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THE *SC CLAUDIANUM* IN THE *CODEX THEODOSIANUS*: SOCIAL HISTORY AND LEGAL TEXTS*

In Roman civil law, unions between free female citizens and slave men were regulated under the provisions of the *Senatus Consultum Claudianum* (hereafter *SCC*). The *SCC* was enacted in A.D. 52, in the reign of the emperor Claudius, and was subjected to important modifications under Hadrian.[1] In its late classical form, the *SCC* allotted the owner of the slave two responses to the union. He could permit the union and claim the woman as his *liberta*, or he could, following a formal procedure, enslave the woman and claim her subsequent offspring as his slaves too.[2] Weaver long ago noted that the *SCC* was not implemented on moral grounds (if so it was 'singularly late and ill-conceived'), and Sirks has recently demonstrated that its primary purpose was to protect the master's authority over his slaves.[3] The *SCC* regulated unions between free women and slave men throughout late

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[1] The principal sources are Tac. *Ann*. 12.53. Gai. *Inst*. 1.84, 91, 160. *PS* (*Pauli sententiae*) 2.21[a].1–18. A.J.B. Sirks, 'Der Zweck des Senatus Consultum Claudianum von 52 n. Chr.', *ZRG* 122 (2005), 138–49; P.R.C. Weaver, 'The status of children in mixed marriages', in B. Rawson (ed.), *The Family in Ancient Rome: New Perspectives* (Ithaca, 1986), 145–69; W.E. Voss, 'Der Grundsatz der "ärgeren Hand" bei Sklaven, Kolonen, und Hörigen', in O. Behrends et al. (edd.), *Römisches Recht in der europäischen Tradition: Symposion aus Anlass des 75. Geburtstages von Franz Wieacker* (Ebelsbach, 1985), 117–84; M. Kaser, *RPR*[2] I (Munich, 1975), 289; J. Crook, 'Gaius, *Institutes*, 1.84–6', *CR* 17 (1967), 7–8; P.R.C. Weaver, 'Gaius 1.84 and the S.C. Claudianum', *CR* 78 (1964), 137–9; H.R. Hoetink, 'Autour du "Sénatus-Consulte Claudien"', in *Mélanges Lévy-Bruhl* (Paris, 1959), 153–62; W.W. Buckland, *The Roman Law of Slavery* (Cambridge, 1908), 412–18. See below (n. 6) for bibliography specific to the *SCC* in late antiquity.

[2] See esp. Crook (n. 1), 7–8, for the modification of Hadrian. Originally, the owner could permit the union (*volente domino*) but by agreement (*ex pactione*) claim the woman's children as his slaves. Now, if the woman became a *liberta* her children were freeborn. Very little is heard of this option, but it apparently existed into the late empire (see *PS* 4.10.2). On the formal procedural requirements, see below. There is one further complication which is of considerable interest but does not affect the subject matter of this article. The *SCC* applied to *cives Romanae*; apparently *Latinae Iunianae* automatically bore slave children if their partner was servile, under the terms of the *lex Iunia Norbana* or the *lex Aelia Sentia*. Gai. *Inst*. 1.86 claims that Hadrian left this exception to the *ius gentium* in place, but this is the last we hear of legal rules concerning mixed marriages between Junian Latin women and slave men. See Crook (n. 1), 7–8 and Weaver (n. 1, 1986), 167, n. 6.

[3] P. Weaver, *Familia Caesaris: A Social Study of the Emperor's Freedmen and Slaves* (Cambridge, 1972), 162–9; Sirks (n. 1), 148. See below, on *CT* 4.12.3, for further discussion of the purpose of the *SCC*.

antiquity, and the details of its application were modified in a series of imperial constitutions preserved in the *Codex Theodosianus* (*CT*). Nearly a century after the *CT* was published, Justinian abolished the *SCC* entirely, depriving slave owners of the capacity to enslave women cohabiting with their male slaves.[4] Because it was abolished by Justinian, the *SCC* has left almost no trace in his legal codifications, so that modern historians are in the unusual position of being largely dependent on the *CT* for knowledge of this important sphere of Roman jurisprudence.

The *CT*, completed in A.D. 438, aimed to collect and organize all general imperial constitutions from the reign of Constantine onwards.[5] Seven constitutions survive in title 4.12, which carries the rubric *Ad Senatus Consultum Claudianum*. *CT* 4.12 occupies three pages in the Mommsen–Krüger edition, yet it collapses enormous problems of historical interpretation into this deceptively small package. The title has been the object of extensive modern discussion, and it is of great interest to both social and legal historians.[6] For the social historian, the title intersects important questions about the transformation of sexual values and the role of legal status in the late empire. One line of interpretation has held that *CT* 4.12 reflects new, Christian attitudes towards sexuality or mixed-status unions.[7] Evans Grubbs, in her systematic study of Constantine's legislation on the family, has persuasively debunked the thesis of religious influence, arguing instead that the laws were a reactionary effort to reinforce social boundaries in an age 'when status distinctions came to have less meaning'.[8] Others have suspected deeper divisions between eastern and western custom as the driving force of change.[9]

[4] *CJ* 7.24.1. The date was probably November 17, 533. See J. Beaucamp, *Le statut de la femme à Byzance*, 2 vols. (Paris, 1990–2), 192. M. Melluso, *La schiavitù nell'età giustinianea: disciplina giuridica e rilevanza sociale* (Paris, 2000), 47–52.

[5] A.J.B. Sirks, *The Theodosian Code: A Study* (Friedrichsdorf, 2007); T. Barnes, 'Foregrounding the Theodosian Code', *JRA* 14 (2001), 671–85; J. Matthews, *Laying Down the Law: A Study of the Theodosian Code* (New Haven, 2000); J. Harries, *Law and Empire in Late Antiquity* (Cambridge, 1999); T. Honoré, *Law in the Crisis of Empire, 379–455 AD: The Theodosian Dynasty and its Quaestors* (Oxford, 1998); M. Sargenti, 'Il Codice teodosiano: tra mito e realtà', *SDHI* 62 (1995), 373–98; T. Honoré, 'The making of the Theodosian Code', *ZRG* 103 (1986), 133–222; E. Volterra, 'Intorno alla formazione del codice Teodosiano', *BIDR* 83 (1980), 109–45; G. Archi, *Teodosio II e la sua codificazione* (Naples, 1976).

[6] A. Arjava, *Women and Law in Late Antiquity* (Oxford, 1996), 220–4; J. Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (Oxford, 1995), 263–73; Beaucamp (n. 4), 185–93; B. Albanese, 'Appunti sul SC. Claudiano', *Scritti giuridici* 1 (Palermo, 1991, orig. 1951), 29–39; M. Navarra, 'A proposito delle unioni tra libere e schiavi nella legislazione costantiniana', *AARC* 8 (Naples, 1990), 427–37; C. Gebbia, 'Il SC. Claudianum e l'emancipazione femminile dal I al IV secolo', *Seia* 3 (1986), 25–37; T. Yuge, 'Die Gesetze im Codex Theodosianus über die eheliche Bindung von freien Frauen mit Sklaven', *Klio* 64 (1982), 145–50; L. Andreotti, 'L'applicazione del "Senatus Consultum Cladianum" nel Basso impero', in E.C. Welskopf (ed.), *Neue Beiträge zur Geschichte der alten Welt*, vol. 2 (Berlin, 1965), 3–12; B. Biondi, 'Vicende postclassiche del S. C. Claudiano', *Iura* 3 (1952), 142–54.

[7] Andreotti (n. 6); Biondi (n. 6); J.L. Murga, 'Una extraña aplicacion del senadoconsulto Claudiano en el Codigo de Teodosio', *Studi Sanfilippo* 1 (Milan, 1982), 415–41; J.L. Murga Gener, 'Una nueva version del contubernio Claudiano en el Codex Teodosiano', *RIDA* 28 (1981), 163–87.

[8] Evans Grubbs (n. 6), 277; Arjava (n. 6), 221–3. Navarra (n. 6) takes a similar view.

[9] Esp. L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs. Mit Beiträgen zur Kenntniss des griechischen Rechts und der spätrömischen Rechtsentwicklung* (Leipzig, 1891), 204, 364–72. Cautiously entertained as a possibility by Beaucamp (n. 4), 185–9.

This article revisits *CT* 4.12 and uses it as a case study of the way we interpret the legal documents in the *CT* as evidence of historical change. The conclusions in this regard are primarily deconstructive. The *CT*, by its very nature, can create an illusion of coherent development where none existed in the fourth and fifth centuries. The title on the *SCC* is a prime example. Serial enactments in *CT* 4.12 have typically been interpreted as conscious responses to previous reforms.[10] Careful attention to the original context of the enactments will reveal that the seven laws of *CT* 4.12 were (with one crucial exception) discrete acts of imperial administration, not an interrelated series of reforms. The point is one of method, but there are immediate substantive implications. A set of laws that has long been held to chart deep, underlying changes in religion or society reflects, rather, individual momentary responses to the difficult problems posed by unions between free women and slave men. This approach will also cast into greater relief what is in fact the most important reform in the title, *CT* 4.12.3, in which Constantine abrogated the effects of the *SCC* for imperial slaves. This amounted to a virtual reversal of Claudius' initial purpose and reflects the different social composition of the imperial slave corps in late antiquity.

At the same time, this article also hopes to make a contribution to the venerable project of trying to understand the *CT* itself. One of the most remarkable undertakings in the history of Roman law, the codification which bears the name of Theodosius II has been the object of renewed attention over the last generation. Title 4.12 cuts to the heart of some of the most lively modern questions about the nature of the *CT*. In particular, the editors of the *CT* were commissioned to collect general imperial constitutions, but the nature of *generalitas* is complex and disputed.[11] Was it a formal category of Roman jurisprudence, and if so, was it long-standing or anachronistic? *CT* 4.12 seems to underline the challenges faced by the editors who had to classify imperial *epistulae*, in many cases more than a century old, according to fifth-century criteria. Moreover, it remains a matter of vigorous debate whether the editors of the *CT* included obsolete laws or expunged rules which had been superseded. Title 4.12 offers clear evidence that the *CT* as we have it includes obsolete rules – so clear, we might believe, that the editors must have recognized this. In his new, magisterial survey of the code, Sirks has noted that these questions must ultimately be answered by careful study of individual titles.[12] This article is submitted as just such an exercise.

[10] So e.g. Beaucamp (n. 4), 185–7, speaks of 'oscillations' and 'vicissitudes'. Arjava (n. 6), 222–3, 'vacillate' and 'wavering.' Evans Grubbs (n. 6), 269, 'vacillations'.

[11] On *generalitas*, see Sirks (n. 5), 19–23, 70–2; Matthews (n. 5), 65–71; Harries (n. 5), 24–5; Honoré (n. 5, 1998), 128–9; N. van der Wal, '*Edictum* und *lex generalis*: Form und Inhalt der Kaisergesetze im spätrömischen Reich', *RIDA* 28 (1981), 277–313; M. Bianchini, *Caso concreto e 'lex generalis': Per lo studio della tecnica e della politica normativa da Costantino a Teodosio II* (Milan, 1979); Archi (n. 5), 59–76.

[12] Sirks (n. 5), 150: 'in the end only an analysis of each title will provide the answer.' 154: 'a more detailed answer to this question, however, will in the end depend on actual research on the texts, as to whether they actually contradict each other or not. Much still has to be done in this area.'

THE LIFE OF A CONSTITUTION IN THE *CT*: THREE STAGES

Before analysing the individual constitutions in *CT* 4.12, it will be helpful to offer an overview of the process by which the laws have descended to us. Every law in the *CT* has come through three distinct stages: creation, codification and transmission. Each of these stages has influenced the constitution as it now exists. Though there are elements of uncertainty about the details of all three steps, a very quick tour through the life of a constitution in the *CT* will provide useful background to the subsequent discussion.

First, the law was enacted.[13] At times it is possible to reconstruct the circumstances or motivations which led to a law's creation, and this context can prove highly illuminating. The administrative process behind the crafting of an individual law is a fundamentally important consideration.[14] A constitution might have originated in response to the suggestion or query of a public official, in response to a legal suit, or simply by the spontaneous will of the imperial court.[15] The emperor was the source of new law in the late empire, but in making rules he had the advice and expertise of his consistory.[16] At some point in the fourth century, the quaestor became responsible for drafting imperial constitutions; some quaestors had legal training, some had rhetorical training, some had both.[17] A law might be delivered in the form of a speech to the senate, while others were issued as imperial edicts, but most were composed in the form of letters to officials.[18] These were written in the florid epistolary style of late Latin, not the spare and exact prose of classical Roman jurisprudence.[19] After the quaestor had drafted the language of the law, the letter was actually composed by the *magister memoriae* or *epistularum*.[20] The letter was signed by the emperor, at which point it became valid law.[21] The letters were delivered to the appropriate officials, often praetorian prefects, with instructions to publish the law or to forward it to lower officials, such as provincial governors, who were to publish it.

