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Emperors, Bishops, Art and Jurisprudence: The Transformation of Law in Eusebius of Caesarea

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This article analyses the collection and repurposing of legal documents in the early fourth century historical writings of Eusebius of Caesarea. Some of these individual documents have been the object of repeated study; others are largely neglected. But they are even more interesting, I suggest, when considered as a collective, as Eusebius' careful editing reveals they were intended to be. This mobilisation of collated and embedded law was, I argue, the meeting of two separate wider trends that took off in this early fourth century watershed moment – the so-called late antique artistic aesthetic, and the gradually changing legal dynamic between government and governed. Eusebius used both as strategies to resist imperial dominance in the uncertain times in which he wrote. And by deliberately presenting the Christian elites of the church's past as experts in both, he constructed an image of the bishop capable of going toe to toe with emperors. In doing so he anticipated the growing conflict between church and state in the centuries to come and the strategies it would employ.

I. Introduction: From Trajan to Constantine

The early fourth century saw the emergence on the world stage of one of early Christianity's most influential figures, Eusebius of Caesarea. Eusebius, like many of his fellow elite Christians, was highly literate. He arguably had the distinction of being one of the best-educated scholars in the Roman world at the time, thanks to teaching received in the second half of the third century in the Caesarean-Alexandrian school of the shadowy Pamphilus.¹ Eusebius' career was extraordinary productive, incorporating biography, history, apology, theology, commentary, pamphleteering and more.² In the early fourth century he also became the bishop of his hometown, Caesarea, the administrative capital of the Roman province of Syria Palaestina. And his scholarship put him on the radar of one of the emperors of the day, the newly Christian Constantine.

It was a rather odd literary experiment concerning that emperor, who had just died in 337, which occupied Eusebius' final years. Constantine had been a turbulent figure, not only because of his famed "conversion" to Christianity, but because he brought an end to the period of tetrarchic rule under four emperors initiated by Diocletian in 293. Constantine's good faith in his political dealings and the fervency of his new Christian faith have been fiercely debated ever since.³ In that sense Eusebius' inscrutable *Life of Constantine* is rather appropriate. Half panegyric, half biography, part history and part hagiography, its true nature and purpose have proved, like its subject, difficult to pin down.⁴ But two decades ago, Averil Cameron suggested, to widespread approval, that Eusebius' apparent eulogy to the recently deceased emperor Constantine was in fact directed at his three sons after the summer of their turbulent succession in 337. The picture of the emperor's piety that the *Life* painstakingly constructs was, Cameron suggests, an attempt to ensure that the princes continued their father's pro-Christian policies.⁵

Cameron's astute observation provides an interesting background against which to read a key trope of the *Life*, namely its manipulation of documents. In it Eusebius collected legal material that suggested Constantine had enacted favourable policies towards Christians. Eusebius makes regular reference to legal measures,⁶ and cites three epistolary edicts verbatim: to the provincials of Palestine on the restoration of previously confiscated Christian property (VC 2.24-42), to the provincials of the east on freedom of worship (VC 2.48-60), and to assorted heretics forbidding assembly and

¹ Elizabeth Penland, 'Eusebius Philosophus?', in Sabrina Inowlocki & Claudio Zamagni (eds.), *Reconsidering Eusebius: Collected Essays on Literary, Historical and Theological Issues* (Leiden/Boston: Brill, 2011), 87-97.

² For a brief summary and introduction see Timothy Barnes, 'Eusebius of Caesarea', *Expository Times* 121.1 (2009), 1-14.

³ See in particular the debate between Timothy D. Barnes, *Constantine and Eusebius* (Cambridge, MA: Harvard University Press, 1981), at e.g. 191-260, and Hal Drake, *Constantine and the Bishops: The Politics of Intolerance* (Baltimore: John Hopkins University Press, 2000).

