

## A LAW OF JUSTINIAN CONCERNING THE RIGHT OF ASYLUM

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In June 1968 the altar of Washington Square United Methodist Church in Greenwich Village was besieged by a resister of the draft and one hundred friends. Although each one claimed to be the person sought, federal marshals identified Don Baty from a photograph and dragged him from the altar.<sup>1</sup>

Among our English ancestors sanctuary was abolished in 1623,<sup>2</sup> but it has been suggested by persons who are aware that such a right has a historical basis that, even where the right is not legally available, churches may at least afford fugitives a platform from which their desperation may be publicized.<sup>3</sup> Journalistic notices of the contemporary use of "sanctuary" occasionally intimate that this right was historically based upon the Bible. The Hebrew Scriptures do indeed contain the acts of two personages who serve as fitting archetypes of the medieval dyarchy—the mitre and the crown, which from time to time came into conflict over this very question. Moses set aside cities of refuge for the manslayer, whether the homicide were deliberate or accidental. Often a kinsman of the deceased pursued him at once. If the manslayer could outrun this avenger of blood, he might live in a city of refuge without fear until the elders judged his case.<sup>4</sup> A later Israelite figure, however, taught kings how to cope with fugitives from their wrath. Wise Solomon himself, builder of the temple of Yahweh, dragged a disgraced general to his doom from the very horns of the altar.<sup>5</sup>

<sup>1</sup> *The New York Times*, June 14, 1968.

<sup>2</sup> J. Bouvier, *Bouvier's Law Dictionary*<sup>8</sup> (West: St. Paul 1914) 2.3005.

<sup>3</sup> *Time* 91.26 (June 28, 1968) 78; *Newsweek* 74.17 (October 27, 1969) 73.

<sup>4</sup> Deuteronomy 19:1-13.

<sup>5</sup> I Kings (= III Kingdoms) 2:28-34; background in 5-6.

Although Hebrew sources may be exploited for the polemic justification of Church asylum, our pagan sources furnish far more congruent precedents for the practice, and both the Greek and Latin terms of its technical vocabulary.<sup>6</sup> A wide variety of classical literary genres attest the practice. The combined testimony of geographers, historians, biographers, epic poets, tragedians, comic poets, and others can inform us *where* fugitives became suppliants: before statues, before altars, within temples, within hallowed boundaries, and even at outer gates;<sup>7</sup> *who* expanded or shrank the sacred limits,<sup>8</sup> and *who* set restrictions to turn away certain fugitives;<sup>9</sup> *what kinds* of persons fled thither: defeated soldiers, ousted politicians, slaves of inhumane masters, and all sorts of accused persons;<sup>10</sup> *who* highhandedly violated the right of asylum—a frequent occurrence;<sup>11</sup> and *how* deity took vengeance upon the violators.<sup>12</sup>

Our earliest sources on sanctuary in Churches indicate that respect for the right of sanctuary there passed to the Church along with the

<sup>6</sup> *Asylon*, adopted by the Romans, who both translate it (Livy 2.1.4 *inviolatum templum*) and transliterate it (Livy 1.8.5, 35.51.2; *Aeneid* 8.342); *asylia* (Aesch. *Suppl.* 610; Strabo 8.6.14, p. 374; Dio Chrys. 31.88); *asphaleia* (Polyb. 4.35.3; Paus. 3.5.6; cf. Theophanes, *Chronographia Anno Mundi* 6127, ed. C. de Boor [Leipzig 1885] 1.339.17); *sôtêria* (Lysias 12.98; cf. Theophanes A.M. 6301, 1.485.10 de Boor); *horia* or *horoi asylas* (Strabo 14.1.23 p. 641; cf. the inscription of Anastasius published by H. Grégoire, A. Dain, and G. Rouillard in *Byzantion* 5 [1929–30] 315–26); *horkos* (Diod. Sic. 11.89.7; cf. *Cod.* [= Code of Justinian: vol. 2 of *Corpus Iuris Civilis*, ed. P. Krueger, 10th ed. Berlin 1929] 1.12.3.3); *parechein pistin* (Diod. 11.89.7; Plut. 828D; cf. *Nov.* [= Novel of Justinian, among *Novellae*: vol. 3 of *Corpus Iuris Civilis*, edd. R. Schoell, G. Kroll, 5th ed. Berlin 1928] 5.2.1).

<sup>7</sup> Statues or cult images: Livy 23.10.11; Tac. *Ann.* 3.36; altars: Plaut. *Rud.* 689, *Most.* 1093; Ovid, *Tristia* 5.2.43; Plut. 166E; temples: Cic. *Verr.* 2.85; Tac. *Ann.* 4.14; wider sacred bounds, e.g. house: Thuc. 5.16.3; porticoes: Diod. Sic. 11.89.6–7; *lucus*: Tac. *Hist.* 3.71; *nemus*: Tac. *Ann.* 3.61; handles of outer gates: Herod. 6.91.