The second stage in the life of a law in the *CT* was its inclusion in the code by the fifth-century editors. Although there was some precedent for the idea of

[13] In general, Honoré (n. 5, 1998), 133–5; Matthews (n. 5), 168–99; Honoré (n. 5, 1986), 136–44.

[14] See esp. J. Harries, '*Sacra generalitas*: the administrative background to the Theodosian Code', in *Estudios de Historia del Derecho Europeo: Homenaje al Professor G. Martínez Díez*, vol. 1 (Madrid, 1994), 31–42.

[15] See, e.g., *CJ* 1.14.3. Harries (n. 5), 36.

[16] Harries (n. 5), 38–47.

[17] Honoré (n. 5, 1998), 11–23; Harries (n. 5), 42–7; J. Harries, 'The Roman imperial quaestor from Constantine to Theodosius II', *JRS* 78 (1988), 148–72.

[18] 94 per cent of texts in the *CT* are letters to officials: see Sirks (n. 5), 85–6. Van der Wal (n. 11), 285–8.

[19] Honoré (n. 5, 1998), 127: the laws of the *CT* 'often vex the reader by their uneasy mixture of law, rhetoric, and propaganda'. Harries (n. 5), 42: 'Lengthy preambles feature virtuoso displays of eloquence, which extend into the parts of the text containing the "legal content," or *ius*'. O. Robinson, 'Roman criminal law: rhetoric and reality. Some forms of rhetoric in the Theodosian Code', in M. Zabłocka et al. (edd.), *Au-delà des frontières, Mélanges de droit romain offerts à Witold Wołodkiewicz* 2 (Warsaw, 2000), 765–85; E. Voss, *Recht und Rhetorik in den Kaisergesetzen der Spätantike: eine Untersuchung zum nachklassischen Kauf- und Übereignungsrecht* (Frankfurt, 1982).

[20] Esp. Harries (n. 14), 39–40; Harries (n. 5), 46; Honoré (n. 5, 1998), 135.

[21] Sirks (n. 5), 29, 86–91, persuasively. Cf. Matthews (n. 5), 186–9.

codification, the project undertaken by the eastern court under Theodosius II was grander in ambition than anything which had been tried before.[22] A number of plausible motivations have been suggested, the most persuasive of which is the practical need for a clear, authoritative guide to Roman law as it stood at the time.[23] Momentum in this direction can be detected in the important 'Law of Citations' in A.D. 426, a western law possibly inspired by the eastern court which, among other things, offered a standard for distinguishing between particular and general constitutions.[24] In A.D. 429 Theodosius II commissioned a codification project aimed at collecting all general constitutions since the age of Constantine into a single corpus; this corpus was to include all such laws, even obsolete ones, with the explicit provision *validiora esse quae sunt posteriora*. The commission of A.D. 429 envisioned a second phase of the project in which ambiguities and contradictions would be eliminated and in which statutory law would be combined with the writings of the classical jurists. This second code never materialized, at least not until Justinian. The Theodosian editors spent several years at work. A subsequent law, in A.D. 435, made some clarifications in the definition of *generalitas* and granted the editors more power to adjust the language of constitutions. This law shows the codification project moving into its final phases, and by A.D. 438 the project was completed.

Despite the fact that we possess the two enabling laws behind the codification project, a number of important questions remain about the intentions and working methods of the editors. The first surrounds the decisive criterion of *generalitas*. The law of 429 instructed the editors to gather all constitutions 'which rest on the force of edicts or imperial generality'; the law of 435 used different words to the same effect, 'all edictal or general constitutions'.[25] The modifier *generalis* had appeared sporadically in earlier laws, but the most detailed definition of *generalitas* survives in the Law of Citations, issued only three years prior to the initiation of Theodosius II's project.[26] There, *generalitas* was defined first in opposition to particularity.[27] 'General rules' were those not made for individual lawsuits or cases. Then, a more positive definition was proferred. A law was general if it met any of several conditions. If it (1) was sent to the senate, (2) was explicitly labelled by the insertion of the word 'edict', (3) was published by a governor for the whole public or (4) was included because the emperors judged that what was ruled in some cases was to apply in similar ones.[28] The list does not give the impression of being

[22] Honoré (n. 5, 1998), 122, emphasizing the novelty. Sirks (n. 5), 2–20, the precedents.

[23] Esp. Honoré (n. 5, 1998), 127–32; W. Turpin, 'The purpose of the Roman law codes', *ZRG* 104 (1987), 620–30. Sirks (n. 5), 36–53, offers a useful survey of opinions.

[24] Fragments are preserved as *CT* 1.4.3, *CJ* 1.14.2, 1.14.3, 1.19.7 and 1.22.5. *CJ* 1.14.2 and 3 are commonly called the Law of Citations. Sirks (n. 5), 33–4, and G. Bassanelli Sommariva, 'La legge di Valentiniano III del 7 Novembre 426', *Labeo* 29 (1983), 282–313, see western inspiration behind the law. Cf. Harries (n. 5), 37; Honoré (n. 5, 1998), 251–7.

[25] *CT* 1.1.5: *edictorum viribus aut sacra generalitate subnixas*. *CT* 1.1.6: *omnes edictales generalesque constitutiones*.

[26] Sirks (n. 5), 29–31, argues that the criterion was long-standing: 'CJ 1.14.2 and 3 pr. merely conveniently summarise the existing concepts on this matter.'

[27] *CJ* 1.14.2. Sirks (n. 5), 27.

[28] *CJ* 1.14.3: *Leges ut generales ab omnibus aequabiliter in posterum observentur, quae vel missa ad venerabilem coetum oratione conduntur vel inserto edicti vocabulo nuncupantur, sive eas nobis spontaneus motus ingesserit sive precatio vel relatio vel lis mota legis occasionem postulaverit. Nam satis est edicti eas nuncupatione censeri vel per omnes populos iudicum programmate divulgari vel expressius contineri, quod principes censuerunt ea, quae in certis negotiis statuta sunt, similium quoque causarum fata componere.* See Van der Wal (n. 5), 294.

perfectly wrought.[29] The fact that *generalitas* appears so much more prominent in the fifth century than before would lead us to believe that the imprecision is not simply an effect of the law's rhetoric; instead, it reflects the growing significance of the standard itself.[30] We will see that in some instances it may have been a challenge to apply *generalitas* as a formal standard to the *epistulae* which the editors found.

In one sense, certainly, the definition of *generalitas* raised a problem. The law of 435 made it clear that constitutions issued for general application but within a restricted geographic scope, such as a certain province, were to be included.[31] More broadly, the relation of the law of 435 to the original commissioning act of 429 is debated, and several interpretations have been suggested. At one extreme, the first codification project is thought to have failed, so that the law of 435 commissioned a new and more limited project.[32] Others have argued that the law of 435 merely represents the editorial team moving from one phase of the project – searching for laws in archives across the empire – to another, editing the constitutions for the code.[33] An intermediate position, outlined recently by Sirks, sees the law of 435 as a modest change of plan within the same original project.[34] He argues that Theodosius II (or his advisors) decided against including obsolete constitutions in the code. Clearly the project, as it was envisioned in 429, was to include old laws which had been superseded, but Sirks has made a case that this ambition was abandoned.[35] At issue is the wording of the law of 435, where the editors were empowered to cut out the superfluous, rhetorical passages of the original enactments so that *circumcisis ex quaque constitutione ad vim sanctionis non pertinentibus solum ius relinquatur* ('having excised the things which do not pertain to the force of the rule from each constitution, only the legal content is left').[36] Sirks argues that the wording, *vim sanctionis*, must imply that the rule still had currently valid force. Matthews, among others, offers a more neutral reading of the passage, so that the editors were to leave in the final version the legal substance of the constitution such as it existed when it was originally composed.[37] This latter would seem, on several grounds, to be a more natural reading, and CT 4.12 will offer further support.[38]

[29] We might note that the fourth criterion would be particularly open to interpretation, determining *generalitas* not by the form of the constitution (*oratio*, *edictum*, *epistula*) or explicit label (*generalis*, *edictalis*) but rather by its substance. Sirks (n. 5), 32 admits that *CJ* 1.14.3 was 'a jump', but still holds that *generalitas* was 'a concept operational in the entire empire *already and long before*' the law of A.D. 426. Honoré (n. 5, 1998), 124, suggests that the *CT* was necessary precisely because 'the definition of general laws in 426 did not provide a sure enough guide to their identification'. The problem is compounded by the fact that new, general rules were very often inspired by specific cases that prompted appeals or requests for clarification from the emperor. See Bianchini (n. 11).

[30] Matthews (n. 5), 67. See also Harries (n. 5), 25; Harries (n. 14), 32; Honoré (n. 5, 1998), 129; Sargenti (n. 5), 388.

[31] *CT* 1.1.6: *omnes edictales generalesque constitutiones vel in certis provinciis seu locis valere aut proponi iussae* … Bianchini (n. 11), 151; Sargenti (n. 5), 375.

[32] So Mommsen, *Prolegomena*, vol. 1, ix.

[33] Esp. Matthews (n. 5), 59–61. Cf. Harries (n. 5), 23; Honoré (n. 5, 1998), 125–7.

[34] Sirks (n. 5), 178–87.

[35] *CT* 1.1.5, for the original plan. See esp. Sirks (n. 5), 150–1.

[36] *CT* 1.1.6.pr. All translations are my own.

[37] Matthews (n. 5), 65; Honoré (n. 5, 1998), 142–9; Archi (n. 5), 53.

[38] In the passage the *vim sanctionis* is associated with the *ius*, the legal content or principle, in opposition to the superfluous verbiage. If this represented a change of the original mission,

The editors, having found a constitution and determined it was general, eliminated extraneous verbiage and altered what was left so that it made sense; what remains, however, still reflects the ornate rhetorical style of the original constitution.[39] The editors then placed the constitution in a relevant title. If a constitution in its original form pertained to more than one subject, the editors could split it up into multiple pieces and distribute the fragments to the relevant titles. The titles largely followed the order already provided by the Gregorian and Hermogenian codes, themselves based on the order of the classical commentaries and the *Edictum perpetuum*.[40] But we should not underestimate the significance of this part of the codification process.[41] In some cases, the fifth-century editors created new titles.[42] In other cases, they made judgments about where a law belonged in the code, and by implication what its subject matter was.[43] In a fundamental sense, the groups of laws under individual titles have been brought together by the fifth-century editors. This part of their work exerts a continuous and often subtle influence. As we will see, *CT* 4.12.1 could easily have been classified under a different title, and yet it has often appeared to modern interpreters to have instigated a chain reaction of reforms of the *SCC*.

The third and final stage through which a late Roman constitution has come down to us is its transmission through the manuscript tradition and into the modern editions.[44] No complete manuscripts of the *CT* survive. The last eleven books, 6–16, are relatively well attested, but the first five books (in which most private law was placed) have not fared so well. The *lex Romana Visigothorum* (*LRV*), alternatively called the *Breviarium* or Breviary of Alaric, preserves portions of this material and forms our major source.[45] The *LRV* was issued in A.D. 506 by the Visigothic king Alaric II as a private law code for the Roman citizens in his territory.[46] It reproduced parts of the *CT* but only as its editors saw necessary, so it is not a *CT redux*.[47] Other laws can be restored from the *Codex Justinianus*,

it was an awfully indirect way of saying so (and it was nowhere else said). The inclusion of obsolete rules is implied by Nov. Theod. 1 (A.D. 438), and moreover it is significant that *CT* 1.1.5, the original commissioning act, was read in full before the western senate upon the promulgation of the *CT* (whereas the law of 435, 1.1.6, was *not* read) and then published in full in the *CT* itself, implying it was not discontinued. See Matthews (n. 5), 60; Harries (n. 14), 37; Honoré (n. 5, 1998), 127.

[39] Matthews (n. 5), 63–4. For the rhetorical content, see above, n. 19.

[40] G. Scherillo, 'Teodosiano, Gregoriano, Ermogeniano', *Studi in memoria di Umberto Ratti* (Milan, 1934), 249–323; Sirks (n. 5), 82–3.

[41] Honoré (n. 5, 1998), 149.

[42] See esp. G. Bassanelli Sommariva, 'L'uso delle rubriche da parte dei commissari teodosiani', *AARC* 14 (Naples, 2003), 197–239.

[43] See below, for the example of *CT* 9.9.1.

[44] The standard edition of the *CT* is T. Mommsen, P. Krüger, *Theodosiani libri XVI cum Constitutionibus Sirmondianis et Leges novellae ad Theodosianum pertinentes*, 3 vols. (Berlin, 1905). Also indispensable is P. Krüger, *Codex Theodosianus (Liber I–VI)* (Berlin, 1923). Matthews (n. 5), 85–120, provides an accessible overview of the manuscript tradition; Mommsen's *Prolegomena* is the definitive discussion of the text.