⁴ On the *Life*'s unusual form see the theory of Giorgio Pasquali, 'Die Composition des *Life Constantini* des Eusebius', *Hermes* 46 (1910), 369-86, that it was a panegyric turned into a biography, a thesis rehabilitated but inverted by Timothy D. Barnes 'Panegyric, History and Historiography in Eusebius' *Life of Constantine*', in Rowan Williams, (ed.), *The Making of Orthodoxy: Essays in Honour of Henry Chadwick* (Cambridge: Cambridge University Press, 1989), 94-123, and Timothy D. Barnes, 'The Two Drafts of Eusebius' *Life Constantini*', in Timothy D. Barnes (ed.), *From Eusebius to Augustine* (Aldershot: Variorum, 1994), and accepted (with some qualifications) by Averil Cameron, 'Eusebius's *Vita Constantini* and the Construction of Constantine', in Simon Swain & Mark Edwards (eds.) *Portraits: The Biographical in the Literature of the Empire* (Oxford: Clarendon Press, 1997), 245-274.

⁵ Cameron, 'Eusebius's *Vita Constantini*'; see too Cameron & Hall, *Eusebius' Life of Constantine*, 3.

⁶ Listed in Averil Cameron & Stuart Hall *Eusebius' Life of Constantine. Introduction, translation and commentary* (Oxford: Oxford University Press, 1999), 20.

ordering the confiscation of their places of worship (VC 3.64-65).⁷ More interestingly, it has been demonstrated via comparison of Eusebius' treatment of these laws with their independent transmission that Eusebius sought to mislead his readers as to their true extent, systematically suggesting that they had a wider application than was in reality the case.⁸ On Cameron's hypothesis, this was one means by which the aging episcopal author sought to control his young imperial addressees.⁹

Eusebius also quotes a copious legal material in his earlier *Ecclesiastical History*, our first narrative history of the church from the coming of Christ to the accession of Constantine. Some of this is well known, like Galerius' 311 "Edict of Toleration" (HE 8.17.3-10) or Constantine and Licinius' 313 "Edict of Milan" (HE 10.5.2-14).¹⁰ Neither of these however is an isolated document; they are part of wider surveys of legal material. The former is followed shortly by a letter from a praetorian prefect to provincial governors on the relaxation of persecution (HE 9.1.3-6) prompted, according to Eusebius, by Maximin Daia's desire not to promulgate Galerius' missive properly (HE 9.1-2). Maximin Daia's later rescript responding to anti-Christian petitions (HE 9.7.3-14) is also soon followed by that emperor's own legal declaration of toleration (HE 9.10.7-11). And the "Edict of Milan" is not a singular document but actually one of a bundle of six rescripts all concerning imperial relations with Christians, and all quoted verbatim (HE 10.5.15-10.7). Perhaps most intriguing, though most often neglected, much earlier in the *History* there are rescripts, quoted or paraphrased, from the emperors Trajan (HE 3.33.1-4), Hadrian (HE 4.9.1-3), and Antoninus Pius (HE 4.13.1-7) – with another of either Marcus Aurelius or Lucius Verus referred to but not quoted (HE 5.5.5) – concerning Rome's earlier relationship with Christians.

My argument begins with the hypothesis that, as in the *Life*, Eusebius' goal in including this legal material in the *History* was not simply preservation. Instead, as in his last work, these laws were part of a strategy to manage and even control Roman power. If that is the case, then Eusebius' extraordinary *Life* represents not some last desperate throw of the dice, but rather the final crystallization of a strategy that Eusebius had already employed years before, in arguably far riskier circumstances. Though the question of the dating of the *History* has been rather tortuous – and tied to the equally complicated question of the number of editions in which it was produced – the long-standing disagreements of the nineteenth and twentieth centuries have largely been resolved by the persuasive arguments of Richard Burgess, who argued that the *History* was produced in three editions: one in 314/315 (consisting, roughly, of Books 1-9, but with the *Martyrs of Palestine* instead of Book 8), a second in 315/316 (where Book 8 replaced the *Martyrs* and Book 10 was added) and a third in 325 (adding Constantine's victory over Licinius and removing references to the latter, including the aforementioned six legal documents),¹¹ with further minor changes after Constantine's execution of his son Crispus.¹² Eusebius' collection and manipulation of law thus began, I argue, in the second decade of the fourth century. And rather than mobilising legal codification to shape and dictate the behaviour of incoming, malleable emperors, at that point he was using it as a tool against sitting emperors and their appointees at the peak of their powers.

