JUSTINIAN AND THE TRIBULATIONS OF TRANSFORMATION

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ABSTRACT

Justinian was responsible for a major transformation of the Roman Empire in Late Antiquity. This paper looks at some of the problems which Justinian faced, and some which he created, in his bid to transform the empire, its legal system and its administration. Problems arose from the tension between devolution and centralisation, from the blurring of lines of authority when horizontal structures were favoured over pyramidal, and from Justinian’s mixed messages. Procopius and John the Lydian shed light on the impact on the lives of ordinary people in the city, rural areas, bureaucracy and army, of policies such as cost-cutting, rationalisation, revenue enhancement, influx control, strict law enforcement, and the imposition of orthodoxy.

Continuity, or rather revival, and change would have been appropriate key words for Justinian’s programme, as he sought to re-establish the Roman Empire, and at the same time to create a leaner, meaner bureaucracy, a more efficient legal system, and an empire united in the orthodox faith.¹ His starting-point was that the defence of the state rested on ‘arms and the law’ (Summa reipublicae tuitio …., Code, Preface 2.1).² This paper addresses some of the problems which he encountered or created in the process of transforming the Roman Empire.

On 13 February 528 Justinian announced his decision to carry through a reform of the administration of justice (Haec quae necessario …, Preface to the Code), as had seemed necessary to many of his predecessors. His

¹ An earlier version of this paper was presented at the CASA conference at the University of the Western Cape in January 1999. I am very grateful to the two anonymous referees, who went to considerable trouble to suggest how the paper could be improved, though neither of them was particularly sympathetic to the approach I have adopted. The reader may be sure that I was warned, and am aware that the temptation to use the present to explicate the past may in places have got the better of me.

² Cf. Procopius, Buildings (Aed.) 1.1.6-10.

concern was to remove or replace elements that were superfluous, defunct, obscure or contradictory (Preface 1.2, with its echo of Theodosius II, Novel 1.3 of 438). The constitutions of this early period of his reign illustrate the larger aims of his programme, which covered, as Falchi has set out, improving the efficiency and speed of the judicial system,\(^5\) revising the *ius civilis*,\(^4\) settling jurisprudential dilemmas,\(^5\) and deciding points of ecclesiastical law.\(^6\)

To make litigation a more affordable option, Justinian addressed abuses in the setting of fees payable to courts (*Institutes* 4.6.24).\(^7\) Judges in Constantinople and provincial governors were debarred from purchasing or developing property, and from receiving donations, during their term of office.\(^8\) In 530 Justinian introduced a set of rules to ensure that civil actions, once initiated, should be settled within three years, and to impose penalties on any plaintiff or defendant who sought to delay the judicial process by wilful absence.\(^9\) Then, in 531, there were rules to prevent litigants from delaying the business of the courts by appealing against the appointment of an arbitrator to adjudicate on the rejection of a judge appointed to hear the primary case.\(^10\)

It can be argued that precedents exist for many of these items, and that Justinian was simply reflecting long-standing policies, but Justinian made choices, and the rhetoric and the combination of issues addressed constitute

\(^3\) G.L. Falchi, ‘Studi sulle relazioni tra la legislazione di Giustiniano e la codificazione di leges’, *SDHI* 59 (1993) 1-172, esp. 24 and 9, cites as examples the reduction of the period of prescription from 5 to 2 years (C. 4.30.14 of 528), the ban on an *advocatus* serving as assessor to two magistrates or holding another post simultaneously (C. 1.5.14 of Sept. 529) and a revision of the law relating to the admissibility of oral evidence in commercial cases (C. 4.20.18 of May 528).

\(^4\) Thus Justinian removed the anomalous retention of the requirements of the *ius liberorum* for succession by the mother of a deceased son or daughter: C. 8.58.2 of June 528; Falchi (note 3) 13.

\(^5\) For example, on the question whether usufruct acquired through a slave should be reduced proportionately if the slave became co-owned with another, Justinian decided in favour of the judgement of Salvius Julianus: C. 3.33.15 of Sept 530; Falchi (note 3) 46.

\(^6\) For example, C. 1.3.43 enforcing the rule of celibacy in monasteries, and C. 1.5.20 of Nov. 530 imposing restrictions on the activities of heretical sects.


\(^8\) C. 1.53 of 528. In itself the constitution was nothing new, as it reasserted restrictions imposed earlier by Valentinian I, Theodosius I and Arcadius: A.H.M. Jones, *The Later Roman Empire* (Oxford 1964) 399-400, 1160 n. 70.

\(^9\) C. 3.1.13. The statute of limitation had a precedent in C.Th. 1.5.3 of 331.

\(^10\) C. 3.1 16 and 18.
a Justinianic programme.

