

REASSESSING THE RELATIONSHIP BETWEEN EMPEROR AND CHURCH UNDER JUSTINIAN

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Abstract:

Emperor Justinian's reign (527–565) was a pivotal time in early Christian history that shaped the divisions between various Christian factions, which later emerged as the Oriental, Orthodox and Catholic denominations. A crucial part of the division was the controversy of the *Three Chapters* and the Council of Constantinople in 553. Justinian's role in these events was crucial and has often been read as undue imperial interference that pushed the Eastern and Western factions further apart from each other. This is reassessed in this paper on the basis of how Justinian and his officials formulated their perception of the relationship between church and emperor in the law code, the *Novellae* from 535. Justinian's involvement is thus re-examined on grounds of Eastern materials and sources which justify the emperor's role in the debate in accordance with contemporary Roman jurisprudence and late Antique Christian-imperial ideology.

Key Words:

Justinian *Novellae*, *Corpus juris civilis*, church–state relationship, *Three Chapters controversy*, Second Council of Constantinople, symphony

Introduction

Emperor Justinian's reign (527–565) has drawn much scholarly attention. A central topic of discussion is the emperor's involvement in the shaping of post-Chalcedonian Christianity and Christology underpinning the growing tension and division between various emerging factions in the aftermath of the Council of Chalcedon in 451. The emperor's own profession of faith, his role in the condemnation of Nestorian theologians, and finally his authorial sway over the Ecumenical Council of Constantinople in 553, make it a complex issue. Richard Price convincingly depicted this in his seminal work on the council in 553.¹ However, the assessment of the emperor's role and his ideological point of view as well as the theological and legal background, often overlooks a key source, namely the imperial law code published prior to the Christological debates. The legal text is an early achievement of Justinian's reign and enshrined his and his officials' perspective on their world and how it should be governed. The debate about Justinian's perception of Christianity and his understanding of his role in relation to the church often completely overlooks this piece of the puzzle, such as in Price's above-mentioned work. Quite often scholar seems to interpret the early Christian world as one, where the bishops did not act and knew the Roman legal system – and made use of it. As Caroline Humfress notes, does the church build on an accommodation of Roman law and imperial institutions, such as the Imperial office, which created a very complex legal reality of theology and law surrounding the early church councils, church policy and canon law.² The bishops, the pope and the emperor lived and acted within this world.

The omission of this legal work becomes problematic, because the legal sources provide a glimpse of Justinian's perception of his own role. It will be argued that Justinian saw himself as a traditional Roman emperor and followed what he saw as the traditional responsibility of such an emperor towards God. Justinian was aware of the limits, boundaries and possibilities of imperial power, but also where it fell short during his predecessors' rule and their failed attempt to breach the division of

¹ Richard Price, *The Acts of the Council of Constantinople 553 – with Related Texts on the Three Chapters Controversy*, Vol. I-II, Liverpool: Liverpool University Press 2009.

² Caroline Humfress, "The Early Church", in: A. Winroth & J. C. Wei (eds.) *The Cambridge History of Medieval Canon Law*, Cambridge: Cambridge University Press 2022, 12.

the church. The legal text from Justinian's officials is therefore of great importance because it is a direct source to how Justinian and his officials saw the emperor's relation to the clergy, and thereby reveals their perception of the possible space for compromise between various factions of the Church.

Justinian's legal text is, however, much more known and prominent in Eastern Orthodox scholarly debates, where Justinian's legacy is discussed by renowned Church historians, such as Andrew Louth, John McGuckin, John Meyendorff and Georges Florovsky.³ The legal text is seldom taken to be a part of the very concrete political and Christological debate of the Justinian era, but is rather read as an essential point of reference in Eastern Orthodox teachings on the doctrine of state-church relations.⁴

The aim of this paper is to integrate both the legal sources and more traditionally used source material to discuss Justinian's church policy. The analysis will shed new light on the debates on Christology up to the Council of Constantinople in 553.

The paper is divided into three sections. The first is an introduction to Justinian's reign and the legal texts. This is followed by an analysis of the perception of the relationship between emperor and church in the legal text. The final section will turn the focus towards the debate on Christology in the 540s and 550s before the Council of Constantinople in 553. In this section, I will discuss how the emperor acts in accordance with the legal text in two instances; the issuing of the *Three Chapters* and the relationship with Rome's bishop before the council.

³ Andrew Louth, "Ignatius or Eusebios: Two Models of Patristic Ecclesiology", *International Journal for the Study of the Christian Church* 10:1 (2010), 46–56; John Meyendorff, *Imperial Unity and Christian Divisions: The Church 450–680 A.D.*, Crestwood, NY: St. Vladimir's Seminary Press 1989; John A. McGuckin, "The Legacy of the 13th Apostle: Origins of the East Christian Conceptions of Church and State Relation", *St Vladimir's Theological Quarterly* 47 (2003); Georges Florovsky, "Antinomies of Christian History: Empire and Desert", in: *Christianity and Culture, Collected Works of Georges Florovsky*, Vol. 2, Belmont, MA: Nordland Publishing Company 1974, 67–100.

⁴ Aristotle Papanikolaou & George E. Demacopoulos (eds.), *Christianity, Democracy, and the Shadow of Constantine*, New York: Fordham University Press 2017; Daniela Kalkandjieva, "A Comparative Analysis on Church–State Relations in Eastern Orthodoxy: Concepts, Models, and Principles", *Journal of Church and State* (2011), 587–614; Lucian Leustean (ed.), *Orthodox Christianity and Nationalism in Nineteenth Century South-Eastern Europe*, New York: Fordham University Press 2014.