This earlier mobilization of law was, I argue, part of Eusebius' engagement with and transformation of two wider and related developments in the artistic and the legal spheres, namely the late antique tendency towards art made by collection, and the increasing cooption to their own benefit of the Empire's own formal legal documents by provincials. In Eusebius' writing we thus find a key stage in the evolution of bishops as key members of the *literati* and as jurists. Most important, we can see how both identities served Eusebius' purposes in the first proto-confrontation between bishops and emperors, the dynamic that would grow throughout, and ultimately shape, the century to come.

II. A Literary Transformation

⁷ See Andrew J. Carriker, *The Library of Eusebius of Caesarea* (Leiden: Brill, 2003), 286-298.

⁸ Detailed in Brian H. Warmington, 'Eusebius of Caesarea's Versions of Constantine's Laws in the Codes', *SP* 24 (1993), 201-207.

⁹ I have similarly argued that the *Life*'s famous description of Constantine as a kind of bishop (VC 1.44.1; 4.24.1) reflects an attempt to define and delimit the basis of imperial intervention in the church's affairs; see James Corke-Webster, 'A Bishop's Biography: Eusebius of Caesarea's *Life of Constantine*', in Koen de Temmerman (ed.) *The Oxford Handbook of Ancient Biography* (Oxford: Oxford University Press, forthcoming).

¹⁰ For Eusebius' use of contemporary documents in the *History* see Carriker, *The Library of Eusebius*, 279-286.

¹¹ The six documents are only in manuscripts ATERM, at different points in the text.

¹² Richard Burgess, 'The Dates and Editions of Eusebius' *Chronici Canones* and *Historia Ecclesiastica*', *JTS* 48.2 (1997), 471-504. This still represents scholarly consensus, though the latter has been shaken recently by criticisms of the very idea of multiple editions and the mooted of a single edition of 324 or 325. See Matthieu Cassin, Muriel Debi & Michel-Yves Perrin, 'La question des éditions de l'*Histoire ecclésiastique*', in Sébastien Morlet & Lorenzo Perrone (ed.), *Eusèbe de Césarée. Histoire ecclésiastique. Commentaire, Tome 1: Études d'introduction* (Paris: Les Éditions du Cerf, 2012), 185-207 and Aaron Johnson, *Eusebius* (London/New York: I.B. Taurus), 104-112.

Eusebius is perhaps most famous as a historian and apologist, author of both the *History* and the apologetic diptych the *Preparation for the Gospel* and *Proof of the Gospel*. Distinctive in all three is Eusebius' obsession with quotation. This citational habit has proved a gift to classicists, since the latter two sample a vast range of earlier authors whose works have otherwise not survived. Arnaldo Momigliano similarly saw such quotation in the *History* as Eusebius' greatest contribution to historiography, a key step that brought it nearer to its modern form.¹³ More recently, scholars have become interested not just in what Eusebius quoted but in how he did so, in line with a broader renaissance in studies of Eusebius as author. Sabrina Inowlocki, for example, painstakingly considers Eusebius' quotations of Jewish authors in the *Preparation* and *Proof*, noting that while his quotations were generally accurate representations of their originals, Eusebius nevertheless employs them in service of his own argument.¹⁴ Erica Carotenuto has conducted a similar study and reached similar conclusions for the *History*.¹⁵ The studies discussed above on Eusebius' manipulation of legal material in the *Life* are in many ways forerunners of this trend.

It is only in the last few years however that it has begun to be recognised that this excerpting, collating, and reuse of earlier material was a more widespread contemporary phenomenon. Increasingly prominent from the late third century, it came to dominate both the literary and artistic production of late antiquity. Modern appreciation of this late antique aesthetic can be traced to Hans Peter L'Orange's suggestion that the shift in late antique architecture, sculpture, and mosaics away from classical "naturalism" and towards a concern for patterns and hierarchies was not simply a decline in standards, as it was usually dismissed, but rather evidence of an emerging new style of artistic representation motivated by the political and social reforms of the tetrarchs.¹⁶ This inspired Michael Roberts to identify a similar concern for a texture of repetition and variation in poetry of the same period, which he dubbed the 'jeweled style'.¹⁷ For Roberts this increased valuation on the juxtaposition of fragmented smaller items to emphasise their brilliance and setting was characteristic of not just late antique poetry but of late antique taste generally.¹⁸