[45] J. Gaudemet, 'Code Theodosien et Bréviaire d'Alaric', *Studi Grosso* (Turin, 1970), 361–76.

[46] J. Gaudemet, *Le bréviaire d'Alaric et les Epitome* (Milan, 1965).

[47] Laws included in Alaric's code were appended with an *Interpretatio*, a short legal commentary. J. Matthews, 'Interpreting the *Interpretationes* of the *Breviarium*', in R. Mathisen (ed.), *Law, Society, and Authority in Late Antiquity* (Oxford, 2001), 11–32. D. Liebs, *Die Jurisprudenz im spätantiken Italien (260 – 640 n. Chr.)* (Berlin, 1987), 175–6. See below, on *CT* 4.12.2 and 4.12.4.

although Mommsen refused to include them in his edition.[48] Beyond these two principal sources for the first five books of the *CT*, a few scattered manuscripts add bits of information. One important witness was a sixth-century manuscript preserved in the library at Turin (Taurinensis a II,2), T in the sigla of Mommsen and Krüger.[49] Another stray manuscript (Vatican Reg. lat. 520) adds a handful of laws, including the first part of 4.12.[50] As we shall see, the transmission of title 4.12 hangs by an especially thin and uncertain thread, even by the standards of the *CT*.[51] It is imperative to remember that the first five books of the *CT* are known very imperfectly, and that the editorial decisions made by Mommsen and Krüger – reflected in the prolegomena or apparatus criticus – must be scrutinized.

In short, every stage in the life of a constitution in the *CT* – creation, codification and transmission – has left its imprint on the document which we can now consult in the pages of Mommsen–Krüger or (at one step further removed) the widely used translation of Pharr. *CT* 4.12 will prove to be an especially vivid demonstration of this complexity.

CT 4.12.1

It will be best to consider each law in the title individually, paying close attention to the original context in which the law was enacted, in so far as this can be reconstructed. The first law was issued by Constantine and was posted on April 1, 314.

IMP. CONSTANTINUS A. AD PROBUM. Si quae mulieres liberae vel a servis vel a quolibet alio vim perpessae contra voluntatem suam servilis condicionis hominibus iunctae sint, competenti legum severitate vindictam consequantur. Si qua autem mulier suae sit immemor honestatis, libertatem amittat atque eius filii servi sint domini, cuius se contubernio coniunxit. Quam legem et de praeterito custodiri oportet. P(ro)P(osita) KAL. APRIL. VOLUSIANO ET ANNIANO CONSS.

Emperor Constantine Augustus to Probus. If any free women, having suffered violence by slaves or anyone else, have been joined against their will to men of slave status, they must obtain restitution with the appropriate severity of the law. If, on the other hand, a woman should be forgetful of her social respectability, she must lose her freedom, and her children must be the slaves of the master whose slave she has joined in illegitimate union. This law should also be observed for the past. Posted on the Kalends of April, Volusianus and Annianus consuls.[52]

Scholars have long questioned whether the law should truly be attributed to Constantine. Though the fifth-century editors mistakenly included some laws of Licinius in the *CT*, these are rare, and the burden of proof for Licinian attribution

[48] Matthews (n. 5), 90–1.

[49] This important witness to the *CT* was lost in a fire in 1904 but was used by P. Krüger before its destruction.

[50] Mommsen, *Prolegomena*, vol. 1, lxxxvi–lxxxvii. For convenience, I will call this manuscript simply the 'Vatican' manuscript throughout this paper, but it is not to be confused with Reg. Lat. 886, the main source for *CT* 9–16.

[51] Mommsen, *Prolegomena*, vol. 1, lxxxvi–lxxxvii.

[52] *CT* 4.12.1.

should be high.[53] Seeck supported the attribution of *CT* 4.12.1 to Licinius by noting that Licinius issued a law to a Probus concerned with slavery (*CJ* 6.1.3).[54] *CJ* 6.1.3 stipulated that fugitive slaves caught fleeing into *barbaricum* should be maimed. It shared only the weakest generic resemblance to *CT* 4.12.1 and hardly proves that *CT* 4.12.1 is Licinian. The theory of Licinian authorship might gain credibility from Lactantius, who accused Maximinus Daia of raping free maidens and giving them as wives to his slaves.[55] *CT* 4.12.1 could be Licinius' reaction upon gaining control of the east from Maximinus. But Lactantius' allegation can be matched by a panegyric that charges Maxentius in the west with similar, stock outrages, so that a Constantinian origin is prima facie just as plausible.[56] Stylistic similarities between *CT* 4.12.1 and other indubitably Constantinian laws show that in fact *CT* 4.12.1 was drafted by western hands. Evans Grubbs has noticed stylistic similarities with *CT* 5.8.1 of A.D. 314. She points to a parallel construction, *si quae … contra voluntatem suam* (*CT* 4.12.1) and *si quis contra conscientiam suam* (*CT* 5.8.1), plus a 'fondness for alliteration with the letter c'.[57] Beyond these similarities, we may note that *CT* 8.10.1, issued by Constantine on November 8, 313, includes the penalty, *competenti severitate vindicetur*. This law, issued only six months prior to *CT* 4.12.1, is the only other place in the *CT* where *competens* modifies *severitas*.[58] There is a strong case, then, for attributing the law to Constantine.

The language of *CT* 4.12.1 was not transparent legal language, and it is important to recognize the rhetorical nuance of this constitution. The editors of the code were empowered to cut extraneous verbiage and whittle the laws down to their legal core.[59] This refers largely to the preambles associated with Roman legislation, but does not mean, of course, that what remains in the *CT* somehow falls outside the realm of rhetoric.[60] *CT* 4.12.1, issued in the context of a delicate regime change in the city of Rome, might be expected to bear rhetorical baggage. This law was structured by two balanced, mutually exclusive scenarios. In the first case, the law ordered authorities to give legal restitution, *vindicta*, to women forced to join with slaves 'against their will': this surely means they were to return to freedom.[61] The

[53] See S. Corcoran, 'Hidden from history: the legislation of Licinius', in J. Harries, I. Wood (edd.), *The Theodosian Code* (Ithaca, 1993), 97–119, esp. 107–8. Their inclusion does suggest, however, that neat and perfectly lucid copybooks did not survive from Constantine's reign.

[54] O. Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr. Vorarbeit zu einer Prosopographie der christlichen Kaiserzeit* (Stuttgart, 1919), 53, 162. Accepted without discussion by Voss (n. 1), 138.

[55] Lactant. *De mort. pers.* 38. Evans Grubbs (n. 6), 265, rightly describing this as a topos.

[56] *Panegyrici latini XII*, 12.3.6 (A.D. 313). Euseb. *Vit. Const*. 1.33.

[57] Evans Grubbs (n. 6), 265.

[58] In the reign of Constantine, the language of *competens pretium* also became standard: G. De Bonfils, *Gli schiavi degli ebrei nella legislazione del IV secolo: storia di un divieto* (Bari, 1993), 57–87. See also *CT* 5.10.1 (329) and probably *Fragmenta Vaticana* 34 (313).

[59] *CT* 1.1.5 (429): *ut constitutionum ipsa etiam verba, quae ad rem pertinent, reserventur, praetermissis illis, quae sanciendae rei non ex ipsa necessitate adiuncta sunt*. *CT* 1.1.6 (435): *adgressuris hoc opus et demendi supervacanea verba et adiciendi necessaria et demutandi ambigua et emendandi incongrua tribuimus potestatem*.

[60] See n. 19.

[61] *Vindictam consequantur* is a clever play on words. It does mean 'they shall obtain vengeance' as Evans Grubbs (n. 6), 264, has it, or 'she shall be avenged' with C. Pharr, *The Theodosian Code and Novels* (Princeton, 1952), 92. But the resonance of the word is more profound. *Vindicta* was also the name of the legal process of manumission: Buckland (n. 1), 451–9. The *vindicta* was the rod of manumission (Gai. *Inst*. 4.16). A. Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia, 1953), 767. Although surely not implying the women

second part of the law was in balance with the first: it provided for women who voluntarily remained with their servile husbands. Women who stayed with their husbands were described as 'forgetful of their social respectability' – the psychological counterweight of 'against their will'.[62] In other words, a woman whose union to a slave was not against her will had forgotten her social respectability and thus remained subject to the provisions of the *SCC*. She remained enslaved.

The laws in the *CT* originated from particular contexts, and it is occasionally possible to reconstruct the situation in which a constitution was issued. *CT* 4.12.1 takes on a different aspect when it is compared with Constantine's other legislation in the spring of 314. For example, *CT* 4.12.1 and *CT* 5.8.1 share more than linguistic similarities. *CT* 5.8.1 was addressed to Volusianus, Prefect of the City, and posted on March 19, 314, just twelve days before *CT* 4.12.1.[63] It was given its own *titulus* and concerned the status of free people enslaved under the tyrant, Maxentius.[64] *CT* 5.8.1 commanded that such victims be restored to their rightful status without waiting for the intervention of a court.[65] This provision is extraordinary. Roman law had an extensive legal structure regarding such cases; the apparatus of *causae liberales* provided for the resolution of disputes over status.[66] *CT* 5.8.1 instructed the Prefect to bypass one of the most highly regulated procedures in the Roman law on legal status. This is an important clue that Constantine was negotiating a tricky situation in Rome.[67]

CT 5.8.1 shows that a law issued in this environment was intended as an expedient measure in current circumstances, not as an amendment to the Roman law of procedure. *CT* 5.8.1 sounds like vigilante justice in the light of Roman law on the resolution of status disputes. We must imagine that some limitation on the application of *CT* 5.8.1 was included in the original law, simply understood, or issued in a lost law. It would be absurd to read *CT* 5.8.1 as a procedural reform of Roman law and not as a momentary suspension of procedure in a contingent situation. The same holds for *CT* 4.12.1, and yet because the fifth-century editors placed this constitution in a title *Ad senatus consultum Claudianum* rather than a title about those *qui tempore tyranni servierunt*, 4.12.1 has often appeared to modern interpreters as though it amended the procedural requirements of the *SCC* itself. Issued less than two weeks after *CT* 5.8.1, *CT* 4.12.1 should be seen in the same context: changes of status under Maxentius. It was concerned with a specific type of enslavement, that carried out by the *SCC*. *CT* 4.12.1 could easily have

were manumitted, the drafter of this law has written a clever, even elegant expression for what the women must obtain: restitution of their freedom.

[62] *Immemor* is used twice more in the *CT*, and each time it means forgetful or negligent of one's free status: *CT* 4.10.2 and 12.1.92.

[63] Seeck (n. 54), 162.

[64] Another fragment of *CT* 5.8.1 is preserved at *CT* 13.5.1. The latter states that any *naviculario originalis* who has become a *levamentarius* must return to his hereditary position. The context of this law is clear: relations between Rome and the African provinces were temporarily ruptured under Maxentius, and Maxentius transferred *navicularii* who ran the grain shipments across the Mediterranean into more local shipping contexts. See A.J.B. Sirks, *Food for Rome: The Legal Structure of the Transportation and Processing of Supplies for the Imperial Distributions in Rome and Constantinople* (Amsterdam, 1991), 291–3.

[65] *CT* 5.8.1: … *natalibus suis restituere nec expectata iudicis interpellatione.*

[66] *CJ* 7.16. *PS* 5.1. Buckland (n. 1), 652; E. Herrmann-Otto, '*Causae liberales*', *Index* 27 (1999), 141–59; G. Franciosi, *Il processo di libertà in diritto romano* (Naples, 1961).

[67] T. Barnes, *Constantine and Eusebius* (Cambridge, 1981), 45: 'The evils of the preceding régime were blamed on Maxentius himself and a few henchmen.'

been a clarification of *CT* 5.8.1, directing officials how to act when a woman who had lost her status under Maxentius preferred to remain with a servile husband. As Lenski has noted, the *ex post facto* clause at the end of *CT* 4.12.1 is an indication that the law was 'designed to rescind claims to freedom by *ingenuae* who had been enslaved under Maxentius legitimately but then took advantage of Constantine's blanket grant of *libertas* to escape their condition'.[68]

CT 4.12.1 also illustrates the challenge faced by the fifth-century editors in judging whether the constitutions they found possessed *generalitas*.[69] Most of the material included in the *CT* was not originally an edict or a speech to the senate; the *CT* is preponderantly a collection of letters from the emperor to his officials. *CT* 4.12.1, we have argued, was an imperial letter to an official instructing him how to apply the *SCC* in the circumstances which prevailed in the spring of 314.[70] It has been argued that much of the material included in the *CT* could have remained 'difficult to classify', especially the imperial *epistulae*.[71] This constitution, moreover, carries a *proposita* date in the subscription, meaning that it was recovered in the form that the local official promulgated the law, rather than from a copy in the central archives whence the imperial letter first came.[72] Such documents may have been hardest of all to classify. Yet one could certainly maintain that *CT* 4.12.1 met the last and most diffuse criterion of *generalitas* offered in the Law of Citations. This letter concerned not just one instance, and it instructed an official how to rule in a category of cases where women were forced into unions with slave men. But even if *CT* 4.12.1 met the formal definition of generality outlined in the fifth century, it does not necessarily follow that Constantine, in the spring of 314, believed his letter somehow altered the rules of the *SCC*.[73] The circumstances of *CT* 4.12.1's enactment fundamentally shaped its purpose and language.