Context – The Restoration of Rome

The ancient Roman Empire had disintegrated in the west following various Germanic invasions in the 4th and 5th centuries, while the Eastern Roman Empire survived. The institutions of Rome, such as the senate, consul and jurisprudence, were still in place and functioning in the East in Justinian's time.⁵ Prior to Justinian's ascension to power in 527, his uncle Justin had ruled since 518. Justin tried to relieve the tension amongst the Christian factions that had emerged from the Christological debates of the 3rd and 4th centuries which culminated in the Council of Ephesus in 431 and later that of Chalcedon in 451. The resolution of Chalcedon proved not to be a viable compromise and further exacerbated the divisions among the sparring factions. In the East, a faction of clergy and hierarchs held firmly to the position of Cyril of Alexandria (376–444) expressed at the Council of Ephesus, which they thought was eroded by the formulation of faith at Chalcedon. Against the anti-Chalcedonian faction were the eastern Chalcedonians, who held firmly to the formulation from the Council of 451, and a staunch western Chalcedonian faction led by Rome's bishop, the Pope, in accordance with the Northern African bishops. Justinian's reign is, as Price notes, a continuation of Justin's, as Justinian sought to find a viable compromise between the various Christian factions. Whether Justinian had a clear vision of this objective early on in his rule or whether the development was less planned is a matter of debate. What is clear is that Justinian continuously sought to use every opportunity to restore and rebuild the empire to its former Roman glory.⁶

Justinian's Vision: The *Novellae*

One of the earliest programs of restoration of Justinian's reign was a legal one in which the emperor and his civil servants sought to re-establish and consolidate Roman law. The compilation of legal texts, the Justinian Codex, later came to be known as the *Corpus Juris Civilis*. The

⁵ Donald M. Nicol, "Justinian I and his Successors A.D. 527–610", in: Ph. Whitting (ed.), *Byzantium – An Introduction*, Oxford: Basil Blackwell 1971, 15–38.

⁶ Charles Pazdernik, "Justinianic Ideology and the Power of the Past", in: M. Maas (ed.), *The Cambridge Companion to the Age of Justinian*, Cambridge: Cambridge University Press 2005, 185–212 (188–190); A. D. Lee, *From Rome to Byzantium AD 363 to 565*, Edinburgh: Edinburgh University Press 2013, 263–300.

work on the project entailed the collection of prior forms of laws, decrees, jurisprudence as well as other legal imperial documents known as *constitutions*, which Justinian's predecessors had issued in the period between the last standardized version of Roman law, the Theodosian Codex, issued under Emperor Theodosius II's reign in 429 and his own time.⁷ The new version, often just referred to as the law of Justinian, had four parts: the *Digesta*, the *Institutiones*, the *Codex Justinianus* and the *Novellae Constitutiones*.⁸

The last section of the *Corpus*, the *Novellae Constitutiones* ("the new law"), contained between 128 and 131 chapters depending on the source in question.⁹ These laws were issued by the emperor between 534 and 554 in different forms and were then later gathered in different manuscripts.¹⁰ The content of the majority of these new laws pertains to civil life, such as regulations of marriage, inheritance and other affairs. However, a crucial part of the laws pertained to the church. More specifically, these chapters regulated the pathway or zone between civil life and the church, such as what the interior of monasteries should look like and who and how one can access the monastic life (*Novella* 5), how a civil man could be appointed bishop (*Novella* 6), how church property could be bought and sold (*Novella* 7) and the movements of clergy (*Novella* 16).¹¹ *Novellae* was shaped at a moment, where ecclesial law was in the making and when the first collected version of the canonical law, the *Collectio LX titulorum* from 535, appeared. As Péter Erdő notes, *Novellae* was shaped at a time, where: "we find ecclesiastical *kanones* and imperial *nomoi* together".¹² This became a distinct feature of the Justinian codex, which John Scholastikos (503–77) integrated into the first eastern

⁷ Caroline Humfress, "Law and Legal Practice in the Age of Justinian", in: M. Mass (ed.) *The Cambridge Companion to the Age of Justinian*, Cambridge: Cambridge University Press 2005, 161–184 (162).

⁸ Lee, *From Rome to Byzantium*, 263–300.

⁹ David J. D. Milller & Peter Sarris, *The Novels of Justinian: A Complete Annotated English Translation*, Cambridge: Cambridge University Press 2018, 1–2.

¹⁰ Humfress, "Law and Legal Practice", 164; Timothy G. Kearley, "The Creation and Transmission of Justinian's Novels", *Law Library Journal* 102:3 (2010), 377–397.

¹¹ For an introduction, see Miller & Sarris, *The Novels of Justinian*, 1–53.

¹² Péter Erdő, "The Canon Law of the Eastern Churches", in: A. Winroth & J. C. Wei (eds.) *The Cambridge History of Medieval Canon Law*, Cambridge: Cambridge University Press 2022, 157.

Nomocanon. The legal system of Scholastikos melted the imperial system together with the ecclesial one, wherefore the two can hardly be separated in the Eastern Roman world from the 5th century and onwards.¹³

The laws of the *Novellae* – or Constitutions – which are perhaps better described as imperial decrees (*nomoi*), seem to establish a firm jurisprudence for the church in the empire and seem to regard the bishops and clergy as forms of civil servants. The source of the authority of the law is directly and literally the imperial office, which is the one pronouncing the laws through the office of the consul. Caroline Humfress quotes from the opening of *Novella* 72 that “the emperors [...] have received from God the power to make laws”, which underlines that the sole source of legislative power in this world is the emperor.¹⁴ It is the imperial office and the imperial realm (*basileia*), which are the source for everything legally speaking. All property, rights and ownership ultimately derive from the emperor. The imperial office is regarded in the law as the supreme ruling body. This is the so-called “monarchical” form of rulership that Francis Dvornik identified in his seminal work on late Roman imperial ideology.¹⁵ It is essentially a continuation of Greco-Roman theories of the state from Aristotle. John A. McGuckin later pointed out that monarchic ideology was not just a Roman ideology, but rather one reinforced by Christianity.¹⁶ A crucial form of the monarchic theory was formulated by Eusebius in his *Praeparatio evangelica* from 310, in which he compares Augustus’s monarchic rulership to that of Jesus Christ.¹⁷ The theory of monarchic rulership was also an established theological concept of rulership, known as the monarchic theory of God (which is basically monotheism in other terms), as Gregory of Nazianzus (c. 329–390) discusses in his third *Theological Oration* § 2.¹⁸ As McGuckin notes,

¹³ *Ibid.*, 157–158.