Justinian's concern to get the system of justice operating efficiently and quickly produced a strengthening of the judicial roles of the military and the church, as well as the state. For example, in November 531, he strengthened the judicial capacity of the military (C. 3.1.17), and at the same time he provided that where a provincial governor was not available to dispense justice, the function might be performed by a defendant (Civitatis) or municipal (duumviri) (C. 3.1.18). In Novel 128.21 of 545, Justinian enjoined it upon civil and military judicial officials to act against anyone brought before them for robbery, grievous bodily harm, abduction of women and other such serious crimes. No official would be allowed to refuse to handle such a case on the grounds of traditional practice (consuetudinum nomine). The penalty would be removal from office and a fine of 10 pounds of gold, and anyone engaging in such activity would be tortured, have his possessions confiscated and be driven into exile. Further, in the interests of clean government, judges were obliged to remain in their provinces for 50 days after laying down office to allow for any charges to be brought against them (Novel 128.23).

Another aspect of Justinian's approach to the administration of justice was a shift in emphasis from civil to public law (covering constitutional, administrative, criminal and sacral law), from delicts to crimes. Thus Justinian tended to stress penalties, and to insist on exemplary punishment in cases such as the corruption of a slave, where Gaius had argued that there was no entitlement to restitution. The scope of domestic jurisdiction was further reduced, and, as judicial business was more concentrated in imperial structures, in both physical and organisational terms, procedural rules were more tightly drawn.

From these measures, taken by Justinian to improve the administration of justice, various points emerge of significance for a study of the Byzantine bureaucracy. Firstly, there was an avowed delegation of authority and responsibility, but implicit in the rules was a concern to achieve conformity

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14 For example, Novel 17 pr. (535) urges provincial governors to manage justice in such a way
to an imperial standard. For, as so often in modern society, decentralisation masked increased direction from the centre. Secondly, answerability to the emperor was made more direct, and the mediation of successive levels of authority reduced. At the same time there was a lack of clarity in the distribution of responsibilities, and therefore the potential existed for overlapping authorities.\(^{15}\) Thirdly, the attack on traditional procedures or ‘consuetudines’ could be in conflict with the professed concern to revive and strengthen Roman traditions.

Justinian quickly – and the concept of ‘hurry’ was a characteristic of Justinian’s vocabulary\(^ {16}\) – established his central role in the management of the state.\(^ {17}\) Whereas Theodosius and Valentinian in 446 had committed themselves to a collegial approach with the Senate and court officials in the determination of the law (C. 1.14.8), Justinian in October 529 made it very plain that the ‘imperialis maiestas’ could have nothing to do with the indecision and ambiguities which had characterised the earlier administration of justice. With the ridiculous ambiguities exploded (explosion), the emperor alone would rightly be seen as the sole source and interpreter of the laws (C. 1.14.12, esp. 5: *tam conditor quam interpres legum solus imperator iuste existimabitur*).\(^ {18}\) The emperor was now to be seen as the ‘nomos empsychos’, the living law.\(^ {19}\) When the emperor ruled on a point of law, logic and tradition demanded that the ruling would have universal applicability. The emperor could not be considered as the ultimate arbiter of law on a random basis.

that no appeal case should come to Constantinople unnecessarily, and governors are warned of imperial wrath if complaints of injustice reach the capital

\(^{15}\) In several documents, including Novel 17.1 (cf. 8.6 and 13; 25.4.2), governors are instructed to block access to their provinces to officials from the central bureaux, unless they arrive with a written imperial pragmatic sanction, and in Novel 17.4 governors are told to monitor and control any official despatched to their provinces to ensure that there is no extortion or oppression. The law must reflect a reality of some confusion of areas of authority.

\(^{16}\) References in A.M. Honoré, ‘Some constitutions composed by Justinian’, *JRS* 65 (1975) 107-23, esp. 112.

\(^{17}\) He was a hands-on administrator, who worked long hours even when ill: Procopius, *Aed* 1.7.6-9; cf. John the Lydian 3.55.1 (all references are to his *De magistratibus*, on which see note 42 infra).


\(^{19}\) M. Maas, *John Lydus and the Roman Past* (London 1992) 15, with references at 143, n. 15. Themistius *Orationes* 19.227d-228a used the expression to encourage Theodosius I to mitigate
But it was not only in the content of the laws that Justinian asserted his supreme role in the state. The Prefaces to the Code (Haec quae necessario ..., 528), the Institutes (Imperatoriam maiestatem non solum armis decoratam ..., 533), and the Digest (Tanta circa nos divinae humanitatis ..., dated 16 December 533) show a concern to create and publicize ‘mission statements’, and by addressing them to the Senate and People, Justinian avowedly sought willing support for his legislative and administrative programme. In the process he was defining his role as emperor; and, as Rubin notes, at the same time he worked to establish ‘ein staatskirchliches Herrscherideal’, by extending his legislative programme to the Church, and by his mode of communication with its leaders in whatever part of the Empire.20

The development of a functional bureaucracy depended on the establishment of a stable base of administrative and private law, which the Code was designed to provide. Increased delegation meant greater centralised control. But greater centralised control has a habit of diminishing local initiative and sense of responsibility. Of course, a distinction needs to be made between situations where the emperor still had the power to control, and cases where devolution was little more than a pragmatic abandonment of territory to a measure of indirect rule, as in southern Palestine.21 Still, the tension between autocracy and a bureaucracy operating according to established rules and procedures was inherent in the system, and nothing new in Justinian’s reign, but Justinian intensified the potential for conflict.22

One can appreciate that, as a man of action, Justinian might have had little time for academic dithering, and the history of loyal acclamations indicates that he might learn little from a sycophantic Senate or a council of bishops.

