in 46 of the *Novellae*.²⁹⁹ According to *Novella* 2, people appealed to the emperor to soften his legislation, because the existing harsh rules were unworthy of ‘Our philanthropic times’ (*τῶν φιλανθρωπῶπων ἡμῶν χρόνων*).³⁰⁰ In his turn, Justinian claimed his regard for particular legal cases was due to his enormous *philanthropia*:

²⁹² Preambles of Nov. 6, 22, 77 and 141.

²⁹³ Hunger, *Prooimion* 143-146.

²⁹⁴ Some more explicit instances: Justinian as judge similar to God: Nov. 77.1.2; Justinian as a father of his people similar to God: Nov. 13.ep, 77.8 and 98.2.2.

²⁹⁵ Hunger, *Prooimion* 84.

²⁹⁶ Corcoran, *The Empire of the Tetrarchs* 246 and n. 75 on that page.

²⁹⁷ Nov. 4, 8, 10, 18, 72, 74, 80, 87, 89, 94, 101, 113 and 134.

²⁹⁸ Nov. 74.ep and 89.ep: καθ’ ὃν περὶ τῶν τοιούτων πολιτεύονται τρόπον, καὶ τὴν ἡμετέραν ἐννοοῦσι πρόνοιαν ὅτι πάσης ἀσχολίας ἐτέρας τὴν αὐτῶν ὠφέλειαν προτίθεμεν.

²⁹⁹ ‘Lobby’ and other petitions taken together; see chapter 1.

³⁰⁰ Nov. 2.pr.1.

Zo groot is Onze overmaat aan menslievendheid dat Wij het niet als beneden Onze waardigheid beschouwen, alle particuliere rechtszaken die naar Onze mening te moeilijk zijn voor gewoon rechterlijk onderzoek, met wetten Onzerzijds te beslissen³⁰¹

As the living source of law, Justinian was the highest and most knowledgeable legal authority. Yet despite this almost transcendental status, he climbed down from his unearthly viewpoint to listen to the ordinary people, who he loved like all people.

However, taking care of so many people was hard work and asked a lot of the emperor. He was presented as continuously at work in service of his subjects, day and night. Hunger sees this 'sleeplessness' (*ἀγρυπνία*) as a special variety of the notion that the emperor was fulfilling his duty of care (*φροντίς*).³⁰² I would say it was part of a more general tendency to describe the emperor as working for his subjects and therefore deserving praise for his efforts. In chapter 2, I already showed that a reference to Justinian's military ambitions had to be placed in the context of a caring emperor working continuously despite a lack of sleep, hunger and other difficulties. The first part of the preamble of *Novella* 8 embodied many of the elements discussed and was possibly the most forceful statement of a pious emperor working extremely hard to serve his people. It deserves a citation:

Alle dagen en nachten brengen Wij door in de grootst mogelijke waakzaamheid en zorg: voortdurend gaan Wij bij Onszelf te rade hoe Wij Onze onderdanen iets kunnen geven dat nuttig is en God behaagt. En Wij zijn niet doelloos waakzaam, maar Wij gebruiken Onze wake voor zulke beraadslagingen, de hele dag lang en Wij gebruiken de nachten net als de dagen, zodat Onze onderdanen bevrijd van alle zorg rust krijgen, omdat Wij ten bate van allen die zorgen op onze eigen schouders nemen. Want Wij laten geen enkele naspeuring en nauwgezet onderzoek onbenut in Ons streven die dingen te doen die Onze onderdanen tot voordeel zullen strekken en die hen zullen bevrijden van elke last en alle extra kosten, naast de rechtvaardige en wettige belasting op basis van de openbare registratie.³⁰³

The emperor carried the weight of the world on his shoulders while desperately looking for a way to improve the lives of his subjects and to please God. Would not everyone want a leader so dedicated to his state?

³⁰¹ Nov. 159.pr: Τοσοῦτον ἡμῖν φιλανθρωπίας περίεστιν, ὡς μηδὲ τὰς ἰδιωτικὰς ὑποθέσεις, ὅσαι δοκοῦσιν ἡμῖν ζήτησιν ὑπερβαίνειν δικαστικὴν, νόμοις ἡμετέροις διορίζειν ἀπαξιοῦν.

³⁰² Hunger, *Prooimion* 94.

³⁰³ Nov. 8.pr.pr: Ἀπάσας ἡμῖν ἡμέρας τε καὶ νύκτας συμβαίνει μετὰ πάσης ἀγρυπνίας τε καὶ φροντίδος διάγειν ἀεὶ βουλευομένοις, ὅπως ἂν χρηστόν τι καὶ ἀρέσκον θεῷ παρ' ἡμῶν τοῖς ὑπηκόοις δοθείη. Καὶ οὐ πάρεργον τὴν ἀγρυπνίαν λαμβάνομεν, ἀλλ' εἰς τοιαύτας αὐτὴν ἀναλίσκομεν βουλὰς διημερεύοντές τε καὶ νυξίν ἐν ἴσῳ ταῖς ἡμέραις χρώμενοι, ὥστε τοὺς ἡμετέρους ὑπηκόους ἐν εὐπαθείᾳ γίνεσθαι πάσης φροντίδος ἀπηλλαγμένους, ἡμῶν εἰς ἑαυτοὺς τὰς ὑπὲρ ἀπάντων μερίμνας ἀναδεχομένων. Διὰ πάσης γὰρ ἐρεῦνης καὶ ζητήσεως ἀκριβοῦς ἐρχόμεθα, πρᾶττειν ἐκεῖνα ζητοῦντες, ἅπερ ὄφελος τοῖς ἡμετέροις ὑπηκόοις εἰσάγοντα παντὸς αὐτοὺς ἀπαλλάξει βάρους καὶ πάσης ζημίας ἔξωθεν ἐπεισαγομένης παρὰ τὴν δημοσίαν ἀπογραφὴν καὶ τὴν δικαίαν τε καὶ νενομισμένην συντέλειαν.

Striving for perfection

Justinian's dedication was also evident in the last theme I will discuss: the emperor as perfectionist lawgiver. 31 preambles show an emperor who was improving upon earlier legislation to make the body of law from imperfect perfect.³⁰⁴ According to *Novella 7*, this was the one goal of Justinian:

Eén doel dat Wij Ons altijd gesteld hebben is het volgende: mocht er ook maar iets aan het licht komen wat tot dusverre onvolmaakt of verward was, dit zowel te zuiveren als ook van onvolmaakt volmaakt te maken.³⁰⁵

Novellae were often framed as a correction (*ἐπανόρθωσις*) to improve insufficient or by misuse confused laws.³⁰⁶ Justinian would clarify matters – a theme already discussed in chapter 2 – and brought laws to their Aristotelian completion, their natural endpoint.³⁰⁷ However, laws that seemed perfect at the time they were promulgated regularly disappointed later on. Experiences gathered in time continually provided new insights to correct the law, giving rise to new laws:

Weliswaar zijn er door Ons al vele wetten over allerlei onderwerpen uitgevaardigd, die op alle onderdelen van Onze eerdere wettelijke regelingen en bepalingen welke Ons toch niet juist bleken te zijn, de weg tot rectificatie boden en de onderdanen een leidraad verschaften hoe zij behoren te leven. Doch de regeling die nu hier door Ons wordt getroffen is een wet met algemene strekking, die aan de meest cruciale aangelegenheid van alle de daarvoor passende ordening oplegt.³⁰⁸

Not surprisingly in the light of his *philanthropia*, Justinian was especially dedicated to perfection when the well-being of his subjects was concerned.³⁰⁹ The 'most crucial matter' this law discussed was marriage, a holy institution that gave humans 'artificial immortality' (*ἀθανασία ἐπιτεχνητήν*) by way of procreation and was therefore the emperor's greatest concern, deserving more attention than anything else.³¹⁰ Moreover, if any laws were providing the people with moral guidelines for their lives, it were laws on marriage. It was only natural that this topic necessitated painstakingly corrected laws.