This discussion of *generalitas* is significant for our understanding of the whole title, *CT* 4.12. The very inclusion of 4.12.1 makes it appear to be a general reform of the *SCC* itself rather than a clarification of its application in the spring of 314. The problem is compounded when multiple laws are gathered in a title, so that later enactments appear as reactions to earlier measures. This illusion of development is precisely what has happened in the case of *CT* 4.12. Because *CT* 4.12.1 makes no mention of the denunciation procedures required to carry out enslavement under

[68] N. Lenski, 'Constantine and slavery: *libertas* and the fusion of Roman and Christian values', *AARC* (forthcoming).

[69] See above (n. 11).

[70] The reforms which would make the quaestor the principal legal advisor date to the reign of Constantine, but it is not known precisely when they occurred; this law could have been composed by the secretary *ab epistulis*, and not yet by the quaestor, so the administrative structure through which *CT* 4.12.1 was produced is uncertain. See Matthews (n. 5), 176–7; Harries (n. 5), 46; Harries (n. 17), 153–9.

[71] Matthews (n. 5), 67. See also Harries (n. 5), 25; Harries (n. 14), 32; Honoré (n. 5, 1998), 129; Sargenti (n. 5), 388. See S. Corcoran, *The Empire of the Tetrarchs: Imperial Pronouncements and Government, AD 284–324*, rev. ed. (Oxford, 2000), 163–9, on the use of imperial letters in this period.

[72] Matthews (n. 5), 61. Sirks (n. 5), 140, argues that only when the law was published in a place where the emperor was definitely not present can we be certain that it did not come from a central archive. In the spring of 314 Constantine was in Trier, increasing the likelihood that the *proposita* date in *CT* 4.12.1 (which seemingly applied to the territories taken from Maxentius) is a clue that the law did not come from the central archive.

[73] Bianchini (n. 11) has shown how often general norms arose out of specific cases (cf. pp. 102–3). Sirks (n. 5), 11.

the *SCC*, it has been inferred that this law eliminated those procedures.[74] But if the law pertained to the problem of changes of status under Maxentius, and was issued in politically exigent circumstances, we would not expect that the law would necessarily stop to explain the procedures of the *SCC*. In other words, the silence of this law about procedure is nothing more than silence. Whereas *CT* 4.12.1 has always been seen as the beginning of a series of laws adjusting the procedures of the *SCC*, in fact it was a discrete act of imperial administration in very particular conditions.

CT 4.12.2

The second law in the title, *CT* 4.12.2, looks entirely different once *CT* 4.12.1 has been properly placed in its context. Given in January of 317, the entire text of the law is lost. Only the subscription and a post-codification commentary of the law survive:

… DAT. V KAL. FEBR. GALLICANO ET BASSO CONSS.
INTERPRETATIO. Septem testibus civibus Romanis praesentibus tertio ex senatus consulto Claudiano denuntiandum.

Given on the fifth day before the Kalends of February, Gallicanus and Bassus consuls. Interpretation. The third denunciation according to the *Senatus Consultum Claudianum* is to happen in the presence of seven witnesses who are Roman citizens.

The purpose of *CT* 4.12.2 is not clear from this commentary. It has been assumed that *CT* 4.12.1 undermined the requirement of warnings and witnesses to enslave a woman under the provisions of the *SCC* and that this law restored it.[75] But it is wrong to assume that *CT* 4.12.1 overturned the procedural requirements of the *SCC*. In general our knowledge of the procedure involved in the *SCC* is very poor. This commentary marks the first mention of the requirement of three warnings and of seven witnesses, but we do not know whether or not this law created the requirements. There has been debate over whether or not these requirements were classical or post-classical, but there is reason to believe that the triple denunciation was classical.[76] The commentaries attached to the laws in the *CT* are not always summaries of the legal enactment. The commentaries in the *summaria antiqua*, for instance, are quite varied.[77] Some simply explicate the law at hand, but others add information, gloss technical details, or point the reader to other pertinent parts of the law. So the mention of the formal requirements in the commentary to *CT*

[74] This view goes back to no less an authority than J. Godefroy, *Codex Theodosianus cum perpetuis commentariis* (Lugduni, 1665), 411: 'Concordat huic legi, lex 5. & 6. infr. Discordat lex 1. 3. 4. & 7.' It has been influential ever since. See subsequent note.

[75] Andreotti (n. 6), 8; Arjava (n. 6), 222; Evans Grubbs (n. 6), 266; Beaucamp (n. 4), 186; Voss (n. 1), 138–9; Yuge (n. 6), 148; Buckland (n. 1), 413. See, critically, Albanese (n. 6), 91–2.

[76] The best discussion is Albanese (n. 6), 85–96. Gai. *Inst.* 1.91 and 1.160 mentions the denunciation, but says nothing of a triple denunciation. This silence 'non ha nessun valore probatorio', so Albanese (n. 6), 89. The most likely origin would be the reform of Hadrian, who required the woman to be enslaved for her children to be enslaved.

[77] Sirks (n. 5), 231–5. See below, on *CT* 4.12.4, for more on the commentary traditions.

4.12.2 is a signal that the law mentioned the procedure, but does not constitute proof that the law altered the procedure.

Nevertheless, there are compelling grounds to believe that Constantine, in 317, may have altered the procedures required to enslave a woman under the *SCC*. The commentary, in so far as its language may reflect the constitution itself, implies that seven witnesses were required at the *third* denunciation.[78] Perhaps Constantine's innovation lies in the statutory requirement of seven witnesses. Over his reign, Constantine preferred witnesses and oaths to legal formalism; if he added this requirement to the procedure of the *SCC*, it is certainly consistent with his legislative tendencies.[79] Moreover, particularly in the first decades of his rule, Constantine represented himself as the champion of *libertas*, so that more stringent procedural requirements for enslavement would cohere with the broader ideological thrust of his legislative programme.[80] Even if we cannot say with certainty that *CT* 4.12.2 altered the application of the *SCC*, it is safe to conclude that *CT* 4.12.1 and *CT* 4.12.2 do not represent the beginning of a back-and-forth adjustment of the *SCC*. They are two entirely separate acts which have been brought together by the fifth-century editors.

CT 4.12.3

All of this has been necessary ground clearing. The belief that the first two laws were amendments of Roman procedure has skewed the interpretation of the third and fourth laws in the title, also issued by Constantine. The third law, issued in 320, was the first fundamentally significant reform of the *SCC* under Constantine. *CT* 4.12.3 was part of a major edict of Constantine issued from Serdica in January of 320.[81] When the editors of the *CT* found multi-part legal enactments, they were free to cut them down into smaller units and distribute the individual parts into various titles throughout the code. Often, as in this case, laws can be at least partially reassembled. This bundle of laws, issued *Ad Populum*, was a momentous reform package amending several onerous fiscal and financial laws from the early empire. The *Ad Populum* edict of 320 was given January 31 at Serdica and posted April 1 at Rome. This major edict originally comprised *CT* 3.2.1, *CT* 4.12.3, *CT* 8.16.1 and *CT* 11.7.3. Seeck plausibly restored *CJ* 6.9.9, *CJ* 6.23.15 and *CJ* 6.37.21 to the edict as well.[82] The *Ad Populum* package included a prohibition on corporal

[78] Astutely noted by Albanese (n. 6), 91.

[79] See e.g. *CJ* 1.13.1 (316) with Sozomen, *Hist. Eccl.* 1.9.6; *CT* 8.12.5 (333); *CJ* 6.23.15; 6.37.21 (though see below for the date and significance of these final two laws).

[80] Esp. *CT* 4.8.5 (322). Lenski (n. 68).

[81] For a discusson of this edict, see now J. Tate, 'Codification of late Roman inheritance law: *fideicommissa* and the Theodosian Code', *TR* 76 (2008), 237–48; Matthews (n. 5), 236–41; Evans Grubbs (n. 6), 119–20, whose own interpretation of the celibacy law validates this reconstruction; J. Gaudemet, 'La Constitution "ad populum" du 31 Janvier 320', in id., *Droit et société aux derniers siècles de l'Empire romain* (Naples, 1992), 3–22; Mommsen, *Prolegomena*, vol. 1, ccxiv–ccxv. Seeck (n. 54), 59–61.

[82] Seeck (n. 54), 59–61, 169. See B. Albanese, 'L'abolizione postclassica delle forme solemni nei negozi testimentari', in *Scritto Guarino* II (Naples, 1984), 777–92. The edict could have been enacted in 320 or 326 – see Tate (n. 81), 241 – but on balance the arguments favour the former. The date of Constantine's laws on *manumissio in ecclesia* supports the 320 date, for *CT* 4.7.1 of 321 seems to assume *CJ* 6.23.15 and 6.37.21. See K. Harper, *Slavery in the Late Roman World* (Cambridge, forthcoming), ch. 12.

punishment in tax collection, a reform of the *lex commissoria*, a simplification of testamentary forms and a repeal of the penalties on celibacy. *CT* 4.12.3, reforming the *SCC*, is of a piece with the other laws in the edict.

IDEM A. AD POPULUM. Cum ius vetus ingenuas fiscalium servorum contubernio coniunctas ad decoctionem natalium cogat nulla vel ignorantiae venia tributa vel aetati, placet coniunctionum quidem talium vincula vitari, sin vero mulier ingenua vel ignara vel etiam volens cum servo fiscali convenerit, nullum eam ingenui status damnum sustinere, subolem vero, quae patre servo fiscali, matre nascetur ingenua, mediam tenere fortunam, ut servorum liberi et liberarum spurii Latini sint, qui, licet servitutis necessitate solvantur, patroni tamen privilegio tenebuntur. Quod ius et in fiscalibus servis et in patrimoniorum fundorum origini cohercentes et ad emphyteuticaria praedia et qui ad privatarum rerum nostrarum corpora pertinent servari volumus. Nihil enim rebus publicis ex antiquo iure detrahimus nec ad consortium huius legis volumus urbium quarumcumque servitia copulari ut civitates integram teneant interdicti veteris potestatem. Si vel error improvidus vel simplex ignorantia vel aetatis infirmae lapsus in has contubernii plagas depulerit, haec nostris sanctionibus sit excepta. DAT. II KAL. FEB. SERDICAE CONSTANTINO A. VII ET CONSTANTIO C. CONSS.

The same Augustus [Constantine] to the People. Since the old law compels freeborn women joined in contubernium with fiscal slaves to a dissolution of their birth rights, without any lenience given to ignorance or age, it is proper that the chains of such unions be avoided indeed. If, in fact, a free woman either unknowingly or even willingly shall join with a fiscal slave, she shall suffer no damage to her freeborn status. The offspring, too, who are born of a fiscal slave father and free mother, shall hold a middle destiny. As the children of slave men and the illegitimate children of free women, they shall be Latins, who, though absolved of the necessity of servitude, will nevertheless be held by the privilege of a patron. We wish this law to be observed both in the case of fiscal slaves and those adhering by origin to the patrimonial estates and to emphyteutic properties and those who belong to the staff of the *res privata*. For we take away nothing from the old law with regard to municipalities. Nor do we wish the slaves of any city to be joined to association with this law, so that the cities shall hold the full power of the old prohibition. If blind error, plain ignorance, or the slip of weak youthfulness throw a woman into these snares of contubernium, she shall be exempt from our sanctions. Given on the second day before the Kalends of February at Serdica, Constantine Augustus, for the seventh time, and Constantius Caesar consuls.[83]

The law is complex, multi-layered and laden with rhetoric, so we must try to unpack it methodically. The main – I would argue only – effect of the law was to abrogate the effects of the *SCC* for women married to fiscal slaves while making

[83] *CT* 4.12.3. The Latin I have given here is a combination of Mommsen and Krüger's text. It is still problematic. First, I agree with Mommsen's *servorum liberi et liberarum spurii* which emends the gender of the manuscript's *liberorum* to *liberarum*. The suggestion of the masculine gender of *servorum* is a plausible explanation for this error: see L. Havet, *Manuel de critique verbal appliquée aux textes latins* (Paris 1911), 137. Secondly, I have taken Krüger's *in patrimoniorum fundorum origini cohercentes* over Mommsen's emendation to *in patrimoniorum fundorum originariis*. Here the manuscript seems closer, and even Mommsen conceded *scripsi dubitans*. This is discussed below, as the text undoubtedly remains confusing. Finally, I have adopted *copulari* instead of *copulamus*. Mommsen drastically reshuffled the word order of the sentence. Krüger inexplicably left the word order and the verb *copulamus*, giving the sentence two finite verbs in the main clause. Krüger, however, reports an emendation of Haenel in his notes that makes perfect sense: *copulamus* should be *copulari*. Perhaps just as the gender of *liberarum* was influenced by the preceding *servorum*, the voice of *copulari* was affected by the preceding *volumus*. The date of the subscription is Sept. in one of the two manuscripts (Turin), Feb. in the other (Vatican), of which the latter is to be preferred. Seeck (n. 54), 59.