<sup>8</sup> Strabo 14.1.23 p. 689; Tac. *Ann.* 3.36, 62.

<sup>9</sup> Eur. *Ion* 1314–16; Tac. *Ann.* 3.60; Suet. *Tib.* 3.37.3.

<sup>10</sup> Soldiers and politicians: Thuc. 1.126.9–11; cf. Plut. *Solon* 12.1; Paus. 3.5.6, 3.7.10; slaves: Sen. *De clem.* 1.18.2, so much so that asylum is once used by metonymy for “freedman” (Juvenal 8.273); miscellaneous miscreants or accused: Herod. 9.37; Thuc. 4.98.6; Dio Chrys. 31.88 (*phauloi*).

<sup>11</sup> Thuc. 1.126–28. Note that the Greek *poleis*, like most other governments about to engage in hostilities, were fond of seeking grounds for some moral superiority over their foes. The petty diplomatic exchanges here recorded contain the charge and counter-charge of pollution because of the violation of asylum. Cf. Lysias 12.98.

<sup>12</sup> Paus. 1.20.7. One such punishment was an earthquake which would cause an entire city to be submerged beneath the sea (Paus. 7.24.5–6).

sacred places. Not until the Church had begun to appropriate pagan shrines and holy objects do we read of asylum within Churches.<sup>13</sup> The whole area within their boundary walls came to be regarded as inviolable.<sup>14</sup> Imperial enactments supposedly safeguarded this inviolability.<sup>15</sup> Eutropius the eunuch, the notoriously powerful minister of Arcadius, sponsored a law denying Church asylum, but his measure was defeated. The resistance of the Church proved advantageous to him, for he later had occasion to flee for sanctuary himself.<sup>16</sup>

Through stewards and advocates churches were required to register all fugitives on their grounds and therein to indicate the basis for asylum in the case of each one.<sup>17</sup> The state also demanded that the clergy deliver to fugitives any notices of legal action (*hypomnêseis*), if the fugitives refused to come outside for this purpose.<sup>18</sup> Imperial regulations and exceptions affecting asylum became so numerous that its availability was greatly diminished.<sup>19</sup> Unqualified fugitives were to be forcibly removed by troops.<sup>20</sup> Moreover, presence in asylum did not prevent the seizure of property belonging to a fugitive debtor;<sup>21</sup> in the law of Justinian that we shall soon examine, we shall read of fugitive imposters and tax collectors who seem to have found hard cash, which they could transport on their persons, advantageous.

Before we examine our specific law of Justinian, let us briefly

<sup>13</sup> Amm. Marc. 15.5.31 (A.D. 355): "Silvanum extractum aedicula, quo exanimatus confugerat, ad conventiculum ritus Christiani tendentem . . . trucidarunt"; 26.3.3 (A.D. 364): "confugit ad ritus Christiani sacrarium, abstractusque exinde ilico. . ."

<sup>14</sup> *Th.* (=Codex Theodosianus, edd. Th. Mommsen, P. M. Meyer, 3 vols., Berlin 1905) 9.45.4; *Cod.* 1.12.3.pr.-2; *Bas.* (=Basilica: ed. G. E. Heimbach, *Basilicorum Libri LX*, Leipzig 1833-70) 5.1.11: Security shall be available "usque ad extremas foras ecclesiae."

<sup>15</sup> *Cod.* 1.12.2, 1.12.3.pr.; "ek tês diataxeôs," in *Imp. Iustiniani P. P. A. Novellae quae vocantur*, ed. K. E. Zachariae von Lingenthal (Leipzig 1881) I, xiii.

<sup>16</sup> Synesius, *Epistula* 58: MPG (= *Patrologiae Cursus Completus*, series Graeco-latina, ed. J. P. Migne) 66.1400; MPG 52.394; E. Herman, "Zum Asylrecht im byzantinischen Reich," *Orientalia christiana periodica* I (1935) 204-38.

<sup>17</sup> *Cod.* 1.12.6.10.

<sup>18</sup> *Cod.* 1.12.6.1-2.

<sup>19</sup> *Nov.* 17.7; *Bas.* 5.1.12; *Nov.* 37.10; Malalas (= *Ioannis Malalae Chronographia*, ed. L. Dindorf [Bonn 1831]: vol. 15 in *Corpus Scriptorum Historiae Byzantinae*) 18.241; *Nov.* 17.5.1.

<sup>20</sup> *Cod.* 1.12.3.4-5; Procopius, *Anecdota* 16.18-22, 17.7-10.