Novella 78 draws another parallel with *philanthropia*, this time strengthened by God's role in the creation of perfection.

³⁰⁴ Nov. 1, 2, 7, 8, 12, 14, 18, 21, 22, 23, 39, 46, 49, 59, 62, 68, 69, 74, 78, 80-82, 89-92, 98, 107, 114, 127 and 134, see Appendix.

³⁰⁵ Nov. 7.pr: Ἐνα σκοπὸν ἀεὶ τοῦτον ἐθέμεθα τὸ πᾶν εἶ τι πρότερον ἀτελὲς ἢ συγκεχυμένον ἐδόκει, τοῦτο καὶ ἀνακαθᾶραι καὶ τέλειον ἐξ ἀτελοῦς ἀποφῆναι.

³⁰⁶ Hunger, *Prooimion* 103.

³⁰⁷ *Ibidem* 112.

³⁰⁸ Nov. 22.pr: Πολλοὶ μὲν ἤδη καὶ ποικίλοι τέθεινται νόμοι παρ' ἡμῶν καὶ ἐκάστῳ μέρει τῶν πρότερον ἡμῖν νομοθετηθέντων ἢ διαταχθέντων μὲν, δοξάντων δὲ ἡμῖν ἔχειν οὐκ ὀρθῶς τὴν ἐπὶ τὰ κρεῖττω διδόντες ὁδὸν καὶ ὑφηγούμενοι τοῖς ὑπηκόοις ὃν προσήκει διαζῆν τρόπον. Τὸ δὲ δὴ νῦν τοῦτο τὸ παρ' ἡμῶν γινόμενον νόμος τίς ἐστὶ κοινός, τῷ πάντων καιριωτάτῳ τῶν πραγμάτων τὴν προσήκουσαν τάξιν ἐπιτιθεῖς.

³⁰⁹ Hunger, *Prooimion* 104.

³¹⁰ Nov. 22.pr.

Aangezien al het goede dat door de grote God is gegeven, voor ons volmaakt is, hebben Wij gemeend ook zelf de vrijlating van de slaven (...) voor hen in alle opzichten zuiver, onberispelijk en volmaakt te maken. (...) Aangezien Wij aangaande Onze onderdanen steeds iets beters in de zin hebben, hebben Wij gemeend juist hetgeen op een meer volmaakte wijze aan de voorouders is gegeven, nog met de volgende toevoegingen te moeten uitbreiden.³¹¹

God gave all that was good to the people in perfect shape and it was the task of the law to allow for this perfection. In addition, Justinian was presented as better than even his well-performing predecessors. Precisely the thing that was already given to them 'in a more perfect way' (τὸ τελειότερον), he would enhance. And again, his subjects were the ones who would benefit from his efforts. By perfecting the law, Justinian perfected their world and the whole of society.

The emperor's Nature

The *Novellae* presented the emperor as a hard-working, pious caretaker, a fatherly figure looking after his children in the image of God. The language was thoroughly religious and intensely focused on the well-being of his subjects. It is quite a different picture from the language we have seen in the *Novellae* dealing with matters of the public state discussed in chapter 2. Those employed antiquarian histories to preserve a sense of continuity of the Roman state. God was only mentioned incidentally and the honour of officials was far more prominent than the well-being of subjects. None of the nostalgic sentiment prevalent in those laws seems to be present in the laws discussed in this chapter, which encompass the great majority of the *Novellae*.

Nevertheless, the worlds of 'Roman' and 'Christian' laws – as I will designate the two trends – were not completely separated. I do not intend to place the *Novellae* in the age-old struggle between 'medieval' Christianity and 'ancient' paganism with this terminology. I aim to distinguish between laws cast in rhetoric appealing to either the Roman political state or the Christian socio-cultural society. The language used in the *Novellae* did not have to be particularly Roman or Christian – as I have shown, in many cases the terminology was already in use earlier, only applied differently – what matters is the rhetorical context they were embedded in.

The Roman and Christian laws find each other in the objective to improve legislation. It may seem obvious, but the strongest similarity between the two types of *Novellae* was that they were both new laws, innovations upon an existing system. They might place different

³¹¹ Nov. 78.pr: Τελείων ἡμῖν ἀπάντων τῶν ἀγαθῶν παρὰ τοῦ μεγάλου θεοῦ δεδομένων, ᾠήθημεν χρῆναι καὶ αὐτοὶ τὰς τῶν οἰκετῶν ἐλευθερίας (...) παντοίως αὐτοῖς καθαρὰς τε καὶ ἀνοθεύτους καὶ τελείας ἀποτελέσαι. (...) Ἐπειδὴ δὲ αἰεὶ τι κρεῖττον περὶ τῶν ἡμετέρων ὑπηκόων βουλευόμενοι καὶ αὐτὸ τὸ τελειότερον δεδομένον μίξοσιν ᾠήθημεν δεῖν ταῖς προσθήκαις ἀυξῆσαι.

emphases, for example on administrative or inheritance-related topics, but they were united in the one goal to find imperfections in this system and remedy them.³¹²

Ultimately, the result had to be the amelioration of the lives of the emperor's subjects. In the case of laws directly applicable to the common people, this might be obvious, but also the appointment of new officials contributed to this aim. Maas was right to see the 'reform legislation', the regional *Novellae* of appointment, as part of 'Justinian's all-embracing effort to impose good order and unity throughout the empire, thereby earning the divine favor necessary to maintain his throne.'³¹³ The laws were intended to alleviate provincial administrative problems. This intention was more important than a historically correct restoration of ancient offices. *Novella* 25 shows that bringing together civil and military powers preceded the nomenclature of 'pretor' and emphasises the importance of legislation fitting the situation:

Aangezien (*Ἐπειδή*) Wij Ons derhalve tot doel stellen ook hier de beide ambten tot één samen te voegen, geven Wij daarom aan de betrokkene terecht de benaming 'pretor', om te bereiken dat tegelijk met de benaming 'pretor' de instelling en de aard van het ambt zou binnendringen in de geesten van degenen die het horen; en juist omdat het bestuur niet enkelvoudig is en niet het zicht houdt op één aspect alleen (...) En dit doen Wij niet zomaar en Wij richten Ons niet alleen op de naamgeving, maar Wij bepalen ook de maat van de bestuursbevoegdheden in overeenstemming met de behoeften.³¹⁴

The name 'pretor' was a fitting name for the new office with military and civil authority, it was not an ancient office whose restoration resulted in a combination of those powers. Of course, the intention of finding the best way to order society did not have to be the 'real' or most important reason to introduce these reform measures. Centralising power to give Justinian a better control of the empire could have been at least as essential. However, this would probably not be the best way to sell new laws to the public. In contrast, presenting them as measures to fit contemporary needs was.

There was only one problem with the theme of improvement: the laws needed something to improve upon. They had to be placed in a tradition and at the same time distance themselves from that tradition, since they were better. In addition, there had to be a reason for the improvement. As I have shown, an innovation was not a bad thing per se, but it the fact remained that the status quo was only allowed to be disturbed with good reason. There was a tension between tradition and innovation and the right balance had to be negotiated constantly.

³¹² Nov. 7.pr.

³¹³ Maas, 'Roman History and Christian Ideology' 25.