their children freedmen. The first line declared that the 'chains of such unions' were to be avoided. This sentence, it should be noted, described the purpose of the enactment; it did not alter any legal rule. It is, moreover, a construction which has been misconstrued in the scholarship. The *vincula talium coniunctionum* were to be avoided. *Vincula* here was an artful word, but it was synecdoche, not metaphor – not the 'bonds of such unions.'[84] In fact, if the law were meant to deter these 'bonds', in the sense of the unions themselves, it is hard to understand why the law eliminated the penalty for such unions! Rather, *CT* 4.12.3 declared that the *chains* of such unions should be avoided, and it was meant very literally. The chains of slavery – caused by the application of the *SCC*, not the marriages – were to be avoided. The law explicitly declared that free women in relationships with fiscal slaves were no longer to be enslaved. The use of *vincula*, as a graphic symbol of the penalty which *CT* 4.12.3 abolished, significantly paralleled other parts of the *Ad Populum* edict. For instance, *CT* 8.16.1 claimed to free celibates from the 'lurking terrors of the laws', while 11.7.3 saved tax debtors from 'incarceration, the floggings of leaden lashes, weights or other devices of torture' used by tax collectors.[85]

CT 4.12.3 explicitly declared that freeborn women in unions with fiscal slaves suffered no damage whatsoever to their status.[86] The emperor, in other words, ceded his right as a slave owner to enslave women who engaged in relationships with his slaves. He retained certain claims against the offspring of such unions, however. The law decreed that children born from these mixed-status unions were to follow 'a middle destiny'. Specifically, the children were to become *Latini*, the equivalent of slaves who had been freed informally or without meeting the requirements for formal manumission outlined by Augustus.[87] *CT* 4.12.3 was specific that the children of the mixed unions would be 'held' by the *privilegio patroni*. The emperor retained a claim on the children as their patron. By this legal fiction, he would

[84] Evans Grubbs (n. 6), 266: '… it is pleasing that the bonds [*vincula*] of such unions be avoided.' Pharr (n. 61), 93: '… it is Our pleasure that the bonds of such unions must be shunned.'

[85] *CT* 8.16.1: *imminentibus legum terroribus*. 11.7.3: *carcerem plumbatarumque verbera aut pondera aliaque ab insolentia iudicum repperta supplicia*. Thus *CT* 4.12.3 very likely belonged to the *Ad Populum* edict, contra Albanese (n. 82), 782 (who cites the subscription date without noting the variant reading) and Tate (n. 81), 241: 'with the exception of CT 4.12.3, all of them adopt a tone of abolishing harsh or outdated legal rules and procedures in order to benefit the populace.' In fact we can now see that 4.12.3 does just that.

[86] Not even reduction to the status of a *liberta*, an outcome mentioned already by Tacitus (*Ann*. 12.53), considered also in the *Frag. de iure fisci*, 12, and covered by the language of 4.12.3 (*decoctio natalium*). It is also likely that before this constitution, the imperial government did not have to complete the series of formal warnings before enslaving the woman or reducing her to a *liberta*, nor could women claim ignorance as an excuse. We know, for instance, that municipalities enjoyed the capacity to enslave women without the denunciation, although in the case of municipalities ignorance was reserved as a possible exception: *PS* 2.21[a].14. See esp. Weaver (n. 1, 1986). The final sentence of 4.12.3 could be read to support this interpretation. Cf. Buckland (n. 1), 417. Voss (n. 1), 141, apparently unaware of the work of Weaver and Crook (cited above, n. 1), claims that *CT* 4.12.3 was an amendment to the rule mentioned in Gai. *Inst*. 86 (for which see esp. Crook) rather than a fundamental change of the effect which the law had on the status of the women involved.

[87] A.J.B. Sirks, 'Informal manumission and the Lex Junia', *RIDA* 28 (1981), 247–76, esp. 262–3; id., 'The *lex Junia* and the effects of informal manumission and iteration', *RIDA* 30 (1983), 211–92; P. Weaver, 'Children of Junian Latins', in B. Rawson and P. Weaver (edd.), *The Roman Family in Italy: Status, Sentiment, Space* (Oxford, 1997), 55–72. A. Watson, *Roman Slave Law* (Baltimore, 1997), 30–4. See also Voss (n. 1), 136; Buckland (n. 1), 533–51.

have enjoyed the power to claim *operae* and *obsequium*, labour and respect, from the children.[88] Moreover, as *Latini*, the offspring would never be able to create a legally valid will, so that their property returned to their manumitter – in this case, the emperor, their fictive patron.[89] Of course, this solution crafted by Constantine presumed a high degree of juridical culture and an awareness of the finer points of personal status in the civil law. Latin status is not especially prominent in the sources for slavery and manumission in the fourth century.[90] It is a separate question, and ultimately unanswerable, how this solution played out in reality on the estates of the emperor.

In 320, Constantine eliminated the penalty for women who wished to marry his male slaves. The law was specific that it applied only to the emperor's slaves: fiscal slaves, slaves of the patrimonial estates and emphyteutic properties, and slaves belonging to the staff of the *res privata*.[91] The law established a clear boundary where the reform was not to apply: private or municipal slaves.[92] The cities of the Roman empire possessed properties and slaves, and Constantine was offering clear reassurance that his leniency towards free women joined to fiscal slaves did not in any way impinge upon the old rules of the *SCC* for public slaves of the municipalities.[93] Private and municipal slave owners were still able to penalize free women who married their slaves. The final sentence of the law – about error, ignorance and slips – then returned to the complaint issued in the first line: the old law was enslaving women who married *fiscal* slaves without any lenience. Since the body of the law eliminated the penalty for these women, regardless of their knowledge or intention, the final sentence can be considered an optimistic description of what the law did by abrogating the *SCC*'s application for imperial slaves. Constantine advertised his reform as a measure born of clemency. The last sentence, emphasizing the compassion of Constantine's reform, perhaps represents an imperfect job of separating the 'rhetorical' part of the law from the 'legal' part. Importantly, Constantine's elimination of the *SCC* for women who married his imperial slaves was thereby connected with other extracts of the *Ad Populum*

[88] C. Masi Doria, Civitas operae obsequium: *tre studi sulla condizione giuridica dei liberti* (Naples, 1993). W. Waldstein, Operae Libertorum: *Untersuchungen zur Dienstpflicht freigelassener Sklaven* (Stuttgart, 1986).

[89] In the apt description of Salvian, *Ad ecclesiam*, 3.7.31: *ut vivant scilicet quasi ingenui et moriantur ut servi*.

[90] Harper (n. 82), ch. 12.

[91] The text must be damaged in this passage. The manuscript, and here we are reliant on Vat. Reg. 520 alone, reads: *quod ius et in fiscalibus servis et in patrimoniorum fundorum origini cohercentes et ad emphyteuticaria praedia et qui ad privatarum rerum nostrarum corpora pertinent servari volumus*. Mommsen recognized there was a problem in the text and cautiously substituted *originariis* for *origini cohercentes*, confessing *scripsi dubitans*. This seems a doubtful emendation. It would be the earliest use for *originarii*, who are free persons anyway: P. Rosafio, *Studi sul colonato* (Bari, 1992), 188. The problem lies in the voice of *cohercentes* and the grossly unparallel construction of the sentence. The active use of *coherceo* makes little sense: perhaps it was originally *cohaerentibus*, perhaps *cohercitis*.

[92] On municipal slaves, see esp. N. Lenski, '*Servi Publici* in the late antique city', in J.-U. Krause and C. Witschel (edd.), *Die Stadt in der Spätantike* (Stuttgart, 2006), 335–57. A. Weiß, *Sklave der Stadt: Untersuchungen zur öffentlichen Sklaverei in den Städten des Römischen Reiches* (Stuttgart, 2004).

[93] Municipalities did not have to follow the formal procedure of *denuntiatio* and could enslave women directly unless the woman was ignorant of her status or her partner's status: *PS* 2.21[a].14. See below on *CT* 4.12.4.

law, and in the final lines of *CT* 4.12.3 we sense the text moving back towards the other parts of the edict.

The significance of *CT* 4.12.3 emerges from its limitation to fiscal slaves. To understand what a radical change this truly was, we must consider the original context of the *SCC*. The *SCC* was created in A.D. 52. Claudius' chief financial officer, Pallas, was its architect. This is telling. The *SCC* was not instituted as a moral or social reform. In the early principate, the emperor's slaves began to assume an enormous role in both domestic and administrative positions.[94] Servile in status, they were nevertheless securely employed and positioned for advancement, and thus represented a social paradox. Further, the *familia Caesaris* probably suffered from an imbalanced sex ratio with more males than females.[95] By the reign of Claudius, perhaps as many as two thirds of imperial slaves and freedmen were marrying freeborn women.[96] It is easy to imagine the danger this presented to the emperor's control over his male slaves. The emperor had no claim against the free women; since the children followed their mother's status, he had no claim to the children of the union either. Since his slaves, often in administrative positions across the empire, found themselves intimately allied with free persons, the emperor's control over his slave corps was destabilized. Recently Sirks has shown that concern for the master's authority was the primary problem addressed by the *SCC*. The dynamics of the *familia Caesaris* would have made the emperor keenly aware of the dangers of such mixed-status unions, and the *SCC* was crafted as a result.[97] The emperor did not limit its application to his own slaves, and thus he reinforced the power of private slave owners.

If the *SCC* was initially prompted by the need to protect the emperor's power and to create a claim to the reproductive potential of his slaves, the *SCC* apparently worked.[98] But then, in A.D. 320, Constantine repealed the *SCC* for precisely those women who chose to enter unions with fiscal slaves. He thus withdrew the *SCC* from the service of one of its most important applications. Constantine's amendment to the *SCC* represented a fundamental reorientation of the *SCC*, but his measure made sense in terms of fourth-century conditions. Imperial slaves held a different role in society by the late empire. The powerful, socially paradoxical element of the imperial slave family had been rooted in the administrative side of the Roman civil service. Because of the unique genesis of the Roman monarchy, the private

[94] This follows the presentation of Weaver (n. 3), 162–9.

[95] See Harper (n. 82), ch. 2 on the demographic composition of the slave population, esp. among different types of slave owners. Males vastly outnumbered females in large, senatorial households. See also K. Hasegawa, *The* Familia Urbana *during the Early Empire: A Study of the* Columbaria *Inscriptions* (Oxford, 2005).

[96] Weaver (n. 3), 165.

[97] Sirks (n. 1), elegantly teases out the logic of the *SCC* from the detailed rules preserved in *PS* 2.21[a]. Moreover, he has justly criticized some sloppy language in modern discussions of the *SCC*, in particular the assertion that the master gained 'property rights' over the offspring of the union. In Roman law masters had no claim to the product of their male slaves, so no 'property rights.' But this does not vitiate the proposition that the *SCC* was originally motivated by a desire to claim such offspring as slaves; indeed, in its original form enslavement of the woman was optional and her children could be claimed as slaves even when the woman was not herself enslaved. The interpretations of Weaver and Sirks are not mutually exclusive – a law as important and complex as the *SCC* could have had more than one underlying purpose. Moreover, since the existence of free children may have undermined the master's authority over his male slave, the two explanations are highly complementary.

[98] Weaver (n. 3), 53 and 168.

household staff of the emperor absorbed functions and offices in a burgeoning imperial bureaucracy. But by the third century, servile clerks employed by imperial administrators were gradually overtaken by the military *officia* with which they had long coexisted; then, under Diocletian, the civil and military functions of administration were formally separated, a profound reform largely responsible for the shape of the late Roman bureaucracy.[99] The domestic side of the imperial slave family continued to exist, but on a more limited scale, and in positions around the court rather than in the civil service. The imperial court was increasingly staffed by eunuchs, who obviated the need to apply the *SCC*.[100]

When the emperor thought of imperial slaves in the fourth century, in this law and in others, he imagined his workers on imperial estates.[101] The exploitation of imperial properties was a major input for state coffers, and presumably the emperor employed a great number of labourers of various statuses.[102] Slavery remained a vital institution in the late empire, playing a major role in agricultural production on large estates.[103] Constantine removed the serious disincentive, slavery, that awaited any woman who wished to marry a servile worker on imperial land. We can imagine that this increased the likelihood of domestic stability and reproduction among his agricultural workforce.[104] Family stability is a major factor in reproductive success, as comparative data from slave societies demonstrate.[105] Constantine was more concerned with the reproduction of his rural labour force than with exoteric marriages at the clerical level of the *familia Caesaris*. Given the composition of the imperial slave family, Constantine's legislation of 320 was a pragmatic response to the contemporary situation.