Emperors had encouraged their supporters to chant acclamations and the ritual was extended to a variety of situations: thus, for example, when Theodosius presented his new Code to the Senate on 25 December 438, the

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the effects of entrenched laws, when these were excessively harsh, whereas for Justinian the concept provided an ideological rationale for autocracy in favour of legal stability.

20 B. Rubin, Das Zeitalter Justinians, Vol. 1 (Berlin 1960) 144. For examples of laws addressed to church officials: C. 1.4.33 (Nov. 534); 1.3.42 (528), 44 (530), 52 (531); Novellae 6 (535), 7 (535), 8 Edictum (535), with instructions for its promulgation in all churches.


chants of the senators were duly recorded in the Minutes: ‘Augusti of the Augusti, greatest of the Augusti!’ (8 times). ‘Through you we hold our honours, through you our property, through you everything!’ (28 times). ‘In order that the established laws may not be falsified, let all copies be written in long-hand!’ (18 times). The bishops of the Church were no different, as one can see from the Minutes of the Robber Synod held in Ephesus in 449: ‘Eusebius to the flames! Burn him alive! Cut in pieces this man who divides the Christ! Anathema to him who says two natures after the Incarnation!’ Acclamations were likewise recorded as evidence considered by the Council of Constantinople in 536. The pattern was copied at the local level: for example, the citizens in Aphrodisias—perhaps also in the early sixth century—recorded their gratitude to their benefactor in a series of inscribed acclamations: ‘God is one for the whole world! Many years for the emperors! … Many years for the Senate! … Your buildings are an eternal reminder, Albinus, you who love to build! … Albinus to the Senate!’

Of course, it is true that acclamations had become a well-entrenched ceremonial procedure, and that, as John Matthews puts it, ‘ceremonial, in sight and sound, is a mode of communication.’ Thus there was reason to leave open such modes of communication, but the emperor had to find alternative ways of seeking advice.

The Nika riots (‘riots’ because we are here referring to them from Justinian’s point of view; otherwise we should refer to the event as the Nika massacre) of 532 provided Justinian with justification for action against senators he found objectionable—some 18 illustres and other senators were exiled and their property confiscated—and in 537 he could effectively

23 These lines are taken, slightly modified, from the translation of C. Pharr, The Theodosian Code (Princeton 1952) 5-6. John the Lydian 3.51.2 refers to acclamations organised by the consuls for Anastasius.
24 The translation of this extract from the Acta of the Council is taken from W.H.C. Frend, The Rise of the Monophysite Movement (Cambridge 1972) 41. The Akta dia Kalapodion, quoted by Theophanes, shows that, at the time of the Nika riots in 532, the Greens were capable of holding their own when it came to chanting slogans, insults and challenges.
26 Text in Roueché 1984 (note 25), with translation at 194; cf. her Aphrodisias in Late Antiquity (London 1989).
celebrate his achievement in establishing an administration that relied on his bureaucrats and soldiers and not on the authority of the Senate, while he professed concern to find a role for senators who were not on active service. 

Within the Senate the right to speak was limited to its highest ranking members, the *illustris*. Symbolically, in the dating of documents, precedence was given to the emperor’s regnal year (Novel 47 of 537), which was perhaps not unconnected with the fact that in the period 527 to 541 consuls were appointed in only 11 of the 15 years. According to Procopius *Aed.* 1.10.7, the Senate House in Constantinople after the Nika riots was used only once a year, and that for a ceremonial occasion. The mosaic ceiling celebrated the victories of the imperial forces and the central figures were the triumphant Justinian and the Empress Theodora, surrounded by senators radiant in their adulation (*Aed.* 1.10.10-19).

A parallel process affected the curial councils in the cities of the provinces: their powers and responsibilities were more clearly defined, but their function continued to diminish. Likewise Justinian seems to have upheld the tradition of the provincial council, but the membership became more ex officio, and the functions more ceremonial than deliberative.

Another mark of the weakness of the traditional aristocracy was the continuing, and, if anything, increased importance of eunuchs within the administration. A prime example would be Narses, who was made an *illustris* by 538, and led the imperial army which defeated the Gothic leader Totila at Busta Gallorum in 552. As for the traditional élite, Justinian had an advisory council, but in the absence of a constitutional mechanism to ensure a rotation of membership, the emperor and his advisers grew old together,

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29 J. Irmscher, 'Geistiger Widerstand gegen die frühbyzantinische Reichspolitik', in T. Yuge & M. Doi (edd.), *Forms of Control and Subordination in Antiquity* (Leiden 1988) 618; Novel 62 of December 537.