³¹⁴ Nov. 25.1: Ἐπειδή τοίνυν κἀνταῦθα σκοπὸς ἡμῖν εἰς ἓν τι συναγαγεῖν ἀμφοτέρως, διὰ τοῦτο εἰκότως αὐτῶ καὶ συναγαγεῖν ἀμφοτέρως, διὰ τοῦτο εἰκότως αὐτῶ καὶ τὴν τοῦ πραιτῶρος δίδομεν προσηγορίαν, ὅπως ἂν συνεισέρχῃται ταῖς ψυχαῖς τῶν ἀκούοντων ἅμα τῇ προσηγορίᾳ τοῦ πραιτῶρος καὶ ἡ τῆς ἀρχῆς κατάστασις τε καὶ φύσις, καὶ ὅτι περὶ οὐχ ἀπλή τις ἐστὶν οὐδὲ πρὸς ἓν ἀφορῶσα μόνον (...) Καὶ οὐδὲ ἀπλῶς τοῦτο πράττομεν οὐδὲ ὀνομασίᾳ προσέχομεν μόνον, ἀλλὰ τῇ χρεῖα καὶ τὰς ἀρχὰς συμμετροῦμεν.

The *Novellae* discussed in chapter 2 tackled this problem with historical context. The histories stressed continuity with the Roman state and simultaneously presented a historical development that showed that contemporary times would be better. The Christian themes discussed in this chapter on the other hand, focused on contemporary needs and immediate responses to them. These did not allow for much historical development. Then how was the emperor to justify his innovations?

First, we might look to the imperial responsiveness for an answer. Perhaps petitions and court cases could serve as a legitimate inciting incident for a new law. And indeed, they were mentioned often in the *Novellae* and framed as incidents that put the issue in the spotlight. In this capacity, they might have had some legitimising force. However, they were generally portrayed as examples of a wider problem. One court case alone was not enough to initiate a new *lex generalis*. Roman society was used to individual exceptions given in response to petitions to the emperor and in Late Antiquity this practice might indeed have flourished as the most accessible means to get various kinds of privileges and cement ties between emperor and subject.³¹⁵ Furthermore, one could argue that the personal petition-and-response-model was at odds with the principle idea of an impersonal 'general law' valid for everyone. In the latter case, the individual connection between a subject, the emperor and the law was severely watered down. Seen from this perspective, incorporating stories about individual petitioners in a *lex generalis* was perhaps a way to bring back this intimate, personal connection. Petitions might have increased a law's legitimacy, but they were not enough to explain the need for general law.

A second way philanthropic innovations might be justified was by placing them in the legal tradition. These Christian laws were, after all, legal documents. However, a legal tradition would never be able to show why a new law was needed on a particular moment. Rather, the fact that they were Roman laws, added the need for vertical anchoring of these innovations in the Roman past. In chapter 2, I already discussed that this was done extensively. Besides creating legal precedence, mention of earlier laws on the same topic could give a law more relevance and importance in a historical way. Nevertheless, this still did not justify new laws like a historical degeneration or revival did in the other cases, pointing to a development or changing circumstances. So how could the *Novellae* vertically anchor innovation in laws concerned with contemporary needs?

Historicising change

To solve the tension between following an ancient, continuous tradition – promoting a high and eternal emperor and state – and breaking that tradition by responding to immediate concerns and improving upon earlier legislation – promoting a responsive and approachable emperor – the *Novellae* came up with the following solution: historicising change.

³¹⁵ Mathisen, 'Adnotatio and Petitio' 31-32.

The *Novellae* of Justinian introduced a new legal theory that justified the emperor's behaviour, because he always needed to adapt to changing circumstances.³¹⁶ Those changing circumstances were an intrinsic part of Nature (*φύσις/natura*) and especially of human nature:

Omdat de onbestendige en wisselvallige aard van de menselijke natuur zelfs een geleidelijke bijsturing behoeft, zal deze op geen andere manier tot harmonie kunnen terugkeren – zelfs indien men de primaire drijfveren ervan zou kunnen beheersen – dan alleen als men hetgeen in strijd daarmee is opgekomen, langzamerhand doet ophouden en deze aldus in een toestand van rust, kalmte en overeenstemming met de wet brengt. Iets dergelijks heeft zich ook nu voorgedaan en heeft Ons geplaatst voor de noodzaak van een wet.³¹⁷

The purpose of laws was to order society and provide the necessary guidance and limitations. If everything was in its right place, people would live harmoniously together. Alas, human nature was variable and constantly in need of adjustment, forcing the emperor to come up with new laws. And by bringing those to the people, he did not disturb the status quo, he upheld it.

There were 6 *Novellae* that talk about 'nature' in their preambles and another 3 that elaborately articulate the same idea, but do not mention *φύσις* or *natura* themselves, all issued during Tribonian's years between 536-541.³¹⁸ Despite these relatively low numbers, the idea was at the core of Justinian's legal justification. It was developed as the backbone of his responsive emperorship and I think it was this more implicit 'backbone' that *Novella* 84 refers to when it claims 'nature' featured in many preambles:

Aangezien de natuur van alle kanten in haar werken van vernieuwingen gebruik maakt – dit is in Onze wetten reeds vaak als inleiding verwoord en zal steeds weer verwoord worden zolang de natuur haar eigen gang gaat –, stelt zij Ons voor de behoefte aan vele wetten.³¹⁹

In a way, every new law was an attempt to keep up with Nature. Nature, however, was unstoppable in its renewals and so necessitated a multitude of laws. The idea that the emperor not only *could*, but *had to* continuously balance and tweak his legislation was his defence against the accusations that he too easily indulged in making another law:

Zij die acht slaan op de waarheid van de dingen, zouden niet lichtvaardig tot klachten komen als zij de waarheid zouden onderzoeken; want dat sommigen zich beklagen over

³¹⁶Ries, *Prolog und Epilog* 203; Maas, 'Roman History and Christian Ideology' 29-30.

³¹⁷ Nov. 39.pr: Τὸ ῥευστὸν καὶ πεποικιλμένον τῆς ἀνθρωπίνης φύσεως καὶ τῆς κατὰ μικρὸν δεόμενον θεραπείας οὐκ ἂν ἄλλως εἰς τὸ καλῶς ἔχον ἐπανέλθοι, κἂν εἰ τὰς πρώτας τις αὐτοῦ κυβερνήσειεν ἀρχάς, εἰ μὴ καὶ τὸ κατὰ μέρος αὐτοῦ ἐπανιστάμενον διαλύων οὕτως αὐτὸ καθισταίη πρὸς τὸ γαληνὸν τε καὶ ἀτάραχον καὶ νόμῳ πρέπον. ὁποῖον δὴ τι καὶ νῦν ἐπελθὸν εἰς νόμου χρείαν ἡμᾶς κατέστησεν.

³¹⁸ 6 *Novellae* mentioning 'nature': Nov. 18, 39, 73, 74, 84 and 107; 3 *Novellae* articulating the same idea: Nov. 49, 60 and 98.

³¹⁹ Nov. 84.pr: Πολλοῖς πανταχόθεν ἡ φύσις καινουργήμασιν ἐν τοῖς πράγμασι χρωμένῃ (εἰρημένον ἤδη τοῦτο πολλάκις ἐν τοῖς νόμοις τὸ προοίμιον, εἰρήσεται δὲ καὶ αὐθις ἕως ἂν ἐκείνη τὰ ἑαυτῆς πράττη) πολλῶν ἡμᾶς εἰς χρείαν καθίστησι νόμων.

de veelheid aan wetten die door Ons telkens weer worden uitgevaardigd, is begrijpelijk omdat zij niet bedenken dat Wij, aangezien de noodzaak daarom voortdurend roept, gedwongen worden om aan de realiteit beantwoordende wetten uit te vaardigen, aangezien er tegen de verwachting in voortdurend situaties opkomen die niet door hetgeen reeds schriftelijk vastgesteld is, verholpen kunnen worden. Iets dergelijks werd ook onlangs nog vernomen.³²⁰

However unexpectedly, time and time again it became clear the established body of law failed to address novel but urgent matters sprouting in the empire like weeds. The emperor could only control them by regularly tending to his strictly ordered garden.³²¹

Nature was a force greater than the emperor, probably created by God. It was eternally changing and its eternality provided historical justification. Nature had always been variable and it had always been an emperor's task to adjust the law for its changes. The preamble of *Novella* 74 and a passage in Justinian's *Codex* (1.17.218 = *Constitutio Tanta* 18) claim that one of the great Roman jurists Julianus had already articulated this principle and his statement was included in the *Digesta* (1.3.10–12) – although in reality, Julianus had said nothing about the force of Nature in the passage referred to.³²² Suddenly, responding to immediate concerns was part of a tradition that could resolve the 'eternal' tension between tradition and innovation: innovation as tradition, historicising change.