It is noteworthy that *CT* 4.12.3 mapped out a 'middle destiny' for children of mixed-status unions on imperial estates. By reserving for himself the claims to *operae* and *obsequium*, the emperor ensured that the offspring of any unions would remain in his labour force. By specifying that the children were *Latini*, the emperor denied them testamentary privileges and therefore ensured that none of his property would pass out of his ownership. *CT* 4.12.3 made particular sense in light of fourth-century fiscal policy. Those who were liable for the capitation tax were assigned an *origo*, a place of fiscal registration, which they were not free

[99] A.H.M. Jones, 'The Roman civil service (clerical and sub-clerical grades)', *JRS* 39 (1949), 38–55; id., *The Later Roman Empire, 284–602* (Oxford, 1964), 42–62; A. Demandt, *Geschichte der Spätantike: das römische Reich von Diocletian bis Justinian, 284–565 n. Chr.* (Munich, 1998), 212–23.

[100] K. Hopkins, *Conquerors and Slaves* (New York, 1978), 172–196; S. Tougher, 'In or out? Origins of court eunuchs', in id. (ed.), *Eunuchs in Antiquity and Beyond* (London, 2002), 143–59.

[101] The extent of imperial property in the fourth century was vast. See R. His, *Die Domänen der römischen Kaiserzeit* (Leipzig, 1896); Jones (n. 99, 1964), 416; R. Delmaire, *Largesses sacrées et res privata: l'aerarium impérial et son administration du IVe au VIe siècle* (Rome, 1989). Its scale only increased as fourth-century emperors progressively confiscated the estates of temples and municipalities. See A. Chastagnol, 'La législation sur les biens des villes au IVe siècle à la lumière d'une inscription d'Ephèse', *AARC* 6 (Perugia, 1986), 77–104; G. Bransbourg, 'Fiscalité impériale et finances municipales au IVe siècle', *Antiquité Tardive* 16 (2008), 255–96.

[102] e.g. *CT* 11.9.1 (323); *CT* 11.9.2 (337); *CT* 10.8.4 (346); *CT* 10.1.2 (357).

[103] Harper (n. 82), ch. 4.

[104] See too *CT* 2.25.1 (A.D. 325).

[105] See K. Harper, 'The Greek census inscriptions of late antiquity', *JRS* 98 (2008), 83–119.

to abandon.[106] A labourer might be registered to an imperial estate.[107] It has long been noted that the norms of the colonate were first developed on imperial estates, and it is not unreasonable to imagine that the long-term effects of *CT* 4.12.3 are somewhere in the background.[108]

The reform of 320 was part of a major edict, aimed at undoing a series of onerous and outdated laws from the early empire and carried out in the name of gentler governance. By reducing the penalty for marriage with his slaves, Constantine eliminated a law created in the days when the *familia Caesaris* served as an ersatz imperial bureaucracy. He thereby promoted marriage and reproduction on his imperial estates. Like the original enactment of the *SCC*, its reform in 320 was driven by practical concerns related to the imperial treasury, though the conditions under which the emperor as slave-owner stood to benefit had changed. *CT* 4.12.3 was a major reform, and yet its true significance has been obscured by its place in title 4.12, since interpreters have seen it in line with 4.12.1 and 2, which act to pull the eye toward the rhetoric of lenience, away from the substance of what the constitution actually did.

CT 4.12.4

The *SCC* was rooted in concerns about power and property; it provided the slave owner redress against the threat of losing control over his male slaves. It was not particularly concerned with moral questions arising from these unions, nor was it an act of social engineering aimed to prevent mixed-status relationships. The *SCC* gave the private slave owner complete authority to decide whether or not to allow such a union. But Constantine's fourth law on the *SCC*, issued in 331, marked a new direction.[109]

[IDEM A. Q]uaecumque mulierum post hanc legem servi contubernio se miscuerit, et non conventa per denuntiationes, sicut ius statuebat antiquum, statum libertatis amittat. DAT. PRID. NON. OCT. [BAS]SO ET ABLABIO CONSS.

The same Augustus [Constantine]. Any woman who mixes herself in a non-legal union with a slave after this law, even if she has not been notified by the formal warnings as the ancient law held, loses her free status. Given on the day before the Nones of October, Bassus and Ablabius consuls.

[106] C. Grey, 'Contextualizing *colonatus*: the *origo* of the late Roman empire', *JRS* 97 (2007), 155–75; J-M. Carrié, 'Dioclétien et la fiscalité', *Antiquité Tardive* 2 (1994), 33–64.

[107] e.g. *CT* 12.1.33 (A.D. 342). By A.D. 371 at the latest, workers could be registered even to a private estate: *CT* 11.1.14.

[108] The role of imperial estates in developing norms of the colonate has been emphasized esp. by Rosafio (n. 91). On the colonate in general, see J.-M. Carrié, 'Le "colonat du Bas-empire": un mythe historiographique?', *Opus* 1 (1982), 351–70; D. Vera, 'Forme e funzioni della rendita fondiaria nella tarda antichità', in A. Giardina (ed.), *Società romana e impero tardoantico* (1986), vol. 1, 367–477; B. Sirks, 'Reconsidering the Roman colonate', *ZRG* 110 (1993), 331–62; J.-M. Carrié, '"Colonato del Basso-Impero": la resistenza del mito', in E. Lo Cascio (ed.), *Terre, proprietari e contadini dell'Impero romano* (1997), 75–150; D. Vera, 'Padroni, contadini, contratti: *realia* del colonato tardoantico', in Lo Cascio (ed.), *Terre, proprietari e contadini*, 185–224; W. Scheidel, 'Slaves of the soil', *JRA* 13 (2000), 727–32; D. Kehoe, *Law and Rural Economy in the Roman Empire* (Ann Arbor, 2007), especially 163–91; Grey, op. cit. (n. 106); B. Sirks, 'The colonate in Justinian's reign', *JRS* 98 (2008), 120–43.

[109] See esp. Navarra (n. 6).

Unfortunately, *CT* 4.12.4 is the most difficult law to understand in the title, not least because it is so imperfectly preserved. It requires us to consider the strange transmission of the title *CT* 4.12. *CT* 4.12 is known only through two manuscripts. One of these was the sixth-century manuscript preserved in the library at Turin. This manuscript contained only the laws numbered 4–7 (and the subscription of law 3).[110] The other manuscript with *CT* 4.12 is Vatican Reg. lat. 520, an eleventh- or twelfth-century manuscript that was first edited by Cuiacius in 1566.[111] Four folios of this MS contain material apparently from the *CT*. Folio 95 contains the laws now numbered 1, 2, 3, 5, 6 and 7 of this title; it is not apparent why 4.12.4 is omitted.[112] Interestingly, the six laws included in the Vatican manuscript have a commentary attached.

It is unclear whether the laws of *CT* 4.12 were originally included in the *lex Romana Visigothorum*, but it seems likely that they were not. Haenel, with some hesitation, chose to restore the title on the *SCC* to his edition of the *LRV*, apparently because laws 1–3 and 5–7 have attached commentaries, which he thought belonged to the tradition of the *Interpretationes*.[113] The *Interpretationes* are usually thought to have been prepared specifically for the Visigothic edition, so their presence could be a signal of descent from the *LRV*.[114] In this scenario, the Vatican manuscript would represent the title as it appeared in the *LRV*, with *CT* 4.12.4 having been omitted by Alaric's editors because it was obsolete. The Turin manuscript, by contrast, would represent all the laws from the original *CT* (including 4). If this reconstruction is correct, then all the manuscripts of the *LRV* have simply lost the laws pertaining to the *SCC*.

The alternative scenario is that *CT* 4.12 was not originally in the *LRV*.[115] The manuscript tradition of the *LRV* is quite good.[116] Moreover, the sequence of title numbers in the *LRV* leaves no room for a title *Ad Senatus Consultum Claudianum*.[117] This presents us with two closely related problems: where did the commentaries attached to the laws in the Vatican manuscript come from, and when did law 4.12.4 disappear? Mommsen argued that the laws in the Vatican manuscript were laid out on the model of the *LRV*, with 'similar' commentaries that were not actually *interpretationes*; Matthews suggested that the commentaries on the *SCC* differ from the *Interpretationes* in 'their greater simplicity', although there is limited material for comparison.[118] We know that other early commentary traditions, such as the *summaria antiqua*, existed, so this argument certainly has plausibility.[119] Matthews goes further and argues that the Vatican folios were composed 'from the complete

[110] Mommsen, *Prolegomena*, vol. 1, xxxix–xlii.

[111] Mommsen, *Prolegomena*, vol. 1, lxxxvi–lxxxvii.

[112] Arjava (n. 6), 224, rightly notes that Mommsen's claim (lxxxvi–lxxxvii) that law 5 is omitted from the Vatican manuscript is a plain error contradicted later in his own edition.

[113] G. Haenel, *Lex Romana Visigothorum* (Leipzig, 1847), 118.

[114] Matthews (n. 47), 11–32; Liebs (n. 47), 175–6.

[115] Mommsen, *Prolegomena*, vol. 1, lxxxvi–lxxxvii; Matthews (n. 47), 14–15; Matthews (n. 5), 111.

[116] See D. Liebs, *Römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert)* (Berlin, 2002), 109–10.

[117] Mommsen, *Prolegomena*, vol. 1, lxxxvi–lxxxvii. Further, as Arjava (n. 6), 223–4, argues, the *LRV* also omits relevant portions of Gai. *Inst*. and the *PS*.

[118] Mommsen, *Prolegomena*, vol. 1, lxxxvi–lxxxvii; Matthews (n. 5), 111.

[119] A.J.B. Sirks, 'The Summaria Antiqua Codicis Theodosiani in the ms. Vat. Reg. Lat. 886', *ZRG* 113 (1996), 243–67; id., *Summaria Antiqua Codicis Theodosiani. Réédition avec les gloses publiées dans Codicis Theodosiani fragmenta Taurinensia (ed. P. Krüger)* (Amsterdam, 1996).

Theodosian Code', with *interpretationes* 'in imitation' of the *LRV*.[120] This is an attractive explanation, although the Vatican copy emphatically does not preserve *CT* 4.12 completely: *CT* 4.12.4 is missing. Thus the second question remains unanswered. If the Vatican folios were made from a complete original of the *CT*, then why was law 4.12.4 omitted? In other words, if not at the moment of Alaric II's edition of the *LRV*, when and why was law 4 excised from the title in this particular manuscript?

There is no obvious answer, and there is no elegant explanation for the manuscript tradition of *CT* 4.12. This discussion at least reminds us that *CT* 4.12 is preserved by a very precarious line of transmission, and it urges us to approach the fourth law in the title with particular scrutiny. A number of interpretive difficulties surround this constitution. An initial problem is whether or not *CT* 4.12.4 applied to the *SCC* in regard to private slaves, fiscal slaves, or both. Most commentators have inferred, reasonably, that it must apply only to private slaves.[121] The decisive reason is that the next law in the title, Julian's *CT* 4.12.5, shows that Constantine's distinction between private and fiscal slaves was still in place.[122] Without saying so explicitly, *CT* 4.12.4 did not alter Constantine's reform of A.D. 320.

CT 4.12.4 dissolved the requirement of legal warning before a woman could be enslaved. The *denuntiatio* was a part of the legal process that informed the woman of the private slave owner's intention to disallow the relationship.[123] We must ask, though, whether the purpose of *CT* 4.12.4 was to reform the procedure required to carry out the *SCC* or, more radically, to eliminate altogether the private slave owner's discretion to determine the fate of the woman. Because *CT* 4.12.1 and 2 have been seen as procedural reforms (first eliminating the warnings, then requiring three warnings and seven witnesses), *CT* 4.12.4 has also been seen as a reform of procedure. Perhaps this is another optical illusion of the code, and *CT* 4.12.4 was in fact something more profound. Although the law is brief and laconic, it is possible that it was not only the legal *process* that Constantine amended: the emperor did not say that slave owners retained the right to enslave the woman if they so wished, regardless of the *denuntiatio*.[124] Constantine's law mandated that any woman who mixed in *contubernium* with a slave automatically lost her status as a consequence.[125] The dispositive verb was 'she loses'.[126] Conceivably, this law eliminated the master's discretion, making loss of status a direct consequence of a union between a free woman and a slave.

[120] Matthews (n. 47), 14.

[121] Evans Grubbs (n. 6), 267.

[122] As do *CT* 10.20.3 and 10.20.10, for which see below.

[123] Berger (n. 61), 431. 'There was a *denuntiare* when a private person gave notice to another of a legally important fact or of his intention where such an act was necessary for proceeding with a legal remedy.'

[124] Exactly as he did with municipal slaveowners in *CT* 4.12.3.