The seminal discussion of this 'fundamental and radical set of changes in Roman visual practice' in late antiquity is that of Jaś Elsner.¹⁹ Elsner saw as the archetypal example the Arch of Constantine, the triumphal arch dedicated to Constantine in the second decade of the fourth century to celebrate his victory over the "usurper" Maxentius in 312. The arch reuses not only basic building materials but a series of images from earlier imperial monuments, in particular, four sections of a Trajanic frieze, eight roundels of a probable Hadrianic hunting monument, and eight relief panels from a lost arch dedicated to Marcus Aurelius. The arch's collection of the *spolia* of earlier emperors divorces the reused material from its original context – often violently – and forces it to serve an entirely new one. Though echoed in a few earlier tetrarchic monuments, Elsner argued that this aesthetic exploded from Constantine on. Elsner dubs this visual revolution, echoed in the literary sphere as Roberts and Miller had already observed, an 'aesthetic of bricolage'.²⁰ In a variety of media then, and with particular regularity from the late third century on, new artistic meanings were, with increasing regularity, made by massing individual items together in new contexts.

Eusebius and his fellow bishops were among the leading literary lights of their day, so that he partook of this artistic zeitgeist should come as no surprise.²¹ The sheer size, intricacy and depth of his literary oeuvre would be testimony

¹³ Arnaldo Momigliano, 'Pagan and Christian Historiography in the Fourth Century A.D.', in Arnaldo Momigliano (ed.) *The Conflict Between Paganism and Christianity in the Fourth Century* (Oxford: Clarendon Press, 1963), 79-99.

¹⁴ Sabrina Inowlocki, *Eusebius and the Jewish Authors: His Citation Technique in an Apologetic Context* (Leiden: Brill, 2006).

¹⁵ Erica Carotenuto, *Tradizione e innovazione nella Historia Ecclesiastica di Eusebio di Cesarea* (Naples: Istituto Italiano per gli Studi Storici (il Mulino), 2001).

¹⁶ Hans Peter L'Orange, *Art Forms and Civic Life in the Late Roman Empire* (Princeton: Princeton University Press, 1965).

¹⁷ Michael Roberts, *The Jeweled Style: Poetry and Poetics in Late Antiquity* (Ithaca, N.Y.: Cornell University Press, 1989).

¹⁸ Roberts, *The Jeweled Style*, 61. Though Roberts, *The Jeweled Style*, 122-147, denied that this late antique aesthetic applied to Christian authors, this was refuted by Patricia Cox Miller, "'Differential Networks": Relics and Other Fragments in Late Antiquity', *JCS* 6 (1998), 113-38, via three case studies – the cult of the relics, the poems of the in-and-out-of-favour Constantinian poet Optatian Porphyry, and the rhetorician-cum-poet-cum-cataloguer Ausonius of Bordeaux.

¹⁹ Jaś Elsner, 'From the Culture of Spolia to the Cult of Relics: The Arch of Constantine and the Genesis of Late Antique Forms', *PBSR* 68 (2000), 149-184; at 152. See also Jaś Elsner, 'Late Antique Art: The Problem of the Concept and the Cumulative Aesthetic', in Mark Edwards & Simon Swain (eds.) *Approaching Late Antiquity: The Transformation from Early to Late Empire* (Oxford: Oxford University Press, 2004), 271-309.

²⁰ Elsner, 'From the Culture of Spolia to the Cult of Relics', 175; also dubbed a 'syncretistic bricolage' at 177.