¹⁴ Humfress, “Law and Legal Practice”, 170.

¹⁵ Francis Dvornik, *Early Christian and Byzantine Political Philosophy* (Dumbarton Oaks Studies, 9), Washington: Dumbarton Oaks Center for Byzantine Studies 2020.

¹⁶ McGuckin, “The Legacy of the 13th Apostle”, 251–288.

¹⁷ Deno John Geanakoplos, *Byzantium – Church, Society, and Civilization Seen through Contemporary Eyes*, Chicago: Chicago University Press 1984, 131–132. For a full text version, see Eusebius of Caesarea, *Praeparatio Evangelica* (“Preparation for the Gospel”), tr. E. H. Gifford (1903) at www.tertullian.org/fathers/eusebius_pe_01_book1.htm.

¹⁸ Gregory of Nazianzus, *Orationes theologicae III*; Stephen Reynolds (trans.), *Gregory of Nazianzus: Five Theological Orations*, Toronto: University of Toronto 2011, 44–45.

the theory was politicized by John Chrysostom (347–407) in order to stabilize imperial power on the one hand, but on the other hand to shield the church from imperial infringement. Chrysostom pronounced the emperor as “high priest”, but not one with ritual authority.¹⁹

The *Novellae* on the Relationship between Church and Emperor

The theological background described above provides a crucial entry point into how the relationship between the church and the imperial authority is described in the *Novellae*. There isn't a specific chapter that deals with the theme in the *Novellae*, but it appears in some of the remarks on ecclesial power, office, property and clergy mainly in *Novella* 6, 7 and 131, which will be the main focus in the analysis.²⁰ The most important is the opening words of *Novella* 6 in which the author describes the ideal relationship between the two. *Novella* 6 deals with the appointment of bishops, priests and deacons. It starts by declaring that the greatest gifts from God's clemency are “priestly and imperial authority” (*sacerdotium et imperium*) and goes on to define the clergy's task as “administering the divine” (*divinis ministrans*) and “delivering prayers” (*deo supplicent*) while the emperor deals with “human affairs” (*humanis praesidens*). The sole source of both is, however, one and the same: God. If both fulfil their offices, a happy *symphonia* (συμφωνία or *consonantia*) will exist between the two. The text then switches to *majestatis pluralis* and the emperor himself then speaks saying that he will have the greatest “care to the true doctrine of God” (*sollicitudinem circa vera dei dogmata*). This will happen if the emperor follows the “holy rules” (*ministri dei verbi*) of the apostles that have been “protected and explained by the fathers” (*sancti patres et custodierunt et explanaverunt*).²¹

¹⁹ McGuckin, “The Legacy of the 13th Apostle”, 269–270.

²⁰ *Novella* 6 is a much used and debated text in Eastern Orthodox canon law and theology, wherefore this text is used as a point of departure. The attempt is not to make a wholesome description of the image of the emperor and his relation to the church in the entire Justinian codex.

²¹ The full Latin text is *Maxima quidem in hominibus sunt dona dei a superna collata, illud quidem divinis ministrans, hoc autem humanis praesidens ac diligentiam exhibens; ex uno eodemque principio utraque procedentia humanam exornant vitam. Ideoque nihil sic erit studiosum imperatoribus, sicut sacerdotum honestas, cum utique et pro illis ipsis semper deo supplicent. Nam*

The author seems to regard *sacerdotium* and *imperium* as two different offices. The division of labour between the clergy, whose purpose is to take care of the divine and deliver prayers, and the emperor, who takes care of human affairs, seems straightforward on the surface. The text draws a line between the church and the imperial office, who both should ideally work towards the realization of the same goal. It is perhaps also the intention of the author, but the line is drawn and formulated in a way, which seems to often be overlooked, that provides some further instruction as to what constitutes human and divine affairs.

The imperial authority is called on to take care of the dignity of the clergy, guarantee or care for the doctrine within the frame of the holy rules as well as apostolic and patristic guidelines. It poses an immediate question about the extent of the imperial “care” of the clergy and doctrine. In particular, the use of a vague word (*sollicitudinem*) in relation to the doctrine of God is a crucial formulation. It seems to allow the imperial authority some say in matters of clergy and doctrine. The opening of *Novella* 6 was not intended as legal material, but was originally meant as an imperial address to the citizens of the empire given as “the general legislative policies” of the emperor.²² Humfress notes that these opening words have only survived because Justinian’s new regulations, the *Novellae*, were not collected into an authoritative version during his lifetime. A collection might have redacted these opening words and only included the legal text.²³ The opening statement should therefore not be taken as a legal text *in itself*, but rather as a comment on the overall goal of the regulations pertaining to bishops and monks. In such light, the

si hoc quidem inculpabile sit undique et apud deum fiducia plenum, imperium autem recte et competenter exornet traditam sibi rempublicam, erit consonantia quaedam bona, omne quicquid utile est humano conferens generi. Nos igitur maximam habemus sollicitudinem circa vera dei dogmata et circa sacerdotum honestatem, quam illis obtinentibus credimus quia per eam maxima nobis dona dabuntur a deo, et ea, quae sunt, firma habebimus, et quae nondum hactenus venerunt, adquiremus. Bene autem universa geruntur et competenter, si rei principium fiat decens et amabile deo. Hoc autem futurum esse credimus, si sacrarum regularum observatio custodiatur, quam iuste laudati et adorandi inspectores et ministri dei verbi tradiderunt apostoli, et sancti patres et custodierunt et explanaverunt. Rudolf Schoell & Wilhelm Kroll (ed.), *Corpus iuris civilis. Vol. 3: Novellae*, Cambridge: Cambridge University Press 2014, (orig. Berlin 1895). A full English translation is given by Miller & Sarris, *The Novels of Justinian*, 97–98.

²² Humfress, “Law and Legal Practice”, 174.