[125] We must always consider the possibility that the editors were unable to find all relevant laws from the period, too, a problem which seems particularly acute for Constantine. It is conceivable that 4.12.4 was a follow-up measure for which the original reform is lost, not unlike the important law *CT* 4.6.3, see Harper (n. 82). In general, Sargenti (n. 5), 377.

[126] Enslavement under the *SCC* probably required the intervention of a magistrate (from A.D. 52? from Hadrian?), but we know very little about its application. See *PS* 2.21[a].17. *Consultatio* 9.7 (365) – cited below (n. 145) – could be taken to mean that customarily enslavement did not require an official intervention. On balance, enslavement probably did require formal intervention. If our interpretation of 4.12.4 is correct, would it too have required the intervention of an official? Probably, although it is impossible to say with certainty.

On this interpretation, Constantine set up a public penalty for women who 'mixed' – which was precisely his word – with slaves.[127] If so, a law that had originally been discretionary and intended to protect a master's power became, in 331, a law truly opposed to mixed-status unions as such.[128] Frankly, the short notice of this change is disappointingly slight evidence for such a critical shift in the purpose of the law.[129] But this interpretation is more convincing when set beside another near-contemporary law of Constantine on sex between women and slaves. The *SCC* regulated the problem of free women cohabiting with *servi alieni*: the slaves of other masters. In the classical law, there is scant mention of sex between mistresses and slaves, although a husband could accuse his wife and a slave of adultery.[130] The first statute in all of Roman law to address sexual liaisons as such between free women and their own slaves came from Constantine in 329:[131]

Si qua cum servo occulte rem habere detegitur, capitali sententiae subiugetur, tradendo ignibus verberone, sitque omnibus facultas crimen publicum arguendi, sit officio copia nuntiandi, sit etiam servo licentia deferendi, cui probato crimine libertas dabitur, cum falsae accusationi poena immineat. Ante legem nupta tali consortio segregetur, non solum domo, verum etiam provinciae communione privata, amati abscessum defleat relegati. Filii etiam, quos ex hac coniunctione habuerit, exuti omnibus dignitatis insignibus, in nuda maneant libertate, neque per se neque per interpositam personam quolibet titulo voluntatis accepturi aliquid ex facultatibus mulieris. Successio autem mulieris ab intestato vel filiis, si erunt legitimi, vel proximis cognatisque deferatur vel ei, quem ratio iuris admittit, ita ut et quod ille, qui quondam amatus est, et quod ex eo suscepti filii quolibet casu in sua videntur habuisse substantia, dominio mulieris sociatum a memoratis successoribus vindicetur. His ita omnibus observandis et si ante legem decessit mulier vel amatus, quoniam vel unus auctor vitii censurae occurrit. Sin vero iam uterque decessit, suboli parcimus, ne defunctorum parentum vitiis praegravetur; sint filii, sint potiores fratribus, proximis adque cognatis, sint relictae successionis heredes. Post legem enim hoc committentes morte punimus. qui vero ex lege disiuncti clam denuo convenerint, congressus vetitos renovantes, hi servorum indicio vel speculantis officii vel etiam proximorum delatione convicti poenam similem sustinebunt.

If a woman is revealed to be having a hidden liaison with a slave, let her be sentenced to capital punishment, and the reprobate slave sent to the flames. And let everyone have the capacity to report this public crime, let it be a full duty to declare it, let even a slave have permission to make an accusation, which if it is true shall bring him freedom, though if it is false, a penalty waits. A woman married before this law shall be removed from such a union, deprived not just of her house, but from any society with her province, and let her weep for the departure of her dispatched lover. And the children she may

[127] *Misceo* is a broad word that in this sense implies both intermarriage and the carnal union of two people. *TLL* vol. 8, cols. 1086–7.

[128] Voss (n. 1), 142, believing that *CT* 4.12.1 had eliminated the need for formal warnings, argued that the *SCC* had already been made 'vom Willen der *patroni* unabhängig'. The logic is sound, except that *CT* 4.12.4, rather than 4.12.1, was the first measure to eliminate the need for warnings.

[129] Cf. the thoughts of Honoré (n. 5, 1986), 142: 'many of the laws require decoding … the compilers of the Code have shortened the texts and so obliterated some of them.'

[130] *Dig*. 1.12.1.5; *Dig*. 48.2.5. Arjava (n. 6), 194, 226; R. Gamauf, 'Cum aliter nulla domus tuta esse possit…: fear of slaves and Roman law', in A. Serghidou (ed.), *Fear of Slaves, Fear of Enslavement in the Ancient Mediterranean* (Besançon, 2007), 145–64, at 161; in the same volume, H. Parker, 'Free women and male slaves, or Mandingo meets the Roman empire', 281–98, at 294–5.

[131] Seeck (n. 54), 179; T. Barnes, *The New Empire of Diocletian and Constantine* (Cambridge, 1982), 78.

have had from this union are deprived of all marks of dignity and retain only their bare freedom. Neither in their own right nor through the intervention of someone else may they accept anything in a title of the will from the property of the mother. In intestacy the inheritance shall pass to her children, if they are legitimate, or to her relatives or cognates or to him whom the principles of law allow, so that whatever he who was once the lover and whatever the children conceived by him in the event seem to have in their own property, shall be added to the property of the mother and vindicated by the aforementioned successors. These should all be observed even if the mother or the lover has died before the law, since one of the agents of this crime will suffer the penalty. But if both shall have died, we spare the descendants, lest they be burdened by the crimes of a dead parent. Let them be legitimate children, let them be preferred over their brothers, relatives and cognates, let them be heirs to the rest of the inheritance. We sentence to death anyone committing this crime after the law. If anyone separated according to this law should covertly meet again, restarting the illicit union, such convicted persons, whether accused by slaves or officials of the police, or even by the accusation of relatives, will be subjected to the same penalty.[132]

The law was a thundering attack on sex as such between women and slaves, but it was obscure at the critical moment. The highly literary, and not legal, language of the constitution has been perceptively noticed by Evans Grubbs.[133] *Verbero* was used nowhere else in the *CT*; *amatus* is a word from Republican comedy. The name given to the crime itself, *occulte rem habere*, is far from transparent. It could imply adultery, or an illicit *contubernium* or, if the ambiguity is intentional, both. Since the woman was imagined to have legitimate children, the law perhaps concerned wives or widows. This ambiguity becomes much more interesting when we recognize that *CT* 9.9.1 says nothing specific about a woman's 'own' slaves. Only the *titulus* supplied by the fifth-century editors specifies *servi proprii*.[134] Did the editors know, from some information which is now lost, that this was the original domain of the constitution, or was that purely their interpretation? Quite conceivably, the law could originally have intended any woman detected having a covert relationship with a slave, *proprius* or *alienus*, to suffer the penalties outlined in *CT* 9.9.1.

CT 9.9.1 represented an assumption on the part of the state to protect female honour in situations where women were not privately protected by a father or husband, whose 'shadow was the protection' of a woman's virtue in the eyes of ancient society.[135] One of the most striking elements of *CT* 9.9.1 was the large base of eligible informers.[136] Constantine passed adultery legislation in 326 that had strictly limited the public's right to denounce an adulteress: only the woman's family could denounce her.[137] *CT* 9.9.1 emphatically asserted the capacity of the public, the government and even slaves to denounce a woman having an affair with a slave. *CT* 9.9.1 highlights the intensity of prejudice against these types of relations, but for centuries Roman emperors and lawyers had left such matters largely to the private sphere. Constantine's reign betrays an unusual zeal on behalf

[132] *CT* 9.9.1 (329).

[133] Evans Grubbs (n. 6), 274.

[134] See Bassanelli Sommariva (n. 42), esp. 226–9. This constitution is in fact her best example of the interpretive significance of *tituli*.

[135] Jer. *Ep.* 79.8: *maxime ubi et aetas consentit ad uitium et maritalis deest auctoritas, cuius umbra tutamen uxoris est.*

[136] For discussion of this problem, Evans Grubbs (n. 6), 275.

[137] *CT* 9.7.2 (326). See Evans Grubbs (n. 6), 208–9.

of female honour – an issue on which the Christian church and traditional social prejudices were in agreement.[138] This interpretation of *CT* 4.12.4 and 9.9.1 accords well with the tenor of his later rule.[139]

CT 9.9.1 and *CT* 4.12.4 would represent, in tandem, a subtle yet pivotal change in the state's regulation of the intersection between legal status and sexuality. On this reading, Constantine took a fateful step in 326, when he decided to regulate relations between free women and slaves per se with *CT* 9.9.1. Perhaps his penalties against women who committed the crime described by *occulte rem habere* prompted a question: what if the slave's master consented to the affair, as the *SCC* had long allowed? *CT* 4.12.4 then was passed to eliminate the master's discretion, creating a public penalty for women entering unions with slaves. *CT* 4.12.4 could even have been a clarification, rather than an independently motivated reform. This would have denatured the *SCC*, turning a law constructed to guarantee the master's power into a law about status and sex per se, like *CT* 9.9.1. Together, these laws show the assumption by the state of the power to decide the fate of women involved in unions with slaves. Traditional ideas of status and honour, the aggressive attitude of the state and a zeal unleashed against the relationship itself – rather than just its potential to destabilize property – conspired to produce Constantine's legislative program.

CT 4.12.5

Regardless of whether *CT* 4.12.4 simply amended the procedural requirements of the *SCC* (an interpretation which certainly remains possible) or more broadly eliminated the private slave owner's discretion, the law was rescinded by the emperor Julian in A.D. 362. This is quite significant, given the debate over whether the *CT* includes obsolete laws. *CT* 4.12.5 clearly overturns *CT* 4.12.4, and there is no easy way to see how the editors could have viewed *CT* 4.12.4 as anything other than obsolete when they chose to include it in the code of 438.[140] Its moribund state may also account for its absence in the Vatican manuscript and the lack of a commentary on the law.[141] With *CT* 4.12.5, Julian returned to the situation which had prevailed in the A.D. 320s, after the *Ad Populum* reform but before *CT* 4.12.4.

[IMP. I]ULIANUS A. SECUNDO PPO. Senatusconsultum claudianum firmum esse censemus omnibus constitutionibus, quae contra id latae sunt, penitus infirmatis, ut libera mulier, sive procuratori sive actori privato sive alii cuilibet servili condicione polluto

[138] Although the concern with social boundaries is so much stronger than any concern about sexuality per se that it could be claimed, with E. Herrmann-Otto, 'Konstantin, die Sklaven, und die Kirche', in P. Mauritsch et al. (edd.), *Antike Lebenswelten: Konstanz – Wandel – Wirkungsmacht, Festschrift für Ingomar Weiler zum 70. Geburtstag* (Wiesbaden, 2008), 354–66, at 364, that *CT* 9.9.1 'hat nichts mit christlichen Moralvorstellungen zu tun'. Similarly, Navarra (n. 6). See also R. Soraci, 'La legislazione di Costantino sulla schiavitù: Ettore Ciccotti e il dibattito storiografico moderno', *Quaderni catanesi di studi classici e medievali* 5 (1983), 57–77; W. Waldstein, 'Schiavitù e Cristianesimo da Costantino a Teodosio II', *AARC* 8 (Naples, 1990), 123–45.

[139] See e.g. *CT* 9.24.1 (326).

[140] The law was issued to Secundus: *PLRE* Saturninius Secundus Salutius 3, PPO Orientis 361–5, 365–7. As the *PLRE* notes, the location given for the *data et proposita* in the Forum of Trajan must be an error.

[141] See above.

fuerit sociata, non aliter libertate amissa nexu condicionis deterrimae adstringatur, nisi trinis fuerit denuntiationibus ex iure pulsata. quod quidem circa privatas personas convenit observari; nam eas mulieres, quae fiscalibus vel civitatis servis sociantur, ad huius sanctionis auctoritatem minime pertinere sancimus. DATA ET P(RO)P(OSITA) IN FORO TRAIANI VIII ID. DEC. [MA]MERTINO ET NEVITTA CONSS.

Emperor Julian Augustus to Secundus, Praetorian Prefect. We decree that the *SCC* is valid and that all laws which have been brought against it have been completely cancelled. Thus, a free woman who will be joined to a private person, whether to a procurator or to a private actor or to anyone else, stained by the servile condition, shall in no other way be tied to the bond of the worst condition with her liberty lost, except if she has been served by the triple formal warning. To be specific, this law shall be observed in regard to private persons. For we decree that those women who are joined with fiscal or municipal slaves belong not at all to the authority of this rule. Given and posted in the forum of Trajan on the eighth day before the Ides of December, Mamertinus and Nevitta consuls.