33 Evans (note 30) 48; K.M. Hopkins, 'Eunuchs in politics in the Later Roman Empire', *PCPhS* 189, n.s. 9 (1963) 62-80, which appears in revised form as chapter 4 of his *Conquerors and Slaves* (Cambridge 1978) 172-96.
and, as Evans suggests, 'became almost a gerontocracy'. Among Justinian's top officials was Peter the Patrician, Master of the Offices from 539 until he died, towards the end of the reign. Liberus, an octogenarian, was given the supreme military command in Italy in 549, and was sent on a mission to Spain three years later. Despite measures such as Justinian's bid to find a role for inactive senators in Constantinople, the trend was surely towards autocracy and away from collegial management of the Empire. This was necessary to his God-given mission and the culmination of a development that began with Constantine's conversion to Christianity.

With regard to the structure of the administration, Justinian had to decide whether to emphasize hierarchical ordering or to settle for flat structures. A move in the latter direction is indicated in Novel 13 (535), which introduced the new office of Praetor Plebis: this was in part to replace the post of Praefectus Vigilum and was established to take care of law and order in Constantinople. The point of immediate relevance is that the new praetors were to be appointed directly by, and to be answerable directly to, the emperor, for, as Justinian complains, law and order had been badly served by the drift

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34 Evans (note 30) 199.
36 Novel 62 (537). Peculiar to the year 529 is a series of constitutions, scattered throughout the Code, each of which ends with the information that it was read out in the consistory (qua conference room) of Justinian's palace. This would have been in terms of the constitution of 446, which required the Senate to be involved in the enactment of general laws (C. 1.14.8), through joint meetings of the senatorial *conventus* and the *silentium* of executive officers. Novel 62 probably reflects a harsh reality, that the senators had for the most part lost the incentive and motivation to involve themselves in Senate business: so argues G. Garbarino, *Contributo all studio del Senato in età giustinianea* (Napoli 1992), with whom A.M. Honoré in his review in *ZRG* 113 (1996) 575-79 eventually and with some reluctance seems to agree, though he argues that the consistory at least remained a focus of lively debate.
37 Cf. Maas (note 19) esp. 15.
38 Some organisational theorists prefer to use the contrasting images of the pyramid and circle; cf. R.P. Hummel, in H.D. Kass & B.L. Catron (edd.), *Images and Identities in Public Administration* (Newbury Park 1990) 202-18. The hierarchical structure tends to emphasize line management and vertically integrated systems. A referee noted that the cluster of administrative reforms reviewed here fell within the second term of office of the Pretorian Prefect, John the Cappadocian (Oct. 532 to May 541). But, even if the ideas were not Justinian's own, it would at least seem that he took ownership of them.
into the custom that praetors were appointed by the City Prefect. Thus in this new development Justinian rejected line management in favour of a horizontal chain. The City Prefect might refer cases to the Praetor of the Plebs (Novel 13.6 pr.), but the Praetor was still answerable to the emperor. With this configuration, co-ordination would not come from top-down sectoral management, but would depend rather on collegial exchanges on the horizontal plane, unless the emperor maintained a hands-on control of the system.

The cluster of top posts in Constantinople also suggests a flat structure: the incumbents of these posts could be referred to collectively as the eparches,39 the top two being the Praetorian Prefect and the City Prefect, with whom one can link the Quaeestor Sacri Palatii,40 who carried a mix of fiscal and juridical responsibilities.41 Then there was the post of Praetor of the Plebs, which Justinian established to relieve the City Prefect of some of his duties.42 The post of Magister Officiorum (Master of the Offices) had grown in importance, as head of protocol, director of arms manufacturing, head of the special branch and president of a court;43 and while Justinian used the Magister Officiorum primarily as a diplomat or foreign secretary, we are told that in 532 Basilides, who was acting for the Magister, confronted the demonstrators (Chron. Paschale), and thus was doing what one might have expected of the Prefects or Quaeestor. There must, therefore, have been a measure of overlap in the spheres of responsibility of these top officials; there was certainly plenty of tension and fertile ground for power struggling.

In the provinces Justinian wavered between geographical and sectoral demarcations of responsibility. In some cases he departed from Diocletian’s policy of separating military and civil commands, and subordinated all officials to the governor; governors were forbidden to appoint deputies; and at least in