²¹ Observed for example by Aaron P. Johnson, 'Introduction', in Aaron Johnson & Jeremy Schott (eds.), *Eusebius of Caesarea: Tradition and Innovations* (Cambridge, MA.: Harvard University Press, 2013), 1-14; at 3-10, stressing its educational context in Eusebius.

enough as to the extent of the literary education of their author, to say nothing of the complex Greek in which they are written or the plethora of ancient authors with whom they demonstrate he was familiar. At least the later stages of that education came in the Caesarean school of the presbyter Pamphilus (*MP* 4.6–8 LR; 11.1e LR), which stood in the intellectual tradition of Origen of Alexandria (who had himself moved from Alexandria to Caesarea), and both Eusebius and Origen's pupil Gregory Thaumaturgus tell of Origen's desire that those receiving Christian instruction also be immersed in classical learning (*HE* 6.18.2–3; *In Orig.* 5-15). Pamphilus seems to have shared that view (*MP* 11.1e LR).²² What Eusebius tells us of his fellow pupils in his *Martyrs of Palestine* also supports this (e.g. *MP* 5.2 LR).²³ Eusebius' delivery of repeated orations on the imperial stage later in life demonstrate that he had acquired considerable oratorical skills. And the content of his panegyric efforts reveals his familiarity with the form.²⁴ Though he never saw the Arch of Constantine, the wider artistic aesthetic of which it has become an exemplar permeated media in which we know he was well versed.

Given this context, it is perhaps no surprise that Eusebius' citational habit fits extremely well with what Elsner identifies as the twin characteristics of his 'aesthetic of bricolage'. On the one hand, it 'had as its guiding principle a respect for the pastness and integrity of the *spolia* it pressed into use...'; on the other hand it demonstrated 'at the same time a willingness to combine these items with others (some also ancient, some modern) in a creative cocktail'.²⁵ Though Eusebius' quotations have traditionally been read along apologetic lines – assuming that Eusebius, like earlier Christian apologists, cited the material of others in order to critique them – in fact though some of his citation, such as that in the aggressive *Against Marcellus*, conforms to that model, most does not.²⁶ Eusebius tends to give voices he quotes space to speak and does not usually change the words themselves. But his clever editing, framing, and juxtaposition of the materials means that they serve new radically new purposes.

Both characteristics apply equally to Eusebius' treatment of legal material. The independent preservation of documents Eusebius quotes reveals that here too he respects them, transmitting their contents accurately.²⁷ But at the same time his reuse of them is "violent" in that by means of his intricate editorial work they are made to serve radically different purposes from those originally intended. We have already seen this for the *Life*, but it is true too for the *History*. We can consider the Antonine and Constantinian bundles of laws respectively.

I have explored Eusebius' editorial work on the Antonine rescripts in detail elsewhere so will consider it only briefly here.²⁸ Trajan's rescript was originally contained in Pliny the Younger's letter collection. It stated that Christians could be executed, suggested that Pliny not search for them, and banned anonymous accusations. In Tertullian's *Apology*, where Eusebius found it, it was used as evidence of the illogical procedure by which the Roman administration pursued Christians. Eusebius, however, framed it to suggest it was evidence of Roman protection of Christians; his chapter heading reads 'Trajan forbade the Christians to be sought after' (*HE* 3.33).²⁹ The rescript of Hadrian may not be authentic,³⁰ and even if it is, it originally likely concerned only legal process rather than Christianity's legal status.³¹ But

²² On the paralleling between the *Martyrs* and Gregory's *Oration*, see Elizabeth Penland, 'The History of the Caesarean Present: Eusebius and Narratives of Origen', in Johnson and Schott, *Eusebius of Caesarea*, 83-95; at 89–92.

²³ For a full treatment of Eusebius' education see James Corke-Webster, *Eusebius and Empire: Constructing Church and Rome in the Ecclesiastical History* (Cambridge: Cambridge University Press, forthcoming), 18-20, with bibliography.

²⁴ I have written on Eusebius' various panegyric writings in James Corke-Webster, 'How to Praise a Christian Emperor: The Panegyric Experiments of Eusebius of Caesarea', in Adrastus Omissi & Alan J. Ross (eds.) *Imperial Panegyric from Diocletian to Theodosius* (Liverpool: Liverpool University Press, forthcoming), with bibliography. For panegyric in Christian late antiquity see for the Latin world, Sabine McCormack, 'Latin Prose Panegyrics', in Thomas A. Dorey (ed.) *Empire and Aftermath: Silver Latin II* (London/Boston: Routledge & Kegan Paul, 1975), 143-205, at 166-174, and for the Greek, George A. Kennedy, *Greek Rhetoric Under Christian Emperors* (Princeton: Princeton University Press, 1983), 180-264; for Eusebius' familiarity with the form, see Rudolph H. Storch, 'The Eusebian Constantine', *Church History* 40.2 (1971), 145–155 and the brief summary in Cameron & Hall, *Eusebius' Life of Constantine*, 29-33.