²³ Humfress, “Law and Legal Practice”.

text provides a glimpse of the practical imperial ideology of law and should be treated as a political text rather than as a mere legal one.²⁴

The legal text following the opening statement of *Novella 6*, illustrates perhaps the intention in more detail when it provide guidelines for the appointment of bishops etc. These concrete guidelines could be read as the care for the dignity of the clergy, as it seems clear that these rules mainly target the buying and selling of office or prevent civil servants from entering the clergy without some form of formalized training. The text describes how bishops cannot come from “imperial offices” (*cohortales*) or from the “laity” (*laici*) directly.²⁵ The regulations again deal with the passage between divine and human affairs, which seems to be regulated by the imperial office and not the church. Further regulations on church property are provided in *Novella 7*, and it is noted in paragraph 2.1 that:

the clergy and the imperial authority are not that different from each other; holy and ordinary public property are likewise, because all support of the most holy church comes from the imperial office.²⁶

The imperial authority is the source to the church’s ownership of property, as is the case for all other civil and public entities and persons. There is thus no difference between church and civil affairs in the external physical form of property. It is a clear expression of the monarchic theory in practice where the imperial office is the source from which everything derives (*ex imperialibus*). The office is the source of legitimacy, and it is only through its delegation that other persons and entities can own property.

The Framework of the Relationship between Clergy and Emperor

²⁴ According to Humfress, “The Early Church”, 28, all “the manuscript collections of council acts [must be regarded] as propaganda”.

²⁵ Milller & Sarris, *The Novels of Justinian*, 98–99.

²⁶ *utique cum nec multo differant ab alterutro sacerdotium et imperium, et sacrae res a communibus et publicis, quando omnis sanctissimis ecclesiis abundantia et status ex imperialibus munificentis perpetuo praebetur*. Schoell & Kroll, *Corpus iuris civilis*.

The overarching frame of the relationship between the clergy and the emperor is specified in the last chapter of the *Novellae*. In *Novella* 131, section 1, it is noted that the “holy rules” mentioned in *Novella* 6 are canonical rules from the councils of Nicaea (321), Constantinople (381), Ephesus (431) and finally Chalcedon (451). The author thereby makes two indirect claims. The first one is that the chapters of the *Novellae* should be read as a continuation of the canonical tradition of these meetings and within the confines set up by them. In *Novella* 131, Roman law and Ecclesiastical law from church Canons flow together and are inseparably, as Caroline Humfress notes.²⁷ The description of the relationship between church and empire is therefore, at least according to the author, not intended to transgress any of the boundaries formulated by these church meetings. It is an interpretation and specification rather than an innovation in itself. The second indirect claim is that the laws hold authority from these councils and stand on “Orthodox” ground. It is what the emperor should indirectly take care of; the true doctrine of God, never expressly written as such, but comprised of the logical consequences of the content of the four councils.

In the final chapter, Justinian was provided with some political wiggle room: First of all, the Second Council of Ephesus in 449 is not mentioned – either as a true council or a false one. It was an essential point of disagreement between the various factions. The lack of any reference to the second meeting gave Justinian, legally speaking, room for seeking a compromise in the form of the *Three Chapters*. In addition to it, the law confirms the ranks of honour of the church hierarchs from Chalcedon, which upholds that “old” Rome is the first in rank followed by Constantinople. Perhaps a mere repetition of Chalcedon’s canons, but the repetition is noteworthy as a political sign at a time where the Roman bishop was hostile towards Constantinople and under Gothic Arian rule around the 530s. Justinian and his civil servants must have been keenly aware of the precarious situation between Rome and Constantinople, whose celebration of a common communion had only recently been restored in 519 by Justinian’s uncle, Emperor Justin, during his reign (518–527). The Roman bishop had initially reacted with condemnation to the proclamation of the *Henoticon* (482) during Emperor Zenon’s rule in the late 5th century by Patriarch Acacias of Constantinople (d. 484). The *Henoticon* contained an attempt to reach a compromise between the

²⁷ Humfress, “The Early Church”, 12–13.

Chalcedonian and the anti-Chalcedonian factions, but profoundly failed to do so when both sides took offence with the document.²⁸ Justinian or his officers might have had the failed compromise in mind when they upheld the clause about “old” Rome in the law code, because, as Claire Sotinel argues, Justinian might have been the architect behind Justin’s compromise with the West in 519.²⁹ The Acacian schism had demonstrated that any compromise between Chalcedonians and anti-Chalcedonians needed the signature of Rome. The realisation of Rome’s role was a crucial entry point in the debate about the *Three Chapters* that followed the publication of the *Novellae*.

The Principle of Symphony in the *Novellae*

Before turning to real church politics, the principle of relations between church and emperor (*symphonia*) in the *Novellae* needs a few further comments. The concept isn’t described systematically, but rather appears as a phrase of intent or a frame of interpretation providing basis for the imperial rule. The intent seems to be for both clergy and emperor to work towards the same goal, but that all human affairs derive from the sole authority of the emperor. The monarchic ideology is a far-reaching one in the *Novellae*, which essentially includes all aspect of the church that do not relate directly to God. Property, the access to monasticism, the appointment of bishops and even care for the true Chalcedonian doctrines fall within the domain of imperial authority. The administration of “godly things” that the clergy was in charge of could be delimited to rituals and “prayers” (*deo supplicent*). In that way, Justinian’s law takes Chrysostom’s distinction seriously to an extent Chrysostom perhaps did not see. The imperial authority regulates all matters of the church that relate it to its outer world. The *Novellae* was later given a canonical status as part of the first church law books.

The Hellenistic monarchic theory put forward by Dvornik seems to be upheld and further reinforced by the Christian imagery of an

²⁸ Jan-Markus Kötter, *Zwischen Kaisern und Aposteln. Das Akakianische Schisma (484–519) als kirchlicher Ordnungskonflikt der Spätantike*, Stuttgart: Franz-Steiner Verlag 2013.