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39 As in the acclamation of Albinus at Aphrodisias (notes 25-26 supra).
40 The demonstrators in 532 demanded the dismissal of these three officers (Malalas, 475; Chronicon Paschale).
41 Novel 104 (537) added to his duties the anomalous responsibility for justice and finance in Sicily.
42 John the Lydian 2.30.6; cf. 3.70.1. Two translations are available: A.C. Bandy, Ioannes Lydus, De magistratibus reipublicae Romanae (Philadelphia 1982), and T.F. Carney, Bureaucracy in Traditional Society: Romano-Byzantine Bureaucracies Viewed from Within (Lawrence, Kansas 1971). The latter contains, apart from the translation, a full study of the bureaucracy in Justinian’s day and offers an exemplary demonstration of the techniques of content analysis. A referee drew my attention to G. Dagron, Naissance d’une capitale: Constantinople et ses institutions de 330 à 451 (Paris 1974) 233, who takes the line that the post of Praetor Plebis was of little importance.
43 John the Lydian 2.26.1.
some cases military and civil courts were fused.\textsuperscript{44} As in Constantinople, so with at least some of the provinces, the trend was towards a flat structure, with the removal or restriction of the post of ‘vicarius’, responsible for a cluster of provinces. The administrative structure for the new prefecture of North Africa, made no provision for vicars.\textsuperscript{45} Furthermore, in the case of North Africa, Justinian explicitly directed the Prefect and army commanders (the ‘duces’) to report to him directly (C 1.27.2.16): in this respect the traditional divide of civil and military rule was observed. The governor of Arabia, with the title Moderator, was given \textit{spectabilis} rank to raise him to the same level as the military commander, or Dux, of the region: the Dux and the Moderator were to operate in their separate spheres, but the Dux was to have no power to command the troops put under the governor’s control (Novel 102). Furthermore, as we have seen above, army officers and ‘defensores’ of cities were exhorted to act on their own initiative to protect law and order, and there was a grey area of responsibility between bishops and governors.\textsuperscript{46} The mechanism for horizontal co-ordination was left unspecified, but Justinian was well aware of the problems of getting sectoral or regional heads to cooperate (Novels 24 pr. 26 pr.). His solutions were either to fuse the authorities or to demarcate their responsibilities more clearly, rather than to rely on the relevant Pretorian Prefect to manage the differences. Beyond that he had little to offer but encyclical team-talks.

At the level of making appointments, Justinian was capable of adding to the confusion, as when, if we can believe Procopius, Justinian decided to replace Liberius with Laxarion as Prefect of Egypt, and having commissioned Laxarion to take over, he then instructed Liberius not to relinquish office.\textsuperscript{47}

John the Lydian illustrates how a power struggle could distort the participants’ judgement of an administrative issue. In Justinian’s day the City Prefect battled to recover control of the wheat fund from the Pretorian Prefect. The emperor was so impressed with the City Prefect as a man of good breeding, exemplary life-style and munificence, that he agreed to the

\textsuperscript{44} (a) The principle is readily seen in the dispensation made for North Africa (C. 1.27) and cf. note 15 supra; (b) Novel 8.4; (c) e.g. Novel 25.

\textsuperscript{45} For example, Novel 8.2 and 3 on Pacatian Phrygia and Galatia, which shows that the motive was not cost-cutting; and on North Africa, C. 1.27 (534). Combining posts and paying officials more for the additional responsibilities tend not to produce net savings.

\textsuperscript{46} C. 1.4.22 and 23 (529) rule that bishops are not to operate prisons, but are instructed to monitor the well-being of prisoners; cf. J-U. Krause, \textit{Gefängnisse im römischen Reich} (Stuttgart 1996), reviewed in \textit{ZRG} 115 (1998) 615-23.

\textsuperscript{47} Procopius, \textit{Aeneid}. 27.17 and 29.1-4.
take-over, and John adds that one would have expected this decision of an emperor 'who did honour to justice, love of God and distinction of lineage' (3.38, Carney's translation). John applauds the emperor for backing the right man, but fails to examine the efficiency of the rival systems.

The usual forces that work within large organizations, whether bureaucracies or multi-nationals, continued to work in Justinian's civil service and army. Parkinson's Law and the Peter Principle ensured that the service expanded as more officers were recruited to do the work of those who could not cope, or who thought that they should be freed from menial tasks. The 'singulares' lost status as the 'magistriani' came in over their heads to do the same work (John the Lydian 3.7.1-2); the Regendarius once looked after the issuing of travel warrants, but the Master of the Court stole that function, as John put it, and thus left the Regendarius with nothing to do (3.21.1) apart from collecting his salary; similarly 'Trakteutai', as revenue officers, 'stole' the work done by the officials of the cura epistularum in the dioceses (3.21.2). These cases indicate that there was some attempt at rationalisation, which John the Lydian presents in a negative way, and which, in any case, did not result in optimal savings. Some officials were self-appointed and others managed to hold several posts simultaneously. Justinian, like several predecessors, endeavoured to curb the expansion of the civil service, but the general tendency was for the service to expand, and this multiplied inter-departmental rivalries. This in turn meant goal displacement as officials pursued their own personal interests. And there was no external check on the bureaucracy to prevent it monopolizing power: the officers were not accountable to any democratic or representative assembly; they were not dependent on a legislative assembly for their pay and pensions; and they were not the agents of a democratically constituted legislature. For all Justinian's attempts to reform the system, established trends continued.