²⁵ Elsner, 'Late Antique Art', 292.

²⁶ Johnson, 'Introduction', 9-10.

²⁷ Arthur H.M. Jones & Theodore C. Skeat 'Notes on the Genuineness of the Constantinian Documents in Eusebius's *Life of Constantine*', *JEH* 5.2 (1954), 196-200.

²⁸ See James Corke-Webster, 'The Early Reception of Pliny the Younger in Tertullian of Carthage and Eusebius of Caesarea', *CQ* 67.1 (2017), 247-262; and Corke-Webster, *Eusebius and Empire*, 259-266, both with bibliography.

²⁹ Translations of Eusebius my own.

³⁰ A summary of the debate is found in Denis P. Minns, 'The Rescript of Hadrian', in Sara Parvis & Paul Foster (eds.), *Justin Martyr and His Worlds* (Minneapolis, MN.: Fortress Press, 2007), 38-49.

³¹ Paul Keresztes, 'The Emperor Hadrian's Rescript to Minucius Fundanus', *Phoenix* 21 (1967), 120-129 (repr. *Latomus* 26 [1967], 54-66).

in Eusebius' hands it too became evidence of Roman protection of Christians: 'The Epistle of Hadrian that they must not hound us without due process' (HE 4.9) The rescript of Antoninus Pius, almost universally recognised as inauthentic, states explicitly – and extraordinarily – that anyone bringing an accusation of Christianity should themselves be punished, while the intended defendant should go free, regardless of the charge's accuracy (HE 4.13.7). All three have thus been "violently" repurposed.³²

Eusebius' representation of the bundle of six Constantinian documents similarly testifies to a certain degree of editorial cunning, albeit rather less dramatic. Eusebius had inherited at least five of them as a pre-existing collection.³³ The first, the famed "Edict of Milan", he may have known separately.³⁴ But he bundles all six together under one heading: 'Come then, let us in what follows lay out the translations of the constitutions of the emperors Constantine and Licinius (τῶν βασιλικῶν διατάξεων Κωνσταντίνου καὶ Λικιννίου) translated from the Roman language' (HE 10.5.1). Even if all six had come as a unit, the heading is misleading, since only the first document (the "Edict of Milan") is a joint law - the other five were Constantine's only. But they have been repackaged by Eusebius as evidence of the joint emperors' actions on behalf of Christians.

Eusebius' use of these laws thus reflects this tension between respect for each original unit and willingness to repurpose them. They are also true to the 'aesthetic of bricolage' in that each has both an individual role in the narrative structure as well as serving as part of a collective. It is relatively easy first to tease out each individual law's role in Eusebius' narrative. Trajan's rescript distances the *optimus princeps* from violence against Christianity that had occurred during his reign. Hadrian's comes in the context of a discussion of how 'the truth produced again many defenders for itself against the mischief-makers' (HE 4.7.15) of which Justin, from whose writings the rescript is taken, is one example (HE 4.8.3-8). Hadrian's suggestion that he had protected Christians from violence is also connected in context to anti-Jewish polemic (HE 4.8.4). The rescript of Antoninus Pius is in its immediate context supporting evidence for the apologist Justin Martyr's intellectual prominence, proof of Eusebius' general claim that he 'laboured most competently against the Greeks' (HE 4.11.11). Each Constantinian law evidences privileges granted to, or imperial interest in, Christians – freedom of religious worship (HE 10.5.2-14), restoration of property to the catholic church (HE 10.5.15-17), summons to a synod at Rome (HE 10.5.18-20), summons to a synod at Arles (HE 10.5.21-24), a grant of money to the churches (HE 10.6.1-5), and exemptions to clerics from public offices (HE 10.7.1-2).