²⁹ Claire Sotinel, “Emperors and Popes in the Sixth Century”, in: M. Maas (ed.), *The Cambridge Companion to the Age of Justinian*, Cambridge: Cambridge University Press 2005, 267–290 (270–271).

anointed ruler, as noted by John Meyendorff and John McGuckin.³⁰ However, according to Meyendorff and McGuckin, the image of the ruler also means that other concepts of classic Roman law are taken for granted in the *Novellae*. McGuckin points to the distinction between *au-toritas* (“authority power or power to advise”) and *potestas* (“military or enforcing power”) in the classical period.³¹ In the Roman legal system from the imperial period, the emperor had the power of the military (*potestas*), while the senate had the authority to advise the emperor (*au-toritas*), which ideally should work in harmony towards a common goal. It is crucial to recall that the Roman legal system was still functioning during Justinian’s reign and a senate was in place in Constantinople. Justinian himself appointed the senators and even bestowed the office of consul to his victorious general Belisarius, who as a consul signed off on many of the chapters in the *Novellae*.³² The senate had no formal power during Justinian’s reign but was an advisory body used by the emperor to consult on matters of state. The senate was the primary voice of the nobility and where the emperor would learn how they viewed current affairs.³³ McGuckin notes that the civilian form of administration was the ideal form of the “symphonic” model. The clergy’s role was seen as an advisory one to the emperor in affairs pertaining to them, while the emperor still was the only one to hold the power to enact new provisions. The emperor also regulated human affairs in relation to the church in the world, while the clergy only attended matters directly related to God, as Georges Florovsky notes in his analysis of the *Novellae*.³⁴ The church is protected and guarded by the emperor and provides guidance to the earthly power.

Understanding the monarchic political theory of the imperial authority and the theories influence on the relationship between church and emperor as expressed in the *Novellae* provides a base for a more in-depth understanding of the emperor’s role in the controversy of the *Three Chapters*, the relationship with the Roman bishop Vigilius and finally the

³⁰ Dvornik, *Early Christian and Byzantine Political Philosophy*; Meyendorff, *Imperial Unity and Christian Divisions*; McGuckin, “The Legacy of the 13th Apostle”.

³¹ McGuckin, “The Legacy of the 13th Apostle”, 284.

³² McGuckin, “The Legacy of the 13th Apostle”, 251–288; Meyendorff, *Imperial Unity and Christian Divisions*.

³³ Lee, *From Rome to Byzantium*, 264–285.

³⁴ Florovsky, “Antinomies of Christian History”, 67–100.

culmination of the controversy in the Second Council of Constantinople in 553. These events are complex and deeply entangled with each other, but in the following sections they will be re-assessed chronologically in order to further discuss the more practical outcome of Justinian's perception of imperial authority and the church, as formulated in the *Novellae*.

The *Three Chapters*

Justinian and his civil and ecclesial advisors must have been deeply aware of the potential challenges in finding a compromise between his own Chalcedonian Eastern church, the anti-Chalcedonians of the East and finally the Chalcedonians of the Western church, which was not under the emperor's sway. As mentioned, Justinian was probably the civil officer who ended the Acacian schism in 519.³⁵ He seems to have believed that the way towards a tolerable and viable compromise between the various Church factions was through having at least one head of each of the different factions to sign it.

Justinian sought such a compromise to the post-Chalcedonian conflict in a text called the *Three Chapters*, which was a denunciation of the works of three theologians. These contentious works had been behind some of the essential disagreements at the Council of Chalcedon. The *Three Chapters* is a short text that packs a lot in just a few words. On the one hand, it recharges the anathema of the theologians' crucial texts, which had been condemned at the Second Council of Ephesus in 449, but were restored to the church at the Council of Chalcedon. The policy of the *Three Chapters* was a gamble because it could be perceived by the staunch Chalcedonians and the Western church leaders as ceding ground to the anti-Chalcedonians. The text, however, approaches the compromise through a theological bypass, because it addresses the specific theologians and/or their writings, which were deemed as heretical (Nestorian), rather than targeting theological concepts or formulations from Chalcedon. It is therefore both specific and delimited in order to

³⁵ Sotinel, "Emperors and Popes", 270–271.

bridge the division. The theological backdrop of the text was the emperor's conversations with various Christian factions during the 530s and 540s.³⁶

A notable point about it is that the text was not issued by a church hierarchy, but by the emperor himself in 544–45 and affirmed later at the council of 553 (canons 12–14). The text derives directly from the imperial authority in 545, as the author makes clear in the opening of the text. The purpose of the text, according to the author, is to guide towards truth and defend Christianity from heresy. It is an attempt at correction on the grounds of Chalcedonian orthodoxy, rather than one professing anything new. The author criticises those who do not accept the declaration, because:

We have not done this to please them [the critics], but because of the heresy these chapters contained. [...] even though the heresy of these chapters was obvious, we still sought the opinion of the priest of the Church of God in these matters [...] just as the holy fathers have condemned it from the beginning.³⁷

The passage refers to *Novella 6*, where the emperor promises (or warns) that he will provide care for “the true doctrine” of the church. This vague formulation becomes a direct statement; the emperor has the authority to mark the bounds between heresy and orthodoxy. It is therefore noteworthy that the *Three Chapters* does not describe the concrete elements of faith nor puts forward new theological credos, but rather it separates and excommunicates that which is not true. The text refers directly to the Church Council of Chalcedon, the Apostles and the Church Fathers. These are the true criteria of faith according to the text, and are used in it to delineate Christianity. The end of the *Novella* comes into play in the *Three Chapters*, because the latter reaffirms the same authority

³⁶ For an introduction to the debate, see Price, *The Acts of Constantinople 553*, 76–88; Richard Price, “The Three Chapters of Controversy and the Council of Chalcedon”, in: C. Chazelle & C. Cubitt (eds.), *The Crisis of the Oikoumene*, Turnhout: Brepols 2007, 17–38. Price provides an analysis of the theological content, but does not provide much background for the condemnation and the texts it addresses.

³⁷ Justinian, *A letter on the Three Chapters*; trans. in Kenneth Paul Wesche, *On the Person of Christ: The Christology of Emperor Justinian*, Crestwood, NY: St Vladimir's Seminary Press 1991, 116–117.

and criterion of faith as that laid out in the former. Another feature of the declaration of the *Three Chapters* is that the author professes it to be a defence of the clergy's dignity in the eyes of Christian men. The endless debate and possible heresy and division threaten Christianity according to the author, and the imperial power must therefore act (*potest*). An image is again found in the opening of *Novella 6*, where the emperor is called upon to protect the dignity of the clergy.