<sup>21</sup> *Cod.* 1.12.6.4-6; *Ed.* (=Edicts of Justinian, Appendix I to the vol. *Novellae in Corpus Iuris Civilis*) 13.10.4; *Cod.* 10.19.10; *Nov.* 17.7.1.

characterize the psychology of asylum. The fugitive who sought sanctuary usually stood in peril of his life or of exile. He might be evading a judicial action that portended such peril. He might hope that the prospect of divine vengeance would deter his pursuer from removing him. He might hope that the clergy in charge of the shrine would provide at the very least material assistance.<sup>22</sup> Often the fugitive understood that, although he had reached sanctuary, he was still likely to suffer; nevertheless, the chance that his pursuers, if they should violate the sacredness of the place, would pollute themselves or incur some popular odium made the effort worthwhile. Since one might tarnish his public image by forcibly removing a fugitive, a powerful figure might pause to reevaluate the offense in this light, and ultimately decide to honor the asylum. Furthermore, if in the time gained the anger of a prince or other administrator should be mitigated, the fugitive might be allowed to pass into exile. An unrelenting personage, however, with the help of the clergy, might starve a man to death within the sanctuary.<sup>23</sup> Then as now, human nature in extremity would have liberty, and, if not liberty, at least life.

Now that we have considered the background of our material, it is appropriate to point out that the law before us has little bearing upon the question of who may or may not be maintained upon the sacred grounds as a fugitive. It scarcely touches upon "Asylrecht" in the classical sense. In fact, one is hard pressed to find in the classical sources a comparable institution.

At least one informal analogy may be drawn. Diodorus Siculus 11.89.7 provides the closest parallel in thought and vocabulary, but the provision mentioned applies only to slaves who have fled from harsh masters. As we have seen, such flight to asylum was the proverbial last resort of the mistreated slave. But the following elements in the passage of Diodorus encourage me to use it as evidence of transition to the custom upon which our law of Justinian is based: (1) a master might plead with his slave, through promises of better treatment or of an advantageous sale, to leave the place of sanctuary; (2) the method of persuasion involved the provision of assurance (*pistis*) through oaths (*horkoi*); and (3) once the slave had been persuaded to depart, he was

<sup>22</sup> Cf. Herod. 3.48.

<sup>23</sup> Cf. Thuc. 1.134.2-3.

theoretically protected by this assurance of immunity. The law before us is similar in that it is concerned with a formal assurance that provides immunity outside the place of asylum, but it is different in that it does not of itself imply that the recipient has ever fled to a place of sanctuary.

The edict, or law, of Justinian that concerns us is found in only one manuscript, Codex Marcianus Graecus 179, which came to St. Mark's from the library of Cardinal Bessarion.<sup>24</sup> There it occupies fol. 391<sup>v</sup> to 392<sup>r</sup>, as the second of the so-called "Thirteen Edicts." This collection surely arose because of the haphazard additions of some scribe, for the collection is not based upon any detectable scheme.

Although the law before us, like Edict 13, has an important bearing upon the granting of immunity, an English translation has not hitherto been published. The text here follows:

PROVINCIAL ADMINISTRATORS (*archontes*) MUST NOT GRANT ASSURANCE OF IMMUNITY (*logos asylias*) IN CASES INVOLVING THE FISC.<sup>25</sup>

The same emperor to the Praetorian Prefect John.<sup>26</sup>

#### PREFACE

We have learned from what Your Glory has reported to us by word of mouth that no small obstruction to the remittance of public revenue

<sup>24</sup> So state J. Morelli, *Bibliothecae Regiae Divi Marci Venetiarum custodis bibliotheca manuscripta Graeca et Latina* (Bassano 1802) and the frontispiece of the microfilm of the MS. which has been generously furnished me by the librarian.

<sup>25</sup> Either *prophasis* (= *occasio*, *materia*) or *aitia* (= *causa*, *culpa*) may mean a *case* in court. At bottom they refer to the "matter," "charge," or "basis," of the suit. *Theoph.* (= *Institutionum graeca paraphrasis Theophilo Antecessori vulgo tributa*, ed. C. Ferrini, 2 vols., Berlin 1884, 1889) 3.14.2, 3.19.11, 3.27.7; *Nov.* 123.21.2, 130.1. Both words are used in the law before us, wherein *dēmosiai aitiai*, "cases involving the Fisc" or "public suits," are set in contrast to *idiōtikai prophaseis*, "lawsuits between private parties."