A confusion of messages was inherent in Justinian's programme of transformation: Justinian was at pains to emphasize his concern to regain lost ground, literally and metaphorically. The Empire was to be rebuilt with the recovery of North Africa and Italy and the strengthening of the eastern

49 C. 12.33.5 (524); Jones (note 8) 605.
50 C. 1.27.2.20 ff. (534); cf. Libanius, Orat. 2.58 re Julian; CTh 1.15.12-13.
51 Growth in itself may reduce internal conflicts (A. Downs, Inside Bureaucracy [Boston 1967] 17), but an expanding service must increase the potential for internal conflict.
52 Carney (note 42) 2.121.
provinces. The Roman Empire was to resume its traditional role as the dispenser of true justice. To borrow a contemporary catch-phrase, there was to be a Roman Renaissance, with the revival of the best of the old traditions. But at the same time Justinian claimed to be an innovator, prepared to tackle the challenge of putting an end to legal muddles and contradictions; ready to experiment with new administrative structures; and changed circumstances clashed with the image of traditions recovered. The case of North Africa is instructive. Supposedly the provinces were liberated from Vandal oppression, and Roman style ‘libertas’ was restored. The reality was that North Africa entered a new era of oppression. The mutiny of the garrison troops that began at Easter 536 arose because soldiers had married women who had formerly been married to Vandals, and were now encouraged to lay claim to land which the Vandals had abandoned. The other key issue was their Arian faith. The society the mutineers wanted was not consonant with Justinian’s image of North Africa restored to the Roman Empire.

Justinian emphasized his concern to protect and revive traditional values, not least where he wished to introduce radically new or draconian measures. Thus, for example, in his short edict on wages and prices, he introduces four references to traditional practice (παρὰ τὴν ἄρχαίαν συνήθειαν with παλαιάν as a variant). In the Greek prefaces to Justinian’s Novellae, there appear to be some 7 occurrences of the word παλαιός (‘ancient’, ‘time-honoured’) and its related adverb and noun. In setting up the post of Praetor of the Plebs, Justinian made a great deal of Republican tradition, but, while the new office reflected some elements of the praetorship and the tribunate of the Plebs, it was not a revival of an archaic form, but a brand new construct. The mix of traditionalism and innovation provided scope for detractors to present either aim as a contradiction of the vaunted other. And there was a tension between the reality of change and the profession of an unbroken and immutable tradition (C. 1.1.5).

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54 Novellae 122; cf. 119.9 and 6.8 of ad 535, where he was concerned to regulate the growth of monastic communities.


57 Cf. Gray (note 56) 284-89.
Justinian's ambition was to create a legal system that would last for all time; the Institutes and Digest were to be valid for ever: 'in omne aevum valituras' (C 1.17.2.23). In this regard, he was emphatic that the Digest was not to be the subject of any further commentaries, and, in anticipation of what might happen when the work was translated into Greek, he ruled that the translation was to be literal, or, as the Greeks put it, pedestrian (κατὰ ποδόν, Digest, Constitutio Tanta §21).\textsuperscript{58} This ruling reflects the fact that the eastern and western law schools had grown apart, and that the western schools were more progressive.\textsuperscript{59} But for all Justinian's professed determination to establish laws that would last for all time, he showed himself quite capable of admitting that some of his ideas did not work, and therefore felt free to emend laws as circumstances demanded.\textsuperscript{60}

His willingness to learn from his mistakes can be illustrated by the case of Hagia Sophia. He pushed his engineers beyond the limits of what had been considered feasible, and indeed the church collapsed in 558, some 21 years after its dedication, but, nothing daunted, Justinian had the dome deepened and the church reopened.\textsuperscript{61}

Early in his reign, Justinian appeared to learn the lesson that it was better to delay announcements of new projects until he was sure that they could be carried through according to plan. At least that seems to have been the case with his legislative programme. Plans for the Digest were announced to the Senate on 22 July 530, but the commission had to be given a revised brief, which was done by a constitution addressed to Tribonian on 15 December 530, and thereafter Justinian delayed his announcements to the Senate till the work on the Digest, and then the second Code, had been completed.\textsuperscript{62}

Mixed messages and changes of plan were an element in the situation


\textsuperscript{59} E. Volterra, 'Western postclassical schools', Cambridge Law Journal 10.2 (1949) 196-207.

\textsuperscript{60} See, for example, Novel 111 of 541 on the 100-year prescription rule which had been granted to the Church.

\textsuperscript{61} Hagia Sophia was dedicated on 27 December 537 (Marcellinus, Chronicle p. 47 in Croke's edition; Malalas 86 [479] [s. ann. 538]) and dedicated for the second time in 562 (Malalas 143 [495]; 24 December, Theophanes; Chron. Pasch.).

\textsuperscript{62} D. Pugsley, 'On compiling Justinian's Digest', RIDA 42 (1995) 289-329, who argues that the Digest team had to revise their work schedule after the discovery of a complete text of Ulpian's commentary on the Perpetual Edict.
that led to the massacre of 30,000 or more in the Nika riots of 532. Justinian took no firm action to stop the rioters during the first wave of arson, and attempted to let the circus games continue as planned, but on the second day of the riots he capitulated to demands for the dismissal of the Pretorian Prefect, John the Cappadocian, the City Prefect, Eudaemon, and the Quaestor Sacri Palatii, Tribonian. But Justinian steadfastly refused to pardon the two partisans – one a Green and the other a Blue – whose escape from the gallows had led to the riot. At the same time, there is a tradition that while Justinian contemplated evacuating the capital, Theodora urged him to stay and fight.\textsuperscript{63} Whatever arrangement Justinian had made with Hypatius, the emperor went back on it, and arranged for troops to attack the partisans who were massed in the circus.\textsuperscript{64} His hesitation, inconsistency and then savage intransigence caused a disaster. But even so, riots and clashes between Greens and Blues did not end in 532, and a factor in the continuation of the struggle was Justinian’s insistence on orthodoxy. He failed to manufacture a working consensus.