The last crucial feature of the authority behind the issuing of the *Three Chapters* is that the author states that the "opinion of the priest of the Church of God" was heard.³⁸ In being so, the Church had – ideally – acted as the advising body to the imperial power, before it acted. The advisory role points back to the division of labour between imperial power and the clergy. The imperial power is the one that acts, enforces and legislates, while the Church advises. But it is not said openly who the "Church of God" who was heard is. The text thereby evades by silence the problem of synodal authority. It does not address the crucial disagreement between anti-Chalcedonians, Chalcedonians and the Western Chalcedonians over authority and legitimacy. The *Three Chapters* was supported by the Chalcedonian Patriarch Menas of Constantinople in 554 and the anti-Chalcedonian's hierarch, which meant that only a Western bishop, most likely the Roman, would be needed to seal the compromise.³⁹ The letters containing the *Three Chapters* quoted above were sent to the Western bishops, appealing for the restoration of unity. It was not well received in the West, as can be seen in two letters from prominent African bishops in 545–46. Both of them refuse the condemnation in the *Three Chapters*, because it is read as a violation of Chalcedon and a return to the meeting in Ephesus in 449. The African bishops do not contradict that the emperor has the authority to issue such a document. They rather argue that *Three Chapters* does not follow the church council's agreement, which the emperor claims to uphold.⁴⁰

³⁸ Wesche, *On the Person of Christ*, 116.

³⁹ James Allen Evans, "Justinian", in: A. A. Barrett (ed.), *Lives of Caesars*, Hoboken: Blackwell Publishing 2008, 301.

⁴⁰ Price, *The Acts of Constantinople 553*, 109–112.

The Relationship with Rome and the West

A final compromise needed Western support, but such a compromise had become a larger challenge for Justinian, as the African letters attest. The *Three Chapters* was viewed as undermining Chalcedon, as the African bishops wrote in 545. The debate over the *Three Chapter* involved the Roman Pope, as well. In Justinian's relation to the Pope a practical enactment of Justinian's church policy, the "symphony", appears. Justinian tried to make the Roman bishop, Pope Vigilius at the time, to agree to *The Three Chapters*. Justinian's attempt has often been assumed to be harsh, threatening and even violently, as James Allan Evans writes, "Justinian was prepared for harsh measures: in November 545, a few days before a second Gothic siege of Rome began, a detachment of Byzantine troops arrested Vigilius [...]. Vigilius put up a long, strenuous fight, but in the end he was forced to yield."⁴¹ Evans describes how the emperor used blunt military and political force to pressure the Roman bishop into submission and acknowledgement of the *Three Chapters* after it had been issued. In Evans' description, Justinian was an emperor above the church hierarchy, who used force to persuade clerics into theological submission. Evans' version is found and repeated in several related scholarly assessments of the relation between Justinian and Vigilius during the debate of the *Three Chapters* up until the Church meeting in 553.⁴² Before turning to the sources, the turn of event from 530s to the council of Constantinople in 553 that involved pope Vigilius need to be clarified to maintain some sort of overview. Vigilius was installed as pope sometimes in the 530s, when Eastern Roman forces took the city from the Goths. In 545, Vigilius travelled from Italy, Rome or Sicily, to Constantinople. He remained here until the council in 553 was

⁴¹ Evans, "Justinian", 301.

⁴² See Donald M. Nicol, "Justinian I and his Successors A.D. 527–610", in: Ph. Whitting (ed.), *Byzantium - An Introduction*, Oxford: Basil Blackwell 1971, 15–38, (77); James Allen Evans, *The Age of Justinian: The Circumstances of Imperial Power*, London & New York: Routledge 1996, 188; John Moorhead, "The Byzantines in the West in the Sixth Century", in: P. Fouracre (ed.), *The New Cambridge Medieval History, Volume 1 c. 500–c. 700*, Cambridge: Cambridge University Press 2005, 118–139, (132), as further discussed by Amalie Grøndal Henriksen, "Blev paven ført til Konstantinopel i lænker? Forholdet mellem kejser og vestkirke under Justinian" ["Was the pope brought to Constantinople in chains? The relationship between emperor and the western churches under Justinian"], *Patristik* 22 (2021), 60–64.

held, which he did not participate in despite being in the city. In 448, Vigilius did sign the *Three Chapters*, but turned back on the issue and renounced his signature in 552. Evan, Price and other interpret the turn of events as one, where Justinian forces, threatens and imprisons Vigilius in Constantinople from ca. 545–553.

The source material in question does, however, provide a more nuanced portrayal of Justinian's role. The sources to Vigilius' trip to Constantinople in 545–46 and the following debate of the late 540s is different than what Evans *et al.* note. A thorough debate can be found in Amalie Grøndal Henriksen's paper, where she notes that the only source that mentions anything about Vigilius being forced to travel to Constantinople by Justinian is the later *Liber Pontificalis*, from 625–638, about the history of the Roman bishops.⁴³ The *Liber Pontificalis* is a late and unreliable source and it is also contradicted by both Vigilius himself in an encyclical letter, *Dum in Sanctae Euphemiae* from 552, but also by contemporary Eastern sources.⁴⁴ In Vigilius' own encyclical letter, he never mentions any forced travel himself. Vigilius does also never mention any physical abuse nor even direct imprisonment by order of the emperor, while being in Constantinople. He rather appeals to Justinian's mercy and talk rhetorically of him as his friend.