<sup>26</sup> Our sources do not praise John the Cappadocian. The Praetorian Prefect, originally a military official, became a civil administrator under the Dominate, second only to the emperor. Other prefectures than that of the East were of Illyricum, Italy, the whole West, Africa, Libya, and each of the two Romes. This official could pronounce decisions orally. All other judges were required to read theirs. Lydus (= Ioannes Laurentius Lydus, *De magistratibus populi Romani*, ed. R. Wuensch, Leipzig 1903) 2.6; *Dig.* (= Digests of Justinian in vol. 1 of *Corpus Iuris Civilis*, edd. Th. Mommsen, P. Krueger, 15th ed. Berlin 1928) 1.11; *Cod.* 1.26–27, 7.42, 12.4; *Nov.* 79.2, 81.1; Cassiodorus, *Variae* (= *Cassiodori Senatoris Variae*, ed. Th. Mommsen [Berlin 1894]: *Monumenta Germaniae Historica, Scriptores* 12) 6.4.

has been created by provincial administrators who grant assurance of immunity to whomever they please, because the receivers (*hypodechomenoi*) of revenue defend themselves by means of the security derived from this assurance.<sup>27</sup> They refuse to remit the gold that has been paid to them, and withhold the larger part of it for themselves. Although they owe this gold, they misuse this assurance of immunity that has been wrongfully granted to them.

1. We therefore use this sacred imperial pragmatic sanction<sup>28</sup> to Your Excellency and decree that through your own directives (*prostagmata*) you shall prohibit all the most noble provincial administrators from granting assurance of immunity in cases involving the Fisc. We also decree that it shall be lawful for them to grant assurance of immunity to those who petition them in private matters alone and only for a fixed time. They shall have no authority to renew such assurance continually whenever the fixed term expires. All must know that those who receive such assurance [from their administrators] shall receive no benefit from it. On the contrary, anyone who is appointed to transmit the public revenue that such petitioners owe shall be authorized to hold them under arrest. The assurance that has been granted to them in their region<sup>29</sup> shall not profit them; but only those who receive assurance of immunity in accordance with our sacred imperial order or in accordance with the directives<sup>30</sup> of Your Excellency shall enjoy any security.

## CHAPTER I

Your Glory has informed us that certain men have descended on various provinces to hold inquisitions and to search out those who have abandoned

<sup>27</sup> *Dēmosioi phoroi* must in this Edict include not only contributions of *fiscal taxes*, but also the *judicial fees* or *expenses for indictment* (*sportula*) collected by the pseudo-inquisitors. See the opening of Chapter 1. The phrase "by word of mouth" is literally "without writing" (*agraphōs*); cf. L. Wenger, "Aus Novellenindex und Papyruswörterbuch," *Sitzungsb. Bayer. Akad. Wiss.* (Munich 1928) 27.

<sup>28</sup> *Typos: forma* is often used of an imperial order, as opposed to one issued by his underlings. The pragmatic *typos* was directed to corporations, municipalities, and provinces. Noailles has suggested that it is so called because *pragmaticarii*, not the *scrinia*, drafted it. *Ed.* 12.pr.-1; 13.5; *Cod.* 1.23.7.1 = *Bas.* 2.5.27; *Cod.* 1.2.10, 12.33.5.4; P. Noailles, *Les collections de Nouvelles de l'empereur Justinien* 1 (Paris 1912) 12-13.

<sup>29</sup> *Chōra: provincia, regio* may mean more generally "land," "country," or "region," but in Justinian the sense of "province" is sometimes required. *Ed.* 8.pr.; *Nov.* 8.8, 24.1, 31.pr., 69.1.

<sup>30</sup> Whereas the *keleusis*, like a *typos*, usually emanates from the emperor, a *prostaxis* (the word used here) originates with the Praetorian Prefect or some other administrator. The "imperial command" (*basilikē keleusis*) is often set in contrast to the "administrative directive" (*archikē prostaxis*). *Nov.* 90.4.1; *Ed.* 8.3.3, 12.1; *Theoph.* 1.11.1.

themselves to the false doctrines<sup>31</sup> of the heretics; that they have arrested many of our taxpayers on this charge; and that they have taken much gold as judicial fees.<sup>32</sup> We therefore decree that those who dare to commit any such crime shall be arrested and conducted to the most noble administrators of their provinces, and that after their conviction they shall restore what they have taken. They shall both restore the simple amount to those who have suffered such loss and pay a double amount to the Fisc.

1. We decree that those who are enrolled on the Vicarial Office Staff that serves the Admirable Vicar<sup>33</sup> of the Diocese of Asia<sup>34</sup> shall collect and deliver the public revenue at the risk of their persons and property, because, as Your Excellency has reported to Our Piety, those who belong to the Provincial Office Staff have become deficient in number and have been reduced to a very few. Moreover, the Vicar has for a long time undertaken the administration (*archê*) that belongs to the Most Noble Provincial Administrator of the Nation of Phrygia Pacatiana.<sup>35</sup> Members of the Vicarial Office Staff shall be permitted to exact contributions and to provide for their delivery to the Fisc upon receiving a directive to this effect from the present Vicar or from any future incumbent of his official position.