So far we have considered problems that arose from three aspects of Justinian’s administration: his tendency to autocracy, the blurring of lines of authority and his propensity for mixed messages. Other problem areas can be illustrated from the reactions to his programme of his subjects at various levels in society.

His campaign to eradicate corruption and strengthen the economy by boosting tax revenue provided ready ammunition for those opposed to his reforming zeal. Justinian summarised his approach in a Novel of AD 535: Officials, while keeping their hands clean in every situation, must spare those subject to them and keep them free of loss, must increase the revenue account and be pro-active in every way for its benefit, and abstain from personal enrichment.\textsuperscript{65} Hence Procopius’ image of Justinian, the pillager of the provinces, the promoter of poverty, the prodigal.\textsuperscript{66} At the same time, cost-cutting measures caused disaffection among ordinary citizens and soldiers,

\textsuperscript{63} Theophanes 184.27-30; Procopius, \textit{Bella} 1.24.32-38.


\textsuperscript{65} Novel 28.5 of July 535.

as when, for example, if we can believe a hostile witness, the Pretorian Prefect, John the Cappadocian, tried to save on bakers’ bills by providing under-prepared bread for the expeditionary force that set sail for North Africa in 533. Five hundred deaths and a mutinous situation ensued.\textsuperscript{67} Similarly, a bid to peg or reduce the remuneration in sections of the army drove troops in Constantinople to join riots over food in 545.\textsuperscript{68}

Procopius’ \textit{Anecdota} and John the Lydian’s \textit{De magistratibus} suggest that Justinian failed to win – or retain – the hearts and minds of the ‘sub-elite’ (Carney’s phrase), the imperial functionaries. The apparent antithesis between the eulogistic elements of the \textit{Buildings} and the rumbustious hatchet job on Justinian’s record in the \textit{Secret History} set some limit on the value to be attached to the latter as a reflection of the general attitude of the class to which Procopius belonged. Nevertheless, Procopius makes complaints that are consistent with what we know from other sources. When Justinian acted swiftly and decisively, he was accused of rushing in without weighing up the evidence or issues;\textsuperscript{69} when he took the trouble to listen to what people had to tell him, he could be accused of dissimulation and concealing his ideas. His measures to increase revenue were obviously reviled as an attack on wealth and an undermining of the economy.\textsuperscript{70}

But with John the Lydian the picture is less equivocal. Unlike Procopius, John the Lydian accepts ‘the official line’ on Justinian’s triumphant grand strategy, shows respect for Justinian and does not hold him responsible for John the Cappadocian’s crimes and excesses.\textsuperscript{71} He attacks John the Cappadocian with zeal, but that was after the Cappadocian fell from favour.\textsuperscript{72} His lament is for the passing of the old institutions of the civil service,\textsuperscript{73} and his comments reveal what we might describe as change fatigue: too much had changed too rapidly and to little advantage. The shift in emphasis in the

\textsuperscript{67} Procopius, \textit{Bella} 3.13.12-20.
\textsuperscript{69} \textit{Anecd}. 14.7-10; 18.9 ff.
\textsuperscript{70} \textit{Anecd}. 29.1 ff.; 13.1-3 and 12 ff.
\textsuperscript{71} John the Lydian 3.39; 42 \textit{ad finem}; 55 (the official line); 57.2; 61.6; 69. Admittedly John may have found it only prudent not to savage the living emperor; he was writing in the early 550’s. Cf. Carney (note 42) 2. chap. 5.
\textsuperscript{72} Lydus’ attack on John the Cappadocian is carefully analysed by J. Caimi, \textit{Burocrazia e diritto nel De magistratibus di Giovanni Lido} (Milan 1984) 243 ff.
\textsuperscript{73} E.g. 3.11.1; 12.1; 14.1.
bureaucracy from communicative skills to numeracy and financial competence was alienating. John was effectively retrenched, and thus had reason to rejoice when John the Cappadocian was discredited and removed from office (3.25-30). John the Lydian’s career was highly unusual, because he was effectively seconded to a teaching post as a ‘grammaticus’, thus one may assume that he was not typical of the bureaucratic class to which he belonged. Nevertheless, unlike Procopius, John the Lydian reflects the concerns that are characteristic of bureaucratic functionaries: appointment procedures; promotions; salaries; tenure; pensions. Justinian at times clearly tried to accommodate the expectations of officials and to allay fears. The charging of fees by bureaucrats and the purchase of offices were banned, but, for many, salaries were increased, and differentials widened. Absenteeism was tackled in a relatively non-confrontational way: for bishops unofficial leave was not to exceed a year; bureaucrats faced demotion after six months of unauthorised leave, and dismissal only after four years’ absence. Justinian found that the staffing establishment of the Quaestor Sacri Palatii was larger than justified, but he promised that there would be no retrenchments; similarly the Archbishop of Constantinople in 535 was instructed to reduce the number of clerics, but by natural attrition and not retrenchments: posts were to be frozen as they fell vacant, and, where necessary, vacant posts were to be filled by redeployment.