God, Nature, and the Roman past

We are left with the question how all modes of anchoring innovation relate to one another. How do we value the theory of Nature compared to Justinian's use of historical context? How did divine sanction of the emperor's authority connect to this? And what can we say about the presentation of the emperor and the laws when we take all these elements together?

Maas has tried to give a comprehensive reading of all these 'Roman' and 'Christian' elements and ultimately labels Justinian a 'Christian restorer', an emperor who carefully cultivated antiquity for propaganda purposes and integrated it into a Christian theory of kingship and law.³²³ Although the author was definitely on the right track, I think he made a few strange twists and turns in his argumentation resulting in a conclusion that went slightly amiss. According to Maas, Justinian's attitude was best exemplified in the reform legislation

³²⁰ Nov. 60.pr: Οί τῆς ἀληθείας τῶν πραγμάτων ἐστοχασμένοι οὐκ ἂν ῥαδίως εἰς μέμψεις χωροῖεν, εἰ τὰ ληθῆ κατεξετάζοιεν· τινὰς γὰρ εἰκὸς τῷ πλήθει τῶν νόμων τῶν καθ' ἑκάστην παρ' ἡμῶν προτιθεμένων ἐπιμέμφεσθαι, οὐκ ἐννοοῦντας, ὅτι τῆς χρείας αἰεὶ καλοῦσης συμφώνους τοῖς πράγμασι τιθέναι νόμους ἀναγκαζόμεθα, τῶν αἰεὶ παραδόξως ἀναφουμένων ὑπὸ τῶν ἤδη γραφέντων θεραπεύεσθαι μὴ δυναμένων. Ὅποῖον δὴ τι καὶ ἔναγχος ἐγνώσθη.

³²¹ W.S. Thurman, 'A Juridical and Theological Concept of Nature in the Sixth Century A.D.', *Byzantinoslavica* 32 (1971) 77-85 also sees the theory of Nature and his role as divine agent attempting to control this force of change as the backbone of Justinian's responsive legislation. Thurman draws the conclusion that the emperor opposed the 'human condition of continuous change' with his imperial laws. Although I would say he embraced this change to justify his innovations, our analyses are very similar. We differ mostly in our interpretation of Justinian either being averse of innovation or just anchoring it.

³²² Maas, 'Roman History and Christian Ideology' 29.

³²³ Maas, *John Lydus and the Roman Past* 45.

elaborately discussed by him. However, in chapter 2 I have demonstrated that the use of historical context was restricted to these (and few other) *Novellae* due to their topic. In addition, the importance of the emperor as a 'restorer' was re-evaluated and instead it was argued the 'cultivation of antiquity' had to be seen from the perspective of promoting continuity. Nevertheless, it is useful to look at the way how Maas wove together the different elements at play to come to his conclusion – and then discover how a different perspective might yield a better result. To do this, I will analyse a crucial passage of his book *John Lydus and the Roman Past* in which he summarises the argument that is found more scattered in his article on the preambles of the *Novellae*.³²⁴

Maas begins his paragraph titled 'Justinian the Christian Restorer' by showing that historical precedent was used in the reform legislation of 535-538. He claims this 'antiquarian pose' found expression in divine sanction of the emperor's rule, but then gives a quote about Justinian governing every aspect of his subject lives and making sure everything was properly ordered.³²⁵ He correctly asserts that Justinian tried to please God by ensuring the well-being of his subjects, but how this was an expression of antiquarianism eludes me.

Maas continues that Justinian's 'watchfulness' was necessitated because of the legal theory of Nature. Nature's variable character created the need for a micromanaging emperor, it justified his *philanthropia*. However, Maas fails to distinguish between the attitude of the emperor as a pious caretaker and the promulgation of new laws to keep the world in order. The former did not need a justification; it was a virtue sanctioned by God and independent of the variety of Nature. This variety might create the need for an emperor to act upon his 'watchfulness', but it was the act, the law flowing from the emperor's philanthropic heart, that needed justification, not the watchfulness itself. The theory of Nature provided a legitimate reason to innovate and disturb the status quo.

Then Maas gives a quote about the general danger of innovation – although the citation only warns against innovation without good cause! – and connects this with the antiquarian pose, now calling it 'restoration'.³²⁶ Finally, he arrives at the idea that divine sanction was granted when the emperor acted in accordance with the past. However, this conclusion can only be derived from Maas's eagerness to unify all *Novellae* under one theory of God, Nature and the Roman past and is not supported by any of his quotations. Maas tries to uncover their 'complex interplay', but in the end this interplay is still unclear.

Yet Maas was so close. He was definitely right when he saw both Christian and Roman themes recurring in the *Novellae* – so much must by now be clear from this thesis. However, he did not account for the selectivity of the reform laws and their resulting lack of representativity for all *Novellae*. He could not bring the theory of Nature and the use of

³²⁴ Maas, *John Lydus and the Roman Past* 45-48.

³²⁵ Nov. 72.pr.

³²⁶ Nov. 28.pr.

historical context together simply because they did not apply to the same type of laws. They were mutually exclusive, because they pertained to different spheres of Roman society.

Conclusion

This chapter started by exploring the image of the emperor. It was evident that the majority of the *Novellae* portrayed Justinian as a hard-working, caring and pious emperor. He was sent by God to give order to the lives of his subjects in the shape of laws. Their order would resemble God's order like the emperor resembled God. Every good deed could only take form with God's will and conversely every disaster was caused by the wrath of the divine, a punishment for human sins. When this kind of religious subjects were discussed, the language of the *Novellae* turned fierce. Different audiences were addressed differently and when the common people were targeted a religious tone was apparently the most successful.

Another theme that was deemed important for Justinian's subjects was the emperor's *philanthropia*, a trait he again shared with God. Justinian was working day and night worried over the weight of the world on his shoulders, desperately searching for a way to improve the life of his subjects. This was the will of God and he would serve Him and his people to the best of his abilities. Every imperfection in the body of law had to be found and perfected. Nevertheless, perfection remained unachievable, or at least temporary, because Nature caused constantly changing circumstances. The emperor had to adapt his legislation to Nature's whims continually, which explained the necessity of the multitude of laws promulgated by the imperial administration.

Justinian's – or the ideal emperor's described in the *Novellae* – unstoppable urge to improve placed him in an awkward position: he had to make clear he was part of a tradition while subsequently distancing himself from that tradition because he was supposed to be better. This tension between tradition and innovation is an intrinsic part of legislation: new laws are always part of a legal tradition as well as innovations aiming to improve the established body of law. Moreover, Rome's legal tradition was part of the empire's identity and therefore very important to uphold. Hence new laws needed justification. In a sixth-century mind a new law meant a disturbance of the stable way things were, the comfortable status quo. In addition, Justinian had implied Roman law was complete after his codification. There had to be a very good reason to promulgate a new law, otherwise it had no right to exist.

In chapter 2, I have shown historical context could do the trick for innovations in Roman institutions. The past was used to vertically anchor *Novellae* dealing with state-related topics with a public character. Innovations appealed to past parallels that gave legitimacy to new offices while historical developments justified the time of the innovation. It was a precarious balance between tradition and innovation, but it was struck with certainty.

It was not possible to apply the same anchoring technique to 'Christian laws'. They were grounded in responding to immediate needs of subjects and could barely bring any historical context to bear. Instead, horizontal anchoring was used to legitimise measures dictated by

Christian(ised) values like *philanthropia* and piety. The emperor tried to please God by ruling in his image and displayed the same fatherly behaviour as that people-loving deity. If the empire thrived, this was proof of his successful service of the Father.