2. We decree that the indigenous tax receivers<sup>36</sup> in each province shall separately enter the gold paid to them in the receipts<sup>37</sup> that they issue,

<sup>31</sup> *Planê*, literally "straying" or "error," refers to departure from the doctrinal canons of the Church. See my article "How Justinian I Sought to Handle the Problem of Religious Dissent," *The Greek Orthodox Theological Review* 13.1 (Spring 1968) 15-40.

<sup>32</sup> *Sportula* (the Latin plural is sometimes *sportulae*, sometimes *sportula*: *Nov.* 86.9, 124.3) are listed with other judicial expenses (*dikastika dapanēmata*: *causalia expensa*, *Nov.* 17.3, 82.7; *Ed.* 9.7.1). Often this refers to the amount that the deliverer (*ekbibastês*: *executor*) of an indictment (*hypomnêsis*: *admonitio*) should legally charge.

<sup>33</sup> *Vicar* was especially applied to diocesan administrators with special military powers: *Cod.* 1.18.11, 4.44.16. *ins.*, 5.3.16, 8.2.3. For his role as deputy of the Praetorian Prefect, see *Cod.* 1.49.1.

<sup>34</sup> When *dioikêsis* has the passive sense of a supervised area, it specifies that subdivision of the empire that is made up of provinces and contained in the prefecture. Within this article, after the text of the Edict, attention will be paid to Phrygia Pacatiana as a subdivision of the Diocese of Asia. The word is translated variously in the ancient Latin version as *gubernatio*, *regimen*, *dispensatio*, and also transliterated *dioecesis*. *Nov.* 28.7, 31.2, 129.1; cf. *Cod.* 1.27.1.19 and *Theoph.* 1.23.5.

<sup>35</sup> Discussed below, as noted in footnote 34.

<sup>36</sup> *Ethnikoi apodektai* seem to be local, originally non-Roman, officials. One may suppose that the alabarchs and pagarchs of Egypt are among these. *Ed.* 11.2 and 13.pr.

<sup>37</sup> *Apodeixis*: *desusceptum*, *documentum*, *probatio* (*Nov.* 49.2.2, 100.pr., 117.2; *Ed.* 5.pr.) generically means "evidence," but is here used in a specific sense synonymous with

and shall distinguish the payments that they receive that pertain to the Depository<sup>38</sup> of Your Excellency from those that pertain to our Sacred Imperial Largesses.<sup>39</sup> Through receipts of the kind mentioned they shall indicate the amount paid and none of them shall be permitted to transfer entries from under their proper headings (*titloi*) to different headings.

These are our regulations. Your Excellency shall direct that what is prescribed in this our Sacred Imperial Pragmatic Edict (*nomos*) shall be enforced.

Regarding the date of this law, one may only hypothesize; for the subscription, or *datum*, is lacking. Since John became Praetorian Prefect between February 20 and April 30, 531—a point that Stein has thoroughly sifted<sup>40</sup>—and since the 8th Novel, which was promulgated on April 15, 535, provided that the Vicar of Asia should become the Count of Phrygia Pacatiana, and since Chap. 1, Sect. 1, of this law testifies to the presence of a Vicar of Asia, it was probably promulgated between February 20, 531, and April 15, 535.<sup>41</sup>

Although the *Preface*, or *Proem*, of this law allows us to assume its unlimited, or oecumenical, applicability, Chap. 1 reveals unquestion-

*homologia*, *apochê*, and *amerimnia: securitas*, Ed. 7.2; Nov. 17.8 = Bas. 6.3.29; Nov. 128.3 = Bas. 56.18.10; Cod. 10.30.4.1-2 = Bas. 56.10.5.

*Amerimniai* were either partial (*merikai*) or full (*plênariai*). The latter were issued for taxes received in January, not May or August; the tax collectors were required to state the amount, date, names, and areas of estates in their receipts; and the taxpayer was required to retain his receipts for three years as proof that he was not indebted to the state: Cod. 10.22.3 = Bas. 56.9.29. See K. E. Zachariae von Lingenthal, "Ein Erlass des Praefectus Praetorio Dioscurus vom Jahre 472 oder 475," *Monatsberichte Akad. Wiss. Berlin vom 17 Februar 1879* (Berlin 1880) 134-69.

<sup>38</sup> *Trapeza: mensa* may be used of any bank, but often in imperial laws has special reference to the *dêmosia trapeza: arca fiscalis*. This was divided into the general (*genikê*) and special (*idikê*) branches. From the latter the Prefect paid salaries to his immediate office staff and other direct subordinates, from the former to all others. Nov. 130.3, 148.1, 163.2; Cod. 12.49.4 = Bas. 6.35.4; Cod. 1.3.52; Ed. 9.1, 9.2.1; cf. M. Gelzer, "Altes und neues aus der byzantinisch-ägyptischen Verwaltungsmisere" in *Archiv für Papyrusforschung* 5 (1913) 346-77.