One might discount Procopius’ vitriol and John the Lydian’s complaints as special pleading by the relatively wealthy, but Justinian’s war on corruption and campaign for increased revenues affected also those lower in the social hierarchy. This can be illustrated by a measure Justinian took in the wake of the bubonic plague which raged from 541 to 543 and claimed c. 300,000 lives. A Novel dated March 544 gives Justinian’s decision on how the resultant economic crisis was to be ameliorated: ‘We have learned that after the chastisement (παίδευσιν) which transpired by the Mercy of God, those who should have been bettered by it – those engaged in business, crafts and agriculture, and the shipmasters as well – have abandoned themselves to avarice and demanded prices and wages two or three times those of old

\[24\] His career is conveniently summarised in R.A. Kaster, Guardians of Language: The Grammarian and Society in Late Antiquity (Berkeley 1988) 306-09.

\[25\] All well treated in Carney (note 42). Relevant passages include John the Lydian 3.2 (admission standards), 9.14.15 (on the scrapping of the lunch-break or siesta), 67.4-5.

\[62\] Novel 6.2; C. 12.42.2, a constitution of 379, but retained by Justinian.

\[77\] C. 12.19.13 of 527 on the Quaestor’s staff; Novel 16.1 on the church posts.
custom. We have resolved, therefore, to forbid such avarice by this sacred edict, that, never in future shall any merchant, artisan or craftsman of any sort of skill, trade or agricultural labour have the effrontery to exact wages or prices greater than ancient custom.\textsuperscript{78} But if this was anything more than an emergency measure, and his aim was to curb inflation, he himself worked against it by raising the salaries of administrators in the civil service, and by introducing new taxes.\textsuperscript{79}

John the Lydian's own tribulations may have checked him from falling into the category of perfectionist narcissists, a class which has given bureaucracy a bad name.\textsuperscript{80} At least as an historian, in looking for explanations of the Nika riots, he was sensitive enough to the plight of the poor to see the causal connection between forced labour, penal taxation and lawlessness in the provinces and the migration of people to Constantinople,\textsuperscript{81} and between influx control and restrictions on migrants,\textsuperscript{82} and alienation and crime. The brutalisation of those who settled in Constantinople helped create the attitudes that surfaced during the riots of 532.\textsuperscript{83} The Byzantine bureaucracy, true to form, protected itself by enshrouding its structure and procedures in a fog: officials had to keep their distance from the public;\textsuperscript{84} the use of Latin in official business in Greek cities was mystifying; members of the public who had dealings with officials were likely to be at a disadvantage because of their own ignorance of procedures, or misled by officials who did not properly know or understand the rules (John Lyd. 3.9.3 and 14.2). For ordinary people in Constantinople, the civil service would have meant influx control (at least from the time of Novel 80 of 539), law enforcement and restrictions on free enterprise. Then there were the physical hazards of living in a city – shortage of food, riots, accidents and natural disasters. The problems of delivery of

\textsuperscript{78} Novel 122 pr. and cap. 1, trans. Teall. This could hardly have functioned as more than an emergency measure.


\textsuperscript{80} For the tendency of closed hierarchic systems to attract the psychologically deficient and to breed perfectionist narcissists and the arrogant vindictive, see, for example, Hummel (note 38) esp. 206, with reference to an observation by M.A. Diamond.

\textsuperscript{81} John the Lydian 3.16.7 and 70.1.

\textsuperscript{82} C. 11.23 pr. (531-34); cf. Novel 162.2 (539); on the specious reason which Justinian gave for the restriction on migration by coloni see M. Mirkovic, 'The Roman colonate, liberty and Justinian's humanity.' RIDA 41 (1994) 287-300.

\textsuperscript{83} John the Lydian 3.70.1-2; cf. 16.2.

\textsuperscript{84} E.g. Julian, Ep. 22, par. 431c.
essential services which Justinian faced were complex and immense, but not the subject of this paper.

Justinian attempted a massive programme of transformation, and encountered major problems. There were natural disasters, such as the bubonic plague and the periodic bad harvests; some problems were inherent in his programme of transformation, and would be very familiar to modern administrators and policy analysts; and some were attributable to his own failings: at various times the indecision, inconsistency, over-ambition, ruthlessness. Having already monopolised power for more than twenty years when John and Procopius were writing, Justinian deserved to be the target of a Secret History. But in assessing Justinian as an administrator, we need to set against Procopius’ satire John the Lydian’s grudging respect for aspects of the new order (as in 3.1), if not his eulogistic references to Justinian.
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