However, Christian laws were still laws and new laws needed justification. They were innovations in the Roman institution of law and part of a historical legal tradition that cried for a vertical anchor. The theory of Nature could fulfil this demand. Not only did the variety of Nature necessitate new laws to keep society well-ordered, it had done so forever. Emperors had always been adapting the law, Justinian doing so was only preserving continuity by following tradition. Historicising change solved the problem of justifying changes to a Roman institution (i.e. law) without a Roman antiquarian motive. As an added bonus, the theory was authored by an ancient Roman jurist – or at least so said Justinian.

The theory of Nature was able to reconcile Roman and Christian modes of anchoring. Horizontal anchoring in Christian values was anchored vertically to fit the idea of a continuous Roman state. The Roman political and Christian socio-cultural elements of the empire were not indistinguishable, but they worked closely together. The epilogue of *Novella 7* expresses this same sentiment:

Maar deze wet moet haar werking uitstrekken over de gehele wereld waar de Romeinse wet en de regel van de universele kerk heerst.³²⁷

Roman law and the Church were part of the same world, but they represented different powers. Therefore, Maas's characterisation of Justinian as a 'Christian restorer' was slightly off. Justinian embodied both a caretaker and an emperor, but in different spheres of his rule: he was a Christian father and a Roman ruler.

³²⁷ Nov. 7.ep: ἀλλ' ἐπὶ πάσης τῆς γῆς, ἣν ὁ Ῥωμαίων ἐπέχει νόμος καὶ ὁ τῆς καθολικῆς ἐκκλησίας θεσμός.

Conclusion: Anchoring the *Novellae*

Justinian's last *Novella* was promulgated in Constantinople on 26 March 565, his 38th year of rule and 24 years after the last time a consul had taken office.³²⁸ On the night of 14 November of the same year, the emperor would draw his last breath. He had had a long rule and he had put his mark on history as few emperors had done. One of his most remarkable qualities had been his legislative fervour. Early on, he had completed what would later be called the *Corpus Iuris Civilis*, incorporating the *Codex*, the *Digesta* and the *Institutiones*. However, in the wake of this *Corpus*, his reign produced another 155 'new laws' that have not yet received the scholarly attention they deserve. This thesis has taken these *Novellae* seriously as a corpus of its own and has explored how we should understand this multitude of laws in their socio-political context and how these innovations were anchored in a sixth-century worldview.

First step in this study was to take the *Novellae* as a 'legal socio-political literary source' operating in a Late Antique world and to acknowledge their multi-layered character. In the first place, they were laws (*leges*), documents embedded in a legal tradition. But they were no dry texts, rather the opposite: they were full of literary themes and strongly resembled letters (*epistulae*). Their legal content and literary form were tied together by their socio-political function.

The *Novellae* did not simply provide rules to obey, nor was their elaborate rhetoric disengaged from their legal purpose; they served a communicative function. The creation process of general laws (*leges generales*) like the *Novellae* provided a space for the negotiation of values and interests of subjects and emperor. The content of a law was determined by many factors and persons, established through patronage and petitions. If a petition led to legislative activity, the response was usually an individual rescript (*rescriptum*), but, if the subject was deemed important enough, a general law could be created. This choice between rescript and general law went beyond a passive style of government and can be seen as a way of policy-making. The outcome was determined by the emperor's will, precedent, advice, the existing law, and of course the topic of the original request.

When it was decided that a certain topic needed a general law, the consistory led by the *quaestor* drafted the law in consistory considering the input of the petitioner and others fighting for favour. The emperor had the last say and if we may believe anything written about Justinian, he took his task as legislator seriously. Besides laying out rules and distributing order, this task included giving moral guidance. The *Novellae* were morally charged documents, essential both to Justinian's legitimacy as a ruler and to the legislator's activity as an educator. They delineated a worldview and defined the role of the emperor and they did this consciously. The fact that the compilers of the codices of Theodosius and Justinian were able to extract the 'essential part' from a complete law-letter implies they knew perfectly well what was the legal component of the text and which part was rhetorical flourish. The chosen phrases were 'essential' for the codices, because those served courtroom practice, where only

³²⁸ Nov. 137.ep.

the legal content of a law was relevant.³²⁹ However, this did not mean the rest of the law was 'superfluous verbiage', only that it served a different purpose. As demonstrated, this purpose was ideological and socio-political.

As the creation process was a collective effort, the worldview delineated in the *Novellae* was collective too. While petitions tried to influence the emperor, the imperial responses vice versa influenced the requests the emperor would get. Litigants and emperor attempted to please one another with the right language to gain each other's favour. Each presented an ideal ruler they hoped would live up to the expectations they thought the other had. As a result, the agency behind the creation of the imperial image was lost in a fog of common language. However, the *Novellae* presented the imperial side of the negotiation that tried to steer the conversation into the direction the imperial administration wanted. Moreover, the fact that all *Novellae* were specifically chosen to be general laws plus the consistency of their themes definitely suggest a coherent set of imperial expressions we could call a policy.

To find this imperial policy of ideology, I have examined the parts of the *Novellae* that contain the strongest ideological message: the preambles, at times carrying over their message to the first chapters, and the epilogues. I have studied how these texts anchored the laws they were part of. They did so vertically (diachronically) in tradition and historical development and horizontally (synchronically) in values and contemporary practice. Through these anchoring devices I could see the ideological structures of the age of Justinian: the position of the emperor vis-à-vis his subjects in the circle of law-making; his symbolic role as source of justice and his concurrent responsive attitude; the importance of the past for state-related laws and the emphasis on the continuity of the Roman state; and the relevance of piety and *philanthropia* for the way the relationship between emperor and subject was envisaged to function.

Through the comprehensive understanding of the *Novellae* as a communicative platform, it has become understandable why Justinian created his extraordinary amount of laws. Nevertheless, it simultaneously raises the question why other emperors did not do the same. The answer to this question might well lie in the realm of inner motives that are inevitably lost to history. We can only speculate, but perhaps we have no other choice than to take some of the rhetoric from the laws seriously. The *Novellae* breathe the air of an ambitious and legal-minded imperial administration, people who truly believed in the organising and clarifying power of law in society. This ambition came partly from the emperor, but seeing that most laws were promulgated in the early part of his reign, his praetorian prefect John the Cappadocian and *quaestor* Tribonian must have played an influential role in this too. And there were other reasons Justinian had the time to focus, the money to spare and the need to communicate with his subjects and to legitimise his rule. We can think of the emperor's humble background, his near downfall during the Nika Riot, the growing importance of the church and religiosity, the relatively long peace with the Persians, the victorious mood after the Vandal War, the identity

³²⁹ However, they did preserve the original rhetoric-heavy language of the laws to retain their authenticity.

face-off between the Romans of Rome and the *Romaioi* of Constantinople and external events like earthquakes, the plague and invasions. All these circumstances might have contributed to the choice of the imperial administration to devote so much of their attention to legislation. But when it did, it used its full potential.

However, constantly disturbing the status quo with new laws created the necessity to anchor these laws firmly and justify their existence. Innovative measures were not a problem per se, if there was a good reason for them. Moreover, they always stirred up some tension with their previous legislation. Innovation and tradition clashed while people had to get accustomed to obeying the new law. To anchor the *Novellae*, the imperial administration had to make use of different tactics. There were roughly two categories of laws and they pertained to different spheres of Roman society. 'Roman laws' dealt with the appointment of officials and the behaviour of the members of ancient Roman institutions, while 'Christian laws' treated a variety of subjects concerning the weal and woe of the common people.