<sup>39</sup> The provost of this treasury was the Count of the Sacred Imperial Largesses. It is also called the "Royal Treasures" (*basilikoi thesauroi*). For it there were special taxes (*telê*) and special collections (*apaitêseis*). Cod. 1.32.1, 10.23.1, 12.23.2 = Bas. 6.31.3; Nov. 8.7, 163.pr.2; Ed. 11.2-3, 13.11.2, 13.12.1; Lydus 2.27; Procopius, *Anecdota* 19.7.

<sup>40</sup> E. Stein, *Histoire du bas empire* (Paris 1949) 2.784: Excursus A.

<sup>41</sup> F. A. Biener, *Geschichte der Novellen Justinians* (Berlin 1824) 510, 529; *Imperatoris Iustiniani P. P. A. Novellae quae vocantur*, ed. K. E. Zachariae von Lingenthal (Leipzig 1881) vol. 1, p. 11, note 3.



ably that it had been evoked by specific nuisances within a fixed region. The unauthorized inquisitors had descended upon various provinces. Some of their prime targets may have been in the area under the "Most Noble Provincial Administrator, or Governor, of the Nation of Phrygia Pacatiana," whose deplorable weakness must now be remedied by the Admirable Vicar of the Diocese of Asia. This locale demands further examination, as the home of the Montanists.

Although the earliest unquestioned reference to two provinces of Phrygia dates from the year 343, the Council of Sardis,<sup>42</sup> Ramsay, following Mommsen, has maintained that a division was made under Diocletian.<sup>43</sup> He has urged that the rolls of the Council of Nicaea, which list a single Phrygia,<sup>44</sup> are in error on this point, because Gelasius of Cyzicus, although he wrote after the year 477, had access to an earlier list and borrowed from it the expression "First and Second Phrygia."<sup>45</sup> *Phrygia Secunda* is called *Salutaris*, about the year 350, by Polemius Silvius.<sup>46</sup> When Malalas later attributed the division to Constantine the Great, he may have done so because he mistakenly linked the name *Salutaris* with a Christian Emperor.<sup>47</sup>

The earliest known documentation of the name *Pacatiana* is a constitution dated between the years 367 and 375, contained in Theodoret 4.8.1. Later verifiable dates for this name are 381, the Council of Constantinople, and from 411 to 413 in the *Notitia Dignitatum Orientis*.<sup>48</sup> Since the testimony for the name *Pacatiana* (First Phrygia) is later than for *Salutaris* (Second Phrygia), one does not know whether *Pacatiana* may be derived from T. Claudius Marinus Pacatianus, the

<sup>42</sup> Theodoret, *Kirchengeschichte*, ed. L. Parmentier, 2nd ed. F. Scheidweiler (Berlin 1954) = vol. 44 in *Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte*, 2.6; Mansi (= *Sacrorum Conciliorum nova et amplissima collectio*, ed. J. D. Mansi, Paris 1903) 2.57, note 1.

<sup>43</sup> W. M. Ramsay, *The Cities of Bishopricks of Phrygia* (Oxford 1895) 80.

<sup>44</sup> Mansi 2.695.

<sup>45</sup> Gelasius *Kirchengeschichte*, edd. G. Loeschcke, M. Heinemann (Leipzig 1918) 2.28.9, 2.38.9.

<sup>46</sup> *Laterculus* 7.10-11, ed. O. Seeck in *Notitia Dignitatum et Administrationum* (Berlin 1876) 258.

<sup>47</sup> Malalas 13.9.

<sup>48</sup> Mansi 3.571; *Notitia Dignitatum Orientis* 1.98, 2.36, 24.18. In the *Notitia Basilii* (ed. H. Gelzer in *Georgii Cyprii Descriptio orbis Romani*, Leipzig 1890) 28, 40, and 503, a metathesis of consonants yields *Phrygia Kapatiana*.

famous Vicar of Britain who was consul and prefect under Constantine I, or from someone else.<sup>49</sup>

Against the view that a pagan origin is improbable for *Pacatiana*, because it has *Salutaris* as its counterpart, one should observe that the subdivisions of Pontus had retained, until Justinian united them, the names *Helenopontus* and *Pontus Polemoniacus*, names of Christian and pagan connotation respectively.<sup>50</sup> Furthermore, as in the case of other provinces, it is probable that *Salutaris* was named *pro salute Caesaris* and had no reference whatever to the saving grace of Christianity.<sup>51</sup>

Phrygia deserves notice as the home of the Montanists, who were so persecuted by Justinian I that they destroyed themselves by igniting their churches over their own heads. Our source, the *Anecdota* ascribed to Procopius, used this example to illustrate the resistance of rural persons (*agroikoi*) to the systematic inquisition launched by that emperor: "Without delay many who travelled in every direction were compelling those who encountered them to abandon their ancestral faith (*doxa*)."<sup>52</sup> The edict before us seems to corroborate the truthfulness of the *Anecdota* on this point; for, unless official inquisitors were being commissioned, is it likely that impostors would have made a pretense of being such?