Vigilius' letter from 552 shows that he was under immense pressure in Constantinople during the debate of the *Three Chapters*. The forthcoming Council of Constantinople in 553 and Justinian's issuing of his *On the Orthodox Faith* in 551, which contained the *Three Chapters*, must have been pressuring Vigilius. This pressure seems to be, what the Roman bishop laments in his letter to the Western bishops in 552.⁴⁵ The letter does not contain any mention of Vigilius being imprisoned, put in chains and subjected to any physical abuse. Pope Vigilius surely would have mentioned such events, if they had transpired, in his letter from 552 to rally up support in the West. Instead, Vigilius only talks of minor incidents, which seem more like allegorical pictures of political and physical pressure. He mentions being dragged from an altar of a Church

⁴³ Louis Duchesne (ed.), *Le Liber Pontificalis*, Paris 1886. For trans., see Raymond Davis, *Liber Pontificalis*, Liverpool: Liverpool University Press 2000.

⁴⁴ Henriksen, "Blev paven ført til Konstantinopel?", 49–79.

⁴⁵ Price, *The Acts of Constantinople 553*, 170–182.

of St. Peter by soldiers and seeking refuge in the Church of Chalcedon.⁴⁶ These are strong images. The image of being dragged from Chalcedon, perhaps more an allegory, is deployed as a rhetorical strategy to solidify his own image as a persecuted man. Whether the story is historically accurate, is hard to say. The images allude to him being the true guardian of St. Peter's throne and the true faith of Chalcedon. The letter is not a precise description of the events. Vigilius omits in the letter the fact that he had initially signed the documents without hardly putting up a fight back in 548. The letter is part of his attempt to secure support before the council of Constantinople in 553. Vigilius only notes that his trip to Constantinople was not because of "private needs".

In the opening of the letter from 552, Vigilius mentions how the ones he first met in Constantinople in 548 were an envoy from the emperor led by general Belisarius and Peter the Patrician.⁴⁷ Peter was a high-ranking Eastern diplomat, who had been in Rome with Vigilius in the 530s. Belisarius and Vigilius knew each other, because they had worked together to defend Rome in the first Gothic siege. Vigilius knew both men personally from Rome and must also have known Belisarius' secretary, Procopius, who was also present in Rome in the 530s.⁴⁸ Peter was the one who had been negotiating with the Goths in Northern Italy and was released to Belisarius in 537 when the general took Rome and Ravenna. All of these men shared relations from their days in Italy, wherefore Justinian seems to have appointed Peter and Belisarius as envoys.⁴⁹ Vigilius was not meet by enemies in Constantinople in 540s, but former allies, who tried to persuade him to sign the emperor's church policy. This initially succeeded in 548. Vigilius seems not to have been a prisoner, but just another church hierarch, who Justinian negotiated with. Vigilius' turn back from this initial signature somewhere in the end of the 540s seems to have been due to Western pressure. In his letter from 552, Vigilius seems to search for an excuse for his initial support of the emperor's policy. Vigilius' excuse takes the form of allegorical pictures and allegations of abuse by soldiers, which are completely lacking from

⁴⁶ Vigilius, *Dum in Sanctae Euphemiae*, in: E. Schwartz (ed.), *Vigiliusbrieve* (Sitzungsberichte der Bayerischen Akademie der Wissenschaften, Philosophisch-historische Abteilung, Jahrgang 1940, Heft 2), Munich 1940. See Price, *The Acts of Constantinople 553*.

⁴⁷ Price, *The Acts of Constantinople 553*, 170–171.

⁴⁸ Warren Treadgold, *The Early Byzantine Historians*, London: Palgrave 2010, 201.

⁴⁹ *Ibid.*, 267.

Eastern sources written by Peter and Procopius, who was almost physically standing at Vigilius' doorstep in Constantinople.⁵⁰

All of these circumstances and sources are disregarded, when Price still notes that the "emperor who dominated [the council in 553], included brutality towards its opponents, both Pope Vigilius and the bravest spirit among the western clergy".⁵¹ Price takes Vigilius' account of the event in 552 and the much later *Liber Pontificalis* as truth. Price accepts these two sources without questioning them. Price thereby buys into a predominantly pro-Western and anti-imperial point of view on Justinian without including the legal backdrop and the contemporary Eastern sources to Vigilius. The Eastern sources do not mention any arrest or violent pressure on Vigilius to leave Rome and come to Constantinople – and furthermore, any physical brutality towards him.⁵²

The most extensive contemporary sources to this in the East are from the historian Procopius (ca. 500–570), who provides some contemporary information in his book *History of the Wars (De Bellis)* and his later *Secret History (Historia Arcana)*. Procopius pro-imperial text, *History of the Wars* briefly mentions that Vigilius was appointed by Belisarius after he took Rome in 537. Procopius, who as mentioned above was with Belisarius during his campaign in Italy, writes that the former bishop of Rome was an ally of the Goths, which the Eastern Romans could not accept, and he was therefore replaced with Vigilius.⁵³ This source tells two things: first of all, that Rome was under the control of Justinian's forces during Vigilius' tenure and so Vigilius' position was precarious and reliant on his relationship with Belisarius and the emperor. His office was bestowed by imperial authority.⁵⁴ This perhaps also indicates why Vigilius left Rome and came to Constantinople in 546. Rome was facing a second Gothic siege by the 540s and Vigilius, appointed by the Eastern Romans, would probably be subjected to hostile treatment by the Goths, if they

⁵⁰ Unfortunately, Peter the Patrician's complete historiographical work has been lost and the latest fragment known describes only events in the late 4th century; see the preface in Thomas M. Banchich, *The Lost History of Peter the Patrician*, London: Routledge 2015.

⁵¹ Price, *The Acts of Constantinople 553*; preface.

⁵² Henriksen, "Blev paven ført til Konstantinopel?"

⁵³ Procopius, *History of the Wars* VI.16–VII.35.