Roman laws were anchored vertically in historical context. They aimed to emphasise the continuity of Roman rule to preserve a political *Romanitas* and appealed to the honour and duty of the administrative elite. The message of Christian laws did not need a vertical anchor. It was not about historical developments, but about the care the emperor took of his subjects and how he responded to their immediate needs. This message was anchored horizontally in contemporary values and in the image of the ideal emperor. This pious emperor was assisted by God and displayed qualities similar to those of the Father, above all the virtue of *philanthropia*. However, this Christian message was communicated in laws and in their capacity as expressions of the Roman state, these laws themselves needed vertical anchoring. Christian laws thus presented a paradox: both anchored and not anchored at the same time, a contemporary message in a historical device. The *Novellae* found the solution for this paradox in historicising change. Immediate needs were caused by changing circumstances, in their turn a result of the variable character of Nature. Nature had always wreaked havoc in the Roman world and the law had always been adapted to these changes. Justinian was simply the last in a long line of emperors tweaking the law to the needs of their time. Even in his contemporary innovations, he was part of a historical tradition.

Further research into the reign of Justinian should take notice of the *Novellae's* subtle treatment of the Roman past and Christian ideals. These laws show that Justinian's empire was neither a complete revival of the ancient Roman Empire without eye for the contemporary world that was based on Christian values, nor was it archetypical 'Byzantine' with Christianity pervading ever corner of society and the connection to traditional Roman ideas lost. The *Novellae* show an emperor that based his state ideology still very much on the continuity of Rome and whose relation with members of the administration was still founded on traditional rules of conduct; while the majority of his laws, which dealt with the small judicial issues of ordinary people, used language that presented a side of the emperor that was thoroughly Christian. Different audiences were approached differently, and different spheres of society

got a different treatment. I wonder if the distinction of spheres could be extended to other sources from the sixth century. Which parts of society did histories, chronicles or poems treat and how did this influence their representation of Justinian's world?

The *Novellae* performed a multi-layered balancing act between tradition and innovation, subject and emperor, and being shaped by and shaping society. However, these laws singled out one person whose presence invaded every corner of the text, who guided the reader (or listener) through the God-inspired lines from preamble to epilogue: the emperor. Justinian was presented as the ultimate source of law and justice, bringer of order and clarity, pious conqueror and philanthropic caretaker. But he was also the bearer of Roman authority, distributor of honours and preserver of continuity. He was ruler of the eternal Roman Empire and Christian father of the people. The *Novellae* gave the people an emperor they could come to with whatever problem they had, foreign invasion or family feud, corrupt official or illegitimate child. And their issue would be resolved, because, always and ultimately, it was the emperor who knew best.

Appendix

In this table I have gathered all Justinian's *Novellae* and indicated which themes occur in their preambles ('x'), first chapters ('1') and epilogues ('y'). The numbers of the *Novellae* correspond to the numbers from J.E. Spruit e.a., *Corpus Iuris Civilis. Tekst en vertaling* Novellen vols. X-XII (Amsterdam 2011). The addressees are abbreviated (see legend below). The categorisation of subjects is very rough, but sufficed for this study. It is based on the general subject of the laws as was relevant for my historical narrative, not their legal sphere (i.e. 'civil law'). The dates are taken from the *Novellae* themselves and refer to the time of promulgation from the imperial centre. If dates or other information is in brackets, it was lost in the original law but suggested on the basis of its content by Spruit or me.

Legend for addressees

arch	Archbishop
com dom	Comes domesticorum (manager of the imperial staff)
com lar	Comes largitionum (manager of imperial expenses)
com of dio East	Comes of the diocese of the East
com priv	Comes privatarum (manager of imperial private riches). 1 = Florus; 2 = Marthanes
con	Inhabitants of Constantinople
gov	governor
mo	Magister officiorum. 1 = Hermogenes; 2 = Tribonian; 3 = Basilides
pat	Patriarch of Constantinople. 1 = Epiphanius; 2 = Anthimus; 3 = Menas
pope	The bishop of Rome
pp	Praetorian prefect. 1 = John the Cappadocian; 2 = Theodotus; 3 = Petrus; 4 = Bassus; 5 = Addaeus; 6 = Areobindus
pp of Illyria	Praetorian prefect of Illyria. 1 = Dominicus; 2 = Elias
Pu	Prefectus urbi (prefect of the city of Constantinople). 1 = Longinus; 2 = Musonius
qua	Quaestor (Tribonian).
que	Questor
que ex	Questor exercitus
sen	Senate
strat	Strategos (general)

Nov.	Adressee	Intelligence			Vertical anchoring			Horizontal anchoring				Nature (φύσις)	Subject	Date
		Lobby efforts	Petitions	Reports and other intelligence	Previous legislators	Previous own law	Historical context	Philanthropia (φιλανθρωπία)	Perfectionism	Piety (εὐσεβεία)	Foresight (πρόνοια)			
1	pp1		x		x			x;y	x	x;y			inheritance	535
2	mo1		x		x	x		x;y	x				marriage	535
3	pat1			x		x				1			church	535
4	pp1			x	x;1			y			y		property	535
5	pat1					x							church	535
6	pat1				1;y			x		x;y.1			church	535
7	pat1				x;y	x.pr;x.1			x	y			church property	535
8	pp1	1			x			x;y	x	x.pr;x.1;1;edicts	x		bureaucracy	535
9	pope					x							church law	535
10	mo1							y			x		bureaucracy	535
11	arch of Justiniana i				1			x					appointment of official/church	535
12	com priv1				x				x				marriage	535
13	con						x;1.1	y					appointment of official	535
14	con			x	x	x		y	x	x.1;y			crime	535
15	pp1						x	y		y			appointment of official	535
16	pat2					x							church	535
17	qua				x	x	x			1			bureaucracy	535
18	pp1				x	x		y	x	x;y	y	x	inheritance	536
19	pp1			x		x							inheritance	536
20	pp			x		x							law	536
21	gov of Armenia		1	x;1			x						crime	536
22	pp1				x	x		x;y	x				marriage	536
23	mo2 & qua				x			x	x				law	536
24	pp1					1	x;1						appointment of official	535

25	pp1						x;1						appointment of official	535
26	pp1						x;1						appointment of official	535
27	pp1				x	1		y					appointment of official	535
28	pp1						x			x			appointment of official	535
29	pp1						x;1						appointment of official	535
30	pp1						x;1						appointment of official	536
31	pp1						1.1;1.2; 1.3						appointment of official	536
32 =34	gov of Haeminontus	x				1		1					property	535
33	pp of Illyria1												property	535
34 =32	gov of Haeminontus					1		1					property	535
35	qua			x	1								bureaucracy	535
36	pp of Africa				x								law	535
37	pp of Africa	1											church	535
38	pp1					x.1;x.2; x.3	x						Roman institution	536
39	pp1		x			x		x	x			x	marriage	536
40	arch of Jerusalem	x.1		x;1				1;y					Church	536
41	que ex					x							appointment of official	536
42	pat3									x			church	536
43	pu1				x	x		x					economy	537
44	pp1		x										inheritance	537

45	pp1			x;1		x;1							bureaucracy	537
46	pp1					x;1		x	x				church property	536
47	pp1						x			x.1			Roman institution	537
48	pp1		x	x									inheritance	537
49	pp1		x.2			x;1		x.1;x.2	x			x	law	537
50	que		x			x							law	537
51	pp1					x				x			economy	537
52	pp1				x	x							property	537
53	pp1		x										inheritance	537
54	pp1			x		x				y			freedom	537
55	pat3			x		x				y			church property	537
56	pat3		x										church	537
57	pat3									y			church	537
58	pp1				x								church	537
59	pp1		x		x	1			x	x			economy	537
60	pp1		x		1.pr;1.1							x	inheritance	537
61	pp1	x				1							marriage	537
62	pp1						x		1				Roman institution	537
63	pu1			x	x								property	538
64	pu1	x											property	538
65	gov of Mysiae	1				x;1.4				1.4;1.5			church	538
66	pp1	x				x		x					law	538
67	pat3			x		x							church	538
68	pp1				x	1			1				inheritance	538
69	con			x	1			y	1	y			law	538
70	pp1						x						Roman institution/ appointment of official	538
71	pp1			x	1								law	538
72	pp1		x					x		x;y	y		inheritance	538