Second, however, these laws also serve Eusebius' purposes as collections. Erica Carotenuto has pointed out that the six Constantinian documents are introduced in general terms, and out of chronological order, suggesting that Eusebius is interested in their collective effect.³⁵ This is also, I suggest, true of the earlier rescripts. Though they are quoted separately and from different sources, Eusebius' framings work to tie them together. We saw above how the Trajanic and Hadrianic rescripts are described so that they appear prompted by a similar concern for Christian wellbeing, and to have effected similar results. The parallels go further. Pliny, to whom Trajan was replying, is described as a most distinguished governor (ἐπισημότατον ἡγεμόνων) (HE 3.33.1); Serenius Gracianus, Hadrian's correspondent, as 'that most distinguished governor (λαμπροτάτου ἡγουμένου)' (HE 4.8.6). Antoninus Pius' rescript notes that earlier governors had corresponded with his father Hadrian about Christians (HE 4.13.6). Eusebius' positioning of the rescript means that for his readers this clearly refers back to Hadrian's rescript to Gracianus. More than that, this later rescript interprets the earlier one: 'he [Hadrian] wrote in reply that they should not harass anyone among such people unless they appeared to be attacking the Roman government.' Eusebius explicitly ties the two rescripts together, implying that Antoninus is simply reaffirming Hadrian's judgment (though in fact the two laws say very different things). Eusebius is urging his readers to approach these laws as a unit.

Perhaps most striking is the intriguing chronological parallel between the reused *spolia* on the Arch of Constantine and the laws repurposed in Eusebius' *History*. The arch reused images from the Nerva-Antonine dynasty in a monument of

³² Eusebius' goal was to assuage elite concerns about Christianity and present the church as a traditional institution aligned with traditional Roman values and as their true repository. That wider thesis is explored fully in Corke-Webster, *Eusebius and Empire*.

³³ Various scholars have noted this, though they disagree on how Eusebius acquired them, since the time between their publication in the west and their inclusion in Eusebius' *History* in the east is rather brief). Brian H. Warmington, 'The Sources of Some Constantinian Documents in Eusebius' *Ecclesiastical History and Life of Constantine*', *Studia Patristica* 18.1 (1985), 93-98, suggests that Eusebius got them from a travelling official; Timothy D. Barnes, 'The Constantinian Settlement', in Harold Attridge & Gohei Hata (eds.) *Eusebius, Christianity and Judaism* (Leiden: Brill, 1992), 635-657, that he was dependent on a personal contact; Erica Carotenuto, 'Six Constantinian Documents (Eus. "H. E." 10.5-7),' *VC* 56 (2002), 56-74, argues persuasively that Eusebius inherited the documents in an anti-Donatist collection likely created in Rome.

³⁴ Carotenuto, 'Six Constantinian Documents', 70-71.

³⁵ Carotenuto, 'Six Constantinian Documents', 63-64.

Constantine; Eusebius' two legal collections involved the same two dynasties.³⁶ The Nerva-Antonine dynasty had come to occupy a revered place in the Roman imagination as the high point of good imperial rule. Scholars have been quick to point out the implications for Constantinian ideology of tying him via the Arch to those earlier paradigms of good behaviour. Seen as an imperial monument, the Arch is either a claim that Constantine be praised in the same breath as these predecessors, or even a promise to behave like them.³⁷ More recent readings of the Arch have, even more interestingly, stressed its status as a senatorial monument.³⁸ It was dedicated to Constantine at Rome by that city's senatorial elites to celebrate his victory over the usurper, Maxentius, who had been based in Rome and who had seemingly, despite the claims of Constantine and Christian historians, treated those same elites well. The arch is thus not only an overt gesture of loyalty but an attempt to dictate the new emperor's behaviour. The Nerva-Antonine dynasty was renowned for its positive treatment of senators; a memorial that literally moulds Constantine out of those emperors is an attempt to shape his character and his treatment of elites.