The aforesaid document also attests the importance of Phrygia in the production of grain, especially when normal suppliers began to fail.<sup>53</sup>

Whether "assurance of immunity" well translates *logos asylias* is questionable. The less perplexing part of the Greek expression is the descriptive genitive *asylias*, which may be translated "immunity" or "inviolability." The word *logos*, however, which it modifies, requires closer scrutiny. It must be noted that the entire expression is used as an object of verbs of giving (*didonai*, *parechein*), so that it

<sup>49</sup> *Cod.* 6.1.6, 6.36.7; *Th.* 2.19.3 and passim; *ILS* 1353; *RE* 3.2771.

<sup>50</sup> *Nov.* 28.1.

<sup>51</sup> E. Schwartz, "Über die Bischofslisten der Synoden Chalkedon, Nicaea und Konstantinopel," *Abh. Bayer. Akad. Wiss.* n. s. 13 (Munich 1937) 73, note 1.

<sup>52</sup> Or, "compelling those who had strayed to be converted from the opinion of their fathers." Procopius, *Anecdota* 11.23. This must be interpreted in the light of 11.15: "He kept commanding all these persons to set aside their ancient faith (*doxa*)."

<sup>53</sup> Procopius, *Anecdota* 22.17.

seems to be comparable to our expression "to give one's word." Other qualifying genitives than *asylias* that are used with *logos* in contexts that seem to demand a parallel sense are *sôtêrias*, "rescue" or "deliverance," *asphaleias*, "security," and *apatheias*, "immunity" or "freedom from injury."<sup>54</sup>

The *logos* in question is not only said to bring assurance (*pistis*), if we may suppose that *Ed.* 10.1 refers to the same kind of *logos*, but also, if *Nov.* 5.2.1 refers to the same kind of *logos*, is itself termed a kind of "pledge of faith" (*hê kaloumenê pistis*). It should also be noted that the text of the Authenticum, an ancient Latin version of the Novels, renders the last mentioned Greek phrase *iusiurandum*, "oath," and that this is corroborated by the testimony of Leo Grammaticus, whose "sworn word" (*logos enorkos*) seems to refer to the same sort of legal ritual.<sup>55</sup>

The authors of our sources were aware that they were using *logos* in the special sense. This is evidenced by their referring several times to "the so-called word" (*ho kaloumenos logos*). Such references may also lead us to infer that other technical terms for the same legal usage were available.<sup>56</sup>

*Logos* seems at one time to have guaranteed indemnity of property, and at another time to have guaranteed inviolability of the person of the fugitive who received it. In some cases both may be implied. In our sources there may be cited instances in which a clause introduced by *hôte* or by an infinitive specifies the guarantees intended.<sup>57</sup> Whereas the execution of an adjudication against a fugitive might normally be expedited only by his voluntary renunciation of the protection of the *logos*, debts to the state could be exacted from even one so indemnified.<sup>58</sup>

<sup>54</sup> Theophanes, A.M. 6301, 1.485.10; A.M. 6127, 1.339.17; A.M. 6290, 1.473.13-17; A.M. 6201, 1.377.11 and 13; Leo Grammaticus (ed. I. Bekker [Bonn 1842]: vol. 47, pp. 445-510, of *Corpus Scriptorum Historiae Byzantinae*) 451A; Anna Comnena (= Annae Comnenae Porphyrogenitae *Alexias*, ed. A. Reifferscheid, Leipzig 1884) 10.8.

<sup>55</sup> Leo Grammaticus 480B; *Cod.* 1.12.3.3 also seems to refer to this kind of pledge as simply "an oath" (*horkos*).

<sup>56</sup> *Nov.* 17.6; *Ed.* 10.1.

<sup>57</sup> Theophanes, A.M. 5969, 1.124.31; Moschus (= Ioannes Moschus) in *MPG* 87.3, 2853B-88B.

<sup>58</sup> *Nov.* 17.6; Theophanes, A.M. 6295, 1.479.21-25.