73	pp1	1	x			x		y		x.1		x.pr;x.1	law	538
74	pp1		x		x	x			x		y	x;1	inheritance	538
75 =104	qua					x	x						appointment of official/law	537
76	pp1	x				x				x			inheritance	538
77								x;1.1		x			blasphemy	
78	pp1				x			y	x	x			freedom	539
79	pat3	x											church law	539
80	pp1			x		x	x	x;y	x	x	x;y		appointment of official	539
81	sen					x		x	x	x			freedom	539
82	pp1				x				x				law	539
83	pp1	x				x							church law	539
84	pp1		x		x;1	1						x	inheritance	539
85	mo3							x		x			economy	539
86								x		x			church	539
87	pp1	x			x	x					y		property	539
88	pp1		x		1	1							property	539
89	pp1				x	x		x;1	x		y		inheritance	539
90	pp1		x		x				x	1			law	539
91	pp1		x			1				1			marriage	539
92	pp1					x				1			property	539
93	pp1		x		x								law	539
94	pp1				1	x;1		x			y		marriage	539
95	pp1				x;1								bureaucracy	539
96	pp1												law	539
97	pp1				x								marriage/ property	539
98	pp1		x		x				x			x	marriage/ property	539
99	pp1					x							law	539
100	pp1					x							marriage/ property	539

101	pp1	x			x	1					y		Roman institution	539
102	pp1				1	x	x;1						appointment of official	536
103	pp1					x	x;1						appointment of official	536
104 =75	qua					x	x						appointment of official/law	537
105	com lar		x		x								Roman institution	537
106	pp1		x			x							economy	540
107	com dom		x			x	x					x	inheritance	541
108	com dom		x		x								inheritance	541
109	pp1				x	1		y		x;y			blasphemy	541
110	pp1					x;1							economy	541
111	pp2					x							church property	541
112	pp2	x			x;1								law	541
113	pp2										y		law	541
114	pp2							x	x				law	541
115	pp2		x										law	542
116	pp2										x		army	542
117	pp2			x									marriage	542
118	pp3				x	1							inheritance	543
119	pp3												marriage	544
120	pp3				x	1							church property	544
121	arch of Tarsus	x											property	535
122											x		economy	544
123	pp3					x							church	546
124	pp3												law	544
125	pp3		x										law	543
126	pp2				x								law	546
127	pp4					x		x	x				inheritance	548
128	pp3												taks	545

129	pp5					x		x					religion	551
130	pp3												army	545
131	pp3												church	545
132										x			religion	544/ 545
133	pp1			1	x	x				x			church	539
134	pu2/pp3					x		x;y	x		y		diverse	556
135	-		x							x			property	
136	com lar	x				x							economy	535
137	mo4		x					x					church	565
138	mo1					x							property	(ca. 535)
139	com priv1	x		x									marriage	(535/ 536)
141	(con.)					x;1		x;1					religion	559
142	com priv2				x					x			religion	558
143 =150	pp6					x							marriage	563
145	pp6			x		x							abolishment of office	553
146	pp6		x										religion	553
147	pp6							x					taks	553
150 =143	Leo			x		x								563
151	pp			x									law	(533/ 534) before codex
152	pp									x			taks	534
153	pp of Illyria2	x											crime	541
154	com priv1			x	x	x;1							marriage	
155	strat		x;1			x;1							marriage	533
156		x				x;1							inheritance	

157	com of dio East	x				x							marriage	542
158			x		x	x							inheritance	544
159	pp3		x			x		x					inheritance	555
160	Papius	x				x;1							property	(ca. 535)
162	(pp of Illyria1)	x			1	1							diverse	539
165					x	x							property	(after 538)

Bibliography

Primary sources

Corpus Iuris Civilis (CIC);

Codex Iustinianus (CJ);

‘Constitutio Tanta’:

Translation from P. Amory, *People and Identity in Ostrogothic Italy, 489–554* (Cambridge 1997) 140.

‘Constitutio Cordi’:

‘Constitutio Haec’.

Digesta;

‘Constitutio Deo Auctore’.

Section 2:

Translation in C. Humfress, ‘Law and Legal Practice in the Age of Justinian’ in: *The Cambridge Companion to the Age of Justinian* (Cambridge, NY 2005) 161-184: 167.

Institutiones;

‘Constitutio Imperatoriam’.

Novellae (Nov.);

Translation: J.E. Spruit i.a. ed., *Corpus Iuris Civilis. Tekst en vertaling. Novellen* vols. X-XII (Amsterdam 2011).

Dio Cassius, *Historia Romana* (Ρωμαϊκή Ἱστορία) LXXVII 17.1-2:

Translation: E. Cary and H.B. Foster, *Dio Cassius. Roman History, Volume IX: Books 71-80*, Loeb Classical Library 177 (Cambridge, MA 1927).

Historia Augusta ‘Severus Alexander’ 31 I:

Translation in: F. Millar, *The Emperor in the Roman World (31 BC – AD 337)* (London 1977) 220-22.

Himerius, *Orationes* XIV 28-30:

Translation in: F. Millar, *The Emperor in the Roman World (31 BC – AD 337)* (London 1977) 103-104.

John Chrysostom, *Homilia* XIV (Ὁμιλία ἰδ΄) [107] β:

Translation in: S. Lieberman, ‘Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum’, *The Jewish Quarterly Review* 35.1 (1944) 1-57: 7-8.

John Lydus, *De Magistratibus* (Περὶ ἀρχῶν τῆς Ῥωμαίων πολιτείας) 2.12.1-3.68.2.

Notitia Dignitatum, ‘Occidentis’ 10 & ‘Orientis’ 12, 19.

Papyri;

PSI 1346 102.

P. Oxy. 4400.

Paul the Silentiary, *Description of the Hagia Sophia* (Εκφρασις του Ναού της Αγίας Σοφίας) 145ff:

Translation in P.N. Bell, *Social Conflict in the Age of Justinian: Its Nature, Management, and Mediation* (online 2013) 196 n.33.

Procopius, *Historia Arcana* (Αποκρύφη Ιστορία) or *Anecdota* (Ανέκδοτα) 14.2-3.

De Aedificia (Περί Κτισμάτων).

Esther Rabbah, 'Proemion' 11:

Translation in: S. Lieberman, 'Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum', *The Jewish Quarterly Review* 35.1 (1944) 1-57: 8.

Theodosian Novellae (Th. Nov.) 1, 2 and 5.

Zosimus, *Historia Nova* (Ιστορία Νέα) V 32.6.

Secondary sources

Amory, P., *People and Identity in Ostrogothic Italy, 489–554* (Cambridge 1997).

Bell, P.N., *Social Conflict in the Age of Justinian: Its Nature, Management, and Mediation* (online 2013).

Benner, M., *The Emperor Says. Studies in the Rhetorical Style in Edicts of the Early Empire* (Göteborg 1975).

Boojamra, J.L., 'Christian *Philanthropia*. A Study of Justinian's Welfare Policy and the Church', *Βυζαντινά. Επιστημονικόν όργανον Κέντρου Βυζαντινών Ερευνών Φιλοσοφικής Σχολής Αριστοτελείου Πανεπιστημίου* 7 (1975) 345-373.

Von Bredow, I. & G. Makris, 'Constantinople' in: C.F. Salazar ed., *Brill's New Pauly* (online 2006).

Cameron, A., 'Old and New Rome: Roman Studies in Sixth-Century Constantinople' in: P. Rousseau and M. Papoutsakis ed., *Transformations of Late Antiquity. Essays for Peter Brown* (Cornwall 2009).

Corcoran, S., *The Empire of the Tetrarchs. Imperial Pronouncements and Government AD 284-324* (Oxford 1996).