⁵⁴ Ian Hughes, *Belisarius – The Last Roman General*, Barnsley: Pen & Sword Military 2009, 141.

took the city. Vigilius denies this in his own letter from 552, but his denial must have come, because it seemed plausible to think so amongst his reader. Belisarius, Peter and Procopius were also heading for Constantinople by the 547 and Vigilius probably followed them.⁵⁵ Even Evans describes, using more recent and questionable sources, how it was Empress Theodora who was the one who made sure Vigilius became pope and later summoned him to Constantinople. Theodora would initially have supported Vigilius because he agreed to reconcile the anti-Chalcedonians with the West.⁵⁶ This might just be speculation about the nature of the connection between Vigilius, Belisarius and Peter, whereas it is clearer that the latter two, the general and the diplomat, were both closely connected to the empress. In Constantinople, Vigilius was at least safe. In such a scenario, he could hardly refuse to sign the *Three Chapters*, being appointed by imperial authority, hosted by the emperor and left alone surrounded by clergy, generals and diplomats all agreeing that the *Three Chapters* was sensible church politics. It does not take much to see that Justinian probably did not need brute force to make Vigilius agree to the document in the first place.

Such an interpretation of Vigilius' act and travels relies on the pro-imperial source of Procopius. Procopius' position, of course, makes his narrative a biased one, just like Vigilius' own letter. Procopius does, however, provide – ex silentio – further evidence that lends credence to such a reading of the situation. In Procopius' *Secret History*, he discloses his dislike of Justinian, Belisarius, Peter and Theodora, portraying the diplomat as a liar, the emperor and general as two simple peasants under the influence of a skillful whore, who through the men unjustly rules the empire. Procopius is not pro-Justinian in the *Secret History*. In a section of chapter XXVII, Procopius describes the unjust treatment of the Alexandrian clergy, who Justinian kills and sells their office for money. In chapter XXVII, Vigilius' name again reappears. Vigilius here acts as an envoy of the emperor. In the text, Procopius is preoccupied with revealing the emperor as an unjust ruler and his story of the Alexandrian clergy serves this objective. The intention is to portray Justinian as a brute man enforcing his views on others in church life. In such a context, it would have made a lot of sense for Procopius to tell of any abuse, imprisonment or harsh treatment of Vigilius. Such a story-line would

⁵⁵ Treadgold, *The Early Byzantine Historians*, 201.

⁵⁶ Evans, "Justinian", 299–300.

have only strengthen his argument. Instead, Procopius tells that Vigilius seems to be a diplomat of the emperor during the troubles with the Alexandrians in the 540s.⁵⁷ The source thereby becomes an indirect, unwitting testimony to the scenario that Vigilius was actually working for the emperor as a mediator in Alexandria, while he was a pope. The role seems hardly to be that of a prisoner. It contributes to the overall picture that Justinian did not need to force Vigilius to do anything at first and that the real pressure on Vigilius came from the West – a pressure that forced him in the end to revoke his signature on the *Three Chapters* and refuse to partake in the council of 553, while ramping up support in his encyclical letter from 552 bewailing his maltreatment. Vigilius' misfortunes have been very great indeed, if one read his letter, as the pope had intended. Scholars like Price, Evans and others have accepted Vigilius' statements uncritically, only supported by the much later *Liber Pontificalis* written hundreds of years later by Western, anti-Eastern authors.

Conclusion

Overall, Justinian's dealing with Vigilius provides some pieces to the puzzle of how Justinian enacted the relationship between emperor and church in practice. In the emperor's view, even the highest church hierarchs in Constantinople, Alexandria and Rome derived their power from imperial authority. The emperor was simply their source of "earthly power" (*ministris humanis*) and the emperor had to take care of the "true doctrine" (*veri dogma*), which gave him power (*potest*) to issue documents like the *Three Chapters* – a power the African bishops do not contest in their letters of 545–546. The legal basis of the *Novellae* was therefore not a mere ideal for Justinian and his officials. They acted in accordance with Roman legal and monarchic principles, which allowed the clergy to advise, but the emperor to act (*potest*). Such a relationship is clearly stated in the *Three Chapters*, where the emperor draws the line alone between faith and heresy.

⁵⁷ Procopius, *Secret History*, XXVII.16–25. Another plausible reading is that the events took place prior to 537, when Vigilius supposedly was a Roman envoy at Justinian's court, as Evans, "Justinian", 299–300, seems to suppose. However, Procopius was in Northern Africa himself during the same period with Belisarius, so it seems odd that he would describe events he was not involved in and not knowledgeable about, being cut off from court information during the Vandal campaigns of the 530s.

Justinian was able to move around this legal world and politically more attuned than Evans, Price and others give him credit for. He did not need to use force against the clergy at first, but could simply compel them through appointments, the distribution of property and safeguarding them from external threats, such as that posed by the Goths in Rome. The emperor could achieve much more in a soft diplomatic way, which even Procopius attests to in his *Secret History*. The real political church problem for Justinian was not Vigilius, but the bishops beyond his own borders in the West – in Africa and Europe, where the hostile bishops under Rome seemed to resist any attempt to reach a compromise. The ecclesial challenge lay beyond the borders of the empire, which reveals that Justinian's vision of a restored Rome, his military campaigns and church politics were one entangled political program. The restoration of Rome was a juridical, political, military and ecclesial program, which fell through due to his realm's failure to conquer the remains of the West, partly due to the Justinianic plague decimating the population and the economy of his realm.

Price, Evans and others have misread Justinian's involvement in church politics. This effects their understanding of how church politics played out concretely in the controversy of the *Three Chapters*, Justinian's dealing with Vigilius and at the Second Council of Constantinople. Price and Evans overemphasize the brutality of the emperor and disregard the real legal Roman basis for the emperor's action. In light of what the Western Roman bishopric evolved into in the medieval period and how the pontifices of Rome later entered into conflict with western European leaders, such a reading makes sense. It seems, however, anachronistic and disregards the Eastern sources and the Roman legal context that the controversy of the 530–50s took place in. Justinian acted with soft diplomacy and within the Roman legal frame, which his juridical program had re-articulated.

This is best illustrated by the fact that the African bishops do not protest over Justinian's announcing of the *Three Chapters*. They disagree, but they do not contest the authorial power behind it. Perhaps the lack of protest from African bishops is because they had read the *Novellae* that was sent to every Christian bishop and read aloud in their churches at the behest of the emperor. The African bishops seem to have known and acted within the Roman legal system. This legal framework is behind the controversy and the players acted accordingly, which Price and Evans overlook.