In later sources than Justinian there is convincing evidence that some written certification accompanied the *logos*. Theophanes calls it "the assurance bearing a signature" (*enhypographos logos*) and states that it was given in specific terms and signed by the emperor, patriarch, and patricians.<sup>59</sup> Whether or not it was invariably written, it is probable that it was always formally and audibly pronounced, because the general population was grossly illiterate and, as we have seen, there is good evidence that it was regarded as an oath.<sup>60</sup> In view of this, the expression *to legomenon*, "that which is spoken," found in *Ed.* 13.10.2 should be regarded as part of the evidence, not rashly emended to *to dedomenon* by Kroll.<sup>61</sup> Many of the passages that we have cited suggest that its primary purpose was to assure the fugitive, not someone else, that the state would guarantee his personal or real indemnity.<sup>62</sup>

Although this law is formulated so that it may be generally applied, the specific scandal that prompted it was found in the Diocese of Asia, and especially in the Province of Phrygia Pacatiana. Those who had collected money in the name of the state, among whom were not only authorized tax receivers, but also those who had appropriated it under false pretenses, like the self-proclaimed inquisitors and those who had made false entries in ledgers, seem to have obtained a pledge of security and to have used it to prevent the state from recovering the money and from punishing them for their deceit.

A key sentence in the proem is: "Anyone who is appointed to transmit public revenue shall be authorized to hold them under arrest," *scilicet* even if they will have received an assurance of immunity. Since the task is being bungled on the provincial level, this law appoints to transmit public revenue from the provinces within his diocese the Vicar of the Diocese of Asia and his apparitors. The aforesaid impostors and peculators will not be made immune by the *logos*, even if they will have proceeded into the sacred enclosures to enjoy their ill-gotten gain.

<sup>59</sup> Theophanes, A.M. 6208, 1.390.12; Leo Grammaticus 451; Manuelis Comneni, coll. iv, Novella 63, in *Ius Graecoromanum*, ed. K. E. Zachariae von Lingenthal (Leipzig 1856-84) vol. 3, p. 478.

<sup>60</sup> *Nov.* 6.1, 44.pr.; cf. above, note 55, and *Nov.* 5.2.1.

<sup>61</sup> See ed. cited above (notes 21 and 6 *ad fin.*) p. 784, line 31.

<sup>62</sup> *Cod.* 1.12.3.3; *Nov.* 5.2.1, 17.6; *Ed.* 10.1; Procopius, *Anecdota* 9.42.

At this point we are ready to summarize what our law reveals regarding both the specific area that evoked it and the widespread difficulty that it sought to remedy.

Among the peoples of Phrygia we clearly detect a recalcitrance against the efforts of Justinian to compel them to think and live within the confines of the imperial theology. Although these efforts are documented by the *Anecdota*,<sup>63</sup> and its author does not misrepresent the intolerance of Justinian, we may find in *Ed. 2* evidence of fair-mindedness on the emperor's part. He made a serious effort to prevent self-appointed champions of orthodoxy from plundering their neighbors with impunity.

We may also relate our law to the more general problems faced by the government in the matter of collecting taxes. In this matter the notorious edicts of reorganization, like *Novv. 24-31* and *Ed. 13*, document the imperial perplexity and despair. Without carefully working through *Ed. 2* and examining its date, we cannot appreciate a provision that Justinian frequently includes when he regulates the collection of taxes. (According to more than one passage the taxes were his first concern.)<sup>64</sup> Apparitors and tax receivers must collect the taxes *at their own risk*.<sup>65</sup> The armed strength of the governmental service, both civil and military, was growing ever weaker, and, for that very reason, grave dangers threatened persons responsible for the transportation and temporary safekeeping of public money. It had therefore become customary for government administrators and prelates of the Church to conduct ceremonies in which the assurance of immunity was solemnly and publicly conferred upon members of the governmental office staffs. This custom seems to have originated as a device to protect officials from antigovernmental persons and groups, e.g. the private retinues of the grand *patroni*. A second effect, however, was to insure them against unbearable personal loss in the event of theft or robbery; the tax collector who had had the money wrested from himself would be protected against the government itself. Unscrupulous officials, however, saw in this custom the possibility that they might defend themselves against the government, even while

<sup>63</sup> Procopius, *Anecdota* 13.4 ff.

<sup>64</sup> *Ed. 13.4.1*; *Nov. 8.8*, 30.5.1.

<sup>65</sup> *Nov. 30.4*; *Ed. 13 passim*.

retaining possession of the money. Furthermore, as we have seen, charlatans posing as inquisitors of heresy had persuaded administrators or clergymen to give them the benefit of the ceremony. That they were then able to use it to protect their extremely illicit operation demonstrates what a firm grip the custom must have had upon both the people and the government. Justinian did not actually abolish the institution, for, had he done so, his empire might have lost almost all its tax collectors. He did insist, however, that the officials to whom it would be granted be more carefully screened.<sup>66</sup> Only persons named by the praetorian prefect or the imperial chancery should have their operations insured.

<sup>66</sup> *Ed.* 13.10; 2.pr. (*in fine*).