Dmitriev, S., 'John Lydus and His Contemporaries on Identities and Cultures of Sixth Century Byzantium', *Dumbarton Oaks Papers* 64 (2010) 27-42.

Feissel, D., 'Pétitions aux empereurs et formes du rescrit dans les sources documentaires du IVe au VIe siècle' in: D. Feissel and J. Gascou ed. *La pétition à Byzance* (Paris 2004) 33-52.

Fridh, A., *Terminologie et formules dans les Variae de Cassiodore* (Stockholm 1956).

- Harries, J., *Law and Empire in Late Antiquity* (Cambridge, NY 1999).
- Hekster, O., *Emperors and Ancestors. Roman Rulers and the Constraints of Tradition* (Oxford 2015).
- Honig, A., *Humanitas und Rhetorik in spätrömischen Kaisergesetzen* (Göttingen 1960).
- Holum, K.G., 'The Classical City in the Sixth Century: Survival and Transformation' in: M. Maas, ed., *The Cambridge Companion to the Age of Justinian* (Cambridge, NY 2005) 87-112.
- Honoré, T., *Law in the Crisis of Empire 379-455 AD. The Theodosian Dynasty and its Quaestors* (Oxford, NY 1998);
Tribonian (London 1978);
 'Some Constitutions Composed by Justinian', *The Journal of Roman Studies* 65 (1975) 107-123.
- Van Hoof, L. & P. van Nuffelen, 'The Historiography of Crisis: Jordanes, Cassiodorus and Justinian in mid-sixth-century Constantinople', *Journal of Roman Studies* 107 (2017) 275-300.
- Humfress, C., 'Law and Legal Practice in the Age of Justinian' in: M. Maas, ed., *The Cambridge Companion to the Age of Justinian* (Cambridge, NY 2005) 161-184.
- Jones, A.H.M., *The Later Roman Empire 284-602. A Social Economic and Administrative Survey I* (Oxford 1964).
- Kaiser, W., 'Justinian and The *Corpus Iuris Civilis*' in: D. Johnston ed., *The Cambridge Companion to Roman Law* (Cambridge, NY 2015) 119-148;
 'Zur äußeren Gestalt der Novellen Justinians' in: J.H.A. Lokin and B.H. Stolte, *Introduzione al diritto bizantino. Da Giustiniano ai Basilici* (Pavia 2011) 159-173;
 'Zum Zeitpunkt des Inkrafttretens von Kaisergesetzen unter Justinian', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 127 (2010).
- Karayannopoulos, J., 'Der frühbyzantinische Kaiser', *Byzantinische Zeitschrift* 49.2 (1956) 369-384.
- Kearley, T.G., 'Justice Fred Blume and the Translation of Justinian's Code', *Law Library Journal* 99.3 (2007) 525-554.
- Krumpholz, H., *Über sozialstaatliche Aspekte in der Novellengesetzgebung Justinians* (Bonn 1992).
- Kuin, I.N.I., 'Anchoring Political Change in Post-Sullan Athens' in: T.M. Dijkstra et al. ed., *Strategies of Remembering in Greece under Rome (100 BC – 100 AD)* 157-167.
- Lieberman, S., 'Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum', *The Jewish Quarterly Review* 35.1 (1944) 1-57.

- Louth, A., 'Justinian and His Legacy (500–600)' in: J. Shepard ed., *The Cambridge History of the Byzantine Empire C.500–1492* (Cambridge, NY 2009) 97–129.
- Maas, M. ed., *The Cambridge Companion to the Age of Justinian* (Cambridge, NY 2005);
 'Roman Questions, Byzantine Answers: Contours of the Age of Justinian' in: Maas ed., *The Cambridge Companion* 3-27;
John Lydus and the Roman Past (London 1992);
 'Roman History and Christian Ideology in Justinianic Reform Legislation', *Dumbarton Oaks Papers* 40 (1986) 17-31.
- MacMullen, R., *Corruption and the Decline of Rome* (New Haven, CT and London 1988).
- Mathisen, R.W., 'Adnotatio and Petitio: the Emperor's Favor and Special Exceptions in the Early Byzantine Empire' 23-32.
- Matthews, J.F., *Laying Down the Law. A Study of the Theodosian Code* (Yale, CT 2000) 28-29.
- Mazal, O., *Justinian I. und seine Zeit. Geschichte und Kultur des byzantinischen Reiches im 6. Jahrhundert* (Köln 2001).
- Meier, M., *Das andere Zeitalter Justinians. Kontingenzerfahrung und Kontingenzbewältigung im 6. Jahrhundert n. Chr* (Göttingen 2003).
- Millar, F., *The Emperor in the Roman World (31 BC – AD 337)* (London 1977).
- Moore, J., *Procopius of Caesarea and Historical Memory in the Sixth Century* (dissertation 2014).
- Noailles, P., *Les Collections de Nouvelles de l'empereur Justinien. Origine et formation sous Justinien* (Paris 1912).
- Noethlichs, K. L., 'Quid possit antiquitas nostris legibus abrogare? Politische Propaganda und praktische Politik bei Justinian I. im Lichte der kaiserlichen Gesetzgebung und der antiken Historiographie', *Zeitschrift Fur Antikes Christentum* 4.1 (2000) 116-132.
- Pazdernik, C., 'Justinianic Ideology and the Power of the Past' in: M. Maas, ed., *The Cambridge Companion to the Age of Justinian* (Cambridge, NY 2005) 185-212.
- Praet, R., 'Re-anchoring Rome's Protection in Constantinople: The pignora imperii in Late Antiquity and Byzantium', *Sacris Erudiri* 55 (2016) 277-319.
- Ries, G., *Prolog und Epilog in Gesetzen des Altertums* (München 1983).
- Roueché, C., 'Provincial governors and their titulature in the sixth century', *Antiquité tardive* 6 (1998) 83-89;
 'Floreat Perge' in: M.M. Mackenzie and C. Roueché ed., *Images of authority: papers presented to Joyce Reynolds on the occasion of her 70th birthday* (Cambridge 1989) 206-228.
- Rubin, B., *Das Zeitalter Iustinians* (Berlin 1960).

- Sarris, P., *Economy and Society in the Age of Justinian* (New York, NY 2006).
- Schindler, K.-H., *Justinians Haltung zur Klassik. Versuch einer Darstellung an Hand seiner Kontroversen entscheidenden Konstitutionen* (Köln 1966).
- Schmidt-Hofner, S., *Reagieren und Gestalten: der Regierungsstil des spätromischen Kaisers am Beispiel der Gesetzgebung Valentinians I* (München 2008).
- Sluiter, I., 'Anchoring Innovation: A Classical Research Agenda', *European Review* 25.1 (2016) 20–38.
- Spruit, J.E. i.a. ed., *Corpus Iuris Civilis. Tekst en vertaling Novellen* vol. X (Amsterdam 2011).
- Stroux, H., 'Römische Rechtswissenschaft und Rhetorik' (Potsdam 1949).
- Thurman, W.S., 'A Juridical and Theological Concept of Nature in the Sixth Century A.D.', *Byzantinoslavica* 32 (1971) 77-85.
- Troianos, S., *Die Quellen des byzantinischen Rechts* [trans. D. Simon and S. Neye] (Berlin and Boston 2017).
- Vernay, E., 'Note sur le changement de style dans les constitutions impériales de Dioclétien à Constantin', *Etudes d'histoire juridique offertes a P.F. Girard* (Paris 1913) 263-274.
- Voss, W.E., *Recht und Rhetorik in den Kaisergesetzen der Spätantike. Eine Untersuchung zum nachklassischen Kauf- und Übereignungsrecht* (Frankfurt am Main 1982).
- Van der Wal, N., 'Edictum und lex edictalis. Form und Inhalt der Kaisergesetze im spätromischen Reich', *Revue internationale des droits de l'antiquité* 3.28 (1981) 277-313.