One minor yet interesting aspect of this constitution is that Julian claimed to restore the *SCC*, eliminating all contrary laws. Quite obviously he did not restore the *SCC* such as it was passed in A.D. 52, by overturning, for instance, Hadrian's modifications. In claiming to restore the *SCC*, Julian was actually restoring it to its late classical form; he was undoing the changes of Constantine, specifically *CT* 4.12.4. Yet by excluding the rules of 4.12.5 from application to fiscal slaves, Julian accepted Constantine's decision of A.D. 320 to allow free women to marry imperial slaves without penalty – an indication that such a reform was a pragmatic and profitable way to manage imperial estates. Julian also specified that *CT* 4.12.5 did not apply to women who were joined with municipal slaves. The *Sententiae Pauli* reported the following rule: *mulier ingenua, quae se sciens servo municipum iunxerit, etiam citra denuntiationem ancilla efficitur: non idem si nesciat*.[142] Julian, restoring the procedural requirements for private slave owners, reaffirmed that muncipalities retained the right to enslave women without issuing the *denuntiationes*.

Clearly the purpose of *CT* 4.12.5 was to overturn *CT* 4.12.4. While 4.12.4 lacks an addressee, it was issued while Constantine was in the east. *CT* 4.12.5 was issued to the Praetorian Prefect of the east. There is no plausible scenario in which limited geographic application would explain why *CT* 4.12.4 was included in the *CT* if only currently valid laws were included. Often, as Sirks and Honoré have shown, careful examination reveals that obsolescence or contradiction is apparent rather than real.[143] In *CT* 4.12 it is incontrovertibly real.[144] The whole purpose of 4.12.5 was to overturn 4.12.4 (and possibly 9.9.1). Julian thus eliminated a harsh innovation of Constantine aimed at repressing sexual interaction between free women and slave men. He favoured, instead, the old, moderate legal regime provided by the system of denunciations, which protected the power and property rights of private slave owners but otherwise turned a blind eye to the sexual partnerships of lower-class women. We have been arguing that the laws in title *CT* 4.12 were

[142] *PS* 2.21[a].14.

[143] Sirks (n. 5), e.g. 105–6 and Sirks (n. 64), *passim*. Honoré (n. 5, 1998), 142–9.

[144] For parallel examples, see Harries (n. 5), 22–3; Honoré (n. 5, 1998), 144. It would be impossible to argue that 4.12.4 remained in force throughout the west; Julian reigned as sole emperor and his laws were valid throughout the empire. See, moreover, the western rescript cited in the following note.

not an interrelated series of reforms; here is the exception, a law that truly was a reaction to a previous enactment preserved in the title. If the inclusion of laws under the same title in the *CT* often gives the impression of a coherent legislative history, it is not *always* an illusion.

CT 4.12.6

Julian's restoration of the *SCC* proved appealing to subsequent emperors. After Julian the rules and procedures pertaining to the *SCC* remained stable throughout the period covered by the *CT*. The *SCC* continued to be enforced. A document of 365, for instance, not included in the *CT*, commanded a Roman governor to intervene and punish women who ignored efforts to enslave them because the master of their servile sexual partner was only a minor.[145] This was not a new rule, simply an instruction to a governor to enforce the *SCC*. The *CT* itself also includes laws that did not implement new rules, but simply clarified, explained, reiterated or instructed imperial agents how to enforce existing law. This is confirmed by multiple constitutions of successive emperors included in the *CT* which merely reflect the imperial centre directing its administrators how to rule in cases involving the *SCC*. *CT* 4.12.6 was a strongly worded law issued in A.D. 366 by Valens:[146]

[IMPP]P. VALENTINIANUS VALENS ET GRATIANUS AAA. AD SECUNDUM PPO. Si apud libidinosam mulierem plus valuit cupiditas quam libertas, ancilla facta est non bello, non praemio, sed conubio, ita ut eius filii iugo servitutis subiaceant. manifestum est enim ancillam esse voluisse eam, quam liberam esse paenituit. DAT. [PR]ID. NON. APRIL. TRIV(ERIS) GRATIANO NP. ET DAGALAIFO CONSS.

Emperors Valentinian, Valens, and Gratian Augusti, to Secundus, Praetorian Prefect. If lust is worth more than liberty to a lascivious woman, she has been made a slave not by war, not by purchase, but by marriage, so that her children shall lie under the yoke of slavery. For it is obvious that she wished to be a slave who regretted being a free woman. Given on the day before the Nones of April in Trier, Gratian, nobilissimus puer, and Dagalaiphus consuls.

This constitution made no alteration to the *SCC*. In *CT* 4.12.6, the woman was assumed to have been enslaved already ('she has been made'); it is thus not a reform of the *SCC*'s application, much less an amendment once again abrogating the need for warnings![147] The law should be seen as a clarification of the effects of the *SCC* on the woman's children. *CT* 4.12.6 simply restated the effects of the *SCC*, but it did so in notably moralizing language.[148] The woman's willingness to enter such a union was ascribed a psychological motive; it was attributed to lust. The law conflated sexual and social transgression. If Christianization was behind

[145] *Consultatio* 9.7 (365): *si servilibus contuberniis sese mulieres quondam ingenuae subdiderint, et nunc contemnentes dominum minoris aetatis servitutis iugum conantur effugere, gravitas tua his, qui servilem condicionem non statim in ipsis coniunctionum primordiis refugerunt, necessitatem subeundae servitutis imponat*. This was a western law (probably a rescript), given by Valentinian from Milan, to the consular of Macedonia.

[146] Seeck (n. 54), 109, 229, amends Triv(eris) to Thyatira since the law must be eastern.

[147] Argued, for instance, by Bassanelli Sommariva (n. 42), 228.

[148] The drafter of this law clearly let rhetoric override technical legal language, even calling the union *conubium*.

this law, it was Christian influence of a form already outlined by Constantine, in which the religion accepted and at times even hardened traditional social boundaries.[149] The substance of the rule remained unchanged.

CT 4.12.6 was not the only law in the *CT* issued by Valentinian and Valens which touched upon the *SCC*. *CT* 10.20.3, issued in A.D. 365, modified Constantine's law of A.D. 320, and in a revealing way. Whereas Constantine had ordered that women cohabiting with fiscal slaves could not be enslaved, *CT* 10.20.3 reversed this policy in the case of imperial weavers. If freeborn women 'after having been notified by the formal denunciations, prefer the vileness of non-legal unions to the grandeur of their ancestry', they would be held to the status of their husbands.[150] As Jones and Sirks have noted, these weavers would have been servile employees of the imperial textile factories.[151] In this case the emperors wished to reapply the sanctions of the *SCC*. *CT* 10.20.3 was placed by the editors of the *CT* in a title which contained laws about menial imperial workers such as weavers, minters, baggage drivers, etc. We argued above that Constantine repealed the *SCC* for imperial slaves because rural agricultural slaves were gaining in relative significance against the bureaucratic, administrative level of the emperor's slave *familia* (increasingly staffed with eunuchs). The slaves in the imperial weaving installations did not fit in either social group, and *CT* 10.20.3 shows that in certain instances the emperors might still wish to protect their power over their male slaves with the *SCC*.[152] Similarly, in A.D. 379, Gratian, Valenintian II and Theodosius issued a law reapplying the *SCC* in the case of imperial minters.[153] The editors of the *CT* made the decision to place these laws in title 10.20 rather than 4.12, but they are just as relevant to the *SCC* as *CT* 4.12.3.

CT 4.12.7

The final law in the title *CT* 4.12 was issued in 398 by Arcadius. This constitution reiterated that a woman had to receive three legal denunciations before she could lose her status:

[IM]PP. ARCADIUS ET HONORIUS AA. AD ANATOLIUM PPO. ILLYRICI. Cuncti provinciales agnoscant, nisi trinis denuntiationibus liberae feminae servorum consortiis arceantur, nullo modo posse eas ad servitium detineri. DAT. NON. MART. CONSTANTINOPOLI HONORIO A. IIII ET EUTYCHIANO CONSS.

[149] Not to mention that in traditional Roman ideology social hierarchies and sexual morals were fused. In e.g. Suet. *Vesp*. 11 a woman has sex with a slave, and it is attributed to *libido* and *luxuria*. Cf. also Petron. *Sat*. 126.5.

[150] *CT* 10.20.3: *ingenuae mulieres, quae se gynaeceariis sociaverint, si conventae denuntiatione sollemni splendorem generis contuberniorum vilitati praeferre noluerint, suorum maritorum condicione teneantur*. We should note that this constitution does require a formal denunciation, even though the slaves are imperial.

[151] A.J.B. Sirks, 'Ad Senatus Consultum Claudianum', *ZRG* 111 (1994), 436–7; Jones (n. 99, 1964), 836–7; Harper (n. 82), ch. 3, on slavery and the textile industry.

[152] This policy not only shows that Constantine's reform remained in place, it also validates our interpretation which emphasizes the importance of the social composition of the imperial slave family.

[153] *CT* 10.20.10.

Emperors Arcadius and Honorius Augusti, to Anatolius Praetorian Prefect of Illyricum. All provincials shall recognize that unless free women cohabiting with slaves are held after three formal warnings, they may in no way be detained in slavery. Given on the Nones of March at Constantinople, Honorius Augustus, for the fourth time, and Eutychianus, consuls.

Again, this law should not be seen as an alteration to the *SCC*; rather, we have an instruction issued to an official, the prefect of Illyricum, informing him how to enforce the law. Perhaps the trail of legislation in the fourth century had created confusion over the procedure required to enslave a woman under the *SCC*. *CT* 4.12.7, then, was a restatement of the existing rules.

CT 4.12.7 is the last law preserved in title 4.12 of the *CT*. The story of the *SCC* in the late fifth and early sixth century is not without interest, for the rules of the *SCC* came to intersect important problems relating to the inheritability of public obligations.[154] But that is an entirely separate theme which cannot be treated within the limits of this article. The *SCC* continued in operation until its abolition by Justinian.[155] Justinian's abolition of the *SCC* was motivated by both practical and ideological considerations, part of his systematic campaign in favour of *libertas*.[156] After Justinian, Roman law on the matter of unions between free women and slave men returned to the status quo as it was in the days before Claudius gave slave owners the right to enslave such women. In other words, it was once again a problem which masters could handle privately, without the ability to exercise a publicly granted power to enslave the women who pursued such unions. After nearly half a millennium, the *SCC* was retired.

CONCLUSIONS

This article has explored the title *Ad Senatus Consultum Claudianum* in the *CT*. It has tried to demonstrate, as a point of method, that each individual constitution in the *CT* has come through three distinct phases which shape its appearance in the modern editions. Each law originated in a particular context that provided the immediate purpose of the rule and shaped its rhetorical construction. Then, each law was collected by the editors of the *CT*, stripped of some of its excess language, and assigned to a title in the code along with other, generically related laws. Finally, each law has come down to the modern era in a manuscript tradition that can be complex in the extreme. All three phases influence the way that modern interpreters comprehend the laws preserved in the *CT*, and this is especially true of title 4.12. We have seen individual constitutions that are profoundly shaped by rhetoric; we have seen how the grouping of these constitutions into a single title gives the appearance, largely an illusion, of coherent development; we have seen a faulty manuscript tradition that thwarts a full understanding of important laws. Title 4.12 also speaks to important questions about the nature of the *CT*, providing

[154] See already *CT* 12.1.179 (415). See further Sirks (n. 151), 436–7, who is rightly cautious about the application of the *SCC* to non- or semi-servile statuses, and M. Bianchini, 'Sul regime delle unioni fra libere e *adscripticii* nella legislazione giustinianea', in *Studi Sanfilippo* V (Milan, 1984), 59–123.

[155] *CJ* 7.24.1 (533). On the date, see Beaucamp (n. 4), 192.

[156] Beaucamp (n. 4), 192; Melluso (n. 4), 47–52.

clear evidence that the code includes obsolete rules, illustrating the subtle influence exerted by *tituli*, and demonstrating the challenge of classifying the formal status of some imperial *epistulae*.

This methodological analysis entails substantive implications. The laws of *CT* 4.12 have been interpreted as a single train of legislation in which the emperors went back and forth, trying to draw the line on the appropriate procedures to carry out enslavement under the *SCC*. Instead, we have argued that the title preserves a series of constitutions which are discrete acts of imperial administration. 4.12.1 was a contingent political response to enslavements carried out under Maxentius. 4.12.2 added the requirement of seven witnesses. 4.12.3 was a major reform, repealing the *SCC*'s application to imperial slaves. 4.12.4 at a minimum eliminated the formal procedures necessary to enslave a woman under the *SCC* and may have eliminated the slave owner's discretion in the matter, mandating loss of status as a public penalty. 4.12.5 overturned the previous law – the only case of reversal in the title. The last two laws reaffirmed the application of the *SCC*. This reading of the title cannot sustain any interpretation which posits massive religious or social change as the underlying cause of the laws. The forces behind any individual enactment were at once more ephemeral and more complex. The *CT* is a record of administration, the collected debris of an ambitious state trying to govern a patchwork of far-flung societies under the rule of a single civil law. *CT* 4.12, then, is not 'about' Christianity or deepening status confusion. It is about slavery and the human complications of slavery in the context of a vast Mediterranean empire.

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