Eusebius' collection and reframing of law in the *History* can, I argue, be seen in parallel. On Burgess' consensus dating the *History* was composed between 314 and 325, under Constantine and Licinius' diarchy, in the territories of the latter. The repurposed Antonine rescripts would have been in the edition of 314/315, with the bundle of six Constantinian and Licinian legal material added in the edition of 315/316, and subsequently removed in the edition of 325. Eusebius thus published his *History* in the immediate aftermath of the "Great Persecution" of the tetrarchs between 303 and 313. Moreover, while in the west the emperor Constantius' lack of enthusiasm had muted the effects of persecution, Eusebius' Palestine was under the Caesar Maximin Daia, under whom the persecutory edicts were zealously enacted (continuing until 313 after the cessation of action elsewhere in 311). Most important, despite Constantine's apparent conversion to Christianity and sympathetic policies, Licinius' attitude towards Christians was more ambivalent, and he may have reinitiated action against them. As Simon Corcoran has demonstrated, the tetrarchic system did not have strong means to ensure that the edicts of one emperor were enacted through the territories of all four.³⁹ Eusebius was thus writing in an uneven legal landscape.

Just as the senate in 312 made use of the late antique 'aesthetic of bricolage' to try to influence their treatment at Constantine's hands in the west, I suggest we can see Eusebius in 315/316 using the same artistic strategy to lay claim to Licinius' public policy.⁴⁰ Perhaps that emperor's apparent antagonism to Christians had begun to be felt; perhaps it was just suspected.⁴¹ Either way Eusebius' deliberate collection and juxtaposition of the (so he claimed) pro-Christian policies of the Antonines and (as he reminded his readers) pro-Christian policies of Constantine and Licinius was a suggestion that the latter's policies should remain that way inclined. It is particularly interesting in this regard that, as we noted above, in fact Eusebius bundles together one joint Constantinian-Licinian law together with five laws that were just Constantinian under the umbrella of the first. Here then in Eusebius' use of law we see the bishop drawing on the elite cultural education and aesthetic of late antiquity that he shared with the senate in Rome. As they produced a new type of triumphal arch that built upon but went beyond earlier such monuments by the use of the new collective aesthetic, so Eusebius by applying the same technique to historiography for the first time produced a recognisable but demonstrably new type of history.⁴² And both did so to develop strategies to gain some control over their new emperors in the tetrarchic "Dominate".

³⁶ There is a further intriguing parallel. As his title makes clear, Elsner, 'From the Culture of Spolia to the Cult of Relics', 158, connects this Constantinian watershed moment not only to the arch's production but also to the development of the cult of relics (see too Miller, 'Differential Networks', e.g. 122). This was the same period in which Eusebius produced his (now sadly lost) *Collection of Ancient Martyrdoms* (HE 4.15.47; 5.pr.2; 5.4.3; 5.21.4), and his *Martyrs of Palestine* (as well as the martyrdom material, some of it quoted verbatim, in the *History*).

³⁷ In this regard, it is interesting that as the arch compresses time by imposing Constantine upon the earlier emperors (including literally, in the re-carving of the earlier emperors' faces), so Eusebius' *History* is often seen as static; see e.g. Teresa Morgan, 'Eusebius of Caesarea and Christian Historiography', *Athenaeum* 93 (2005), 193-208.

³⁸ The senatorial origins of the arch have been recently defended by Noel Lenski, 'Evoking the Pagan Past: *Instinctu divinitatis* and Constantine's Capture of Rome', *JLA* 1 (2008), 204-257, with bibliography.

³⁹ Simon Corcoran, *The Empire of the Tetrarchs: Imperial Pronouncements and Government, AD 284-324* (Oxford: Clarendon Press, 1996), 205-33.

⁴⁰ Pace Jill Harries, 'Sozomen and Eusebius: The Lawyer as Church Historian in the Fifth Century', in Christopher Holdsworth and T.P. Wiseman (eds.) *The Inheritance of Historiography 350-900* (Exeter: University of Exeter Press, 1986), 45-52, who to my mind underplays Eusebius' appreciation of the value of law in history.

⁴¹ Even if we accept a single edition hypothesis of 324/325 for the *History*, this thesis can still apply, but for Constantine rather than Licinius; scholars after all continue to debate exactly how overt Constantine's favour towards Christianity was even in the mid 320s.

⁴² See above n13. Other historians and biographers occasionally included quoted material, but no one did so with Eusebius' regularity. Nor had any included legal material in their literary foraging. The only potential antique parallel is the quotation of legal material in the Attic orators. But there laws were quoted in isolation and in service of the particular case in hand. In Eusebius' case,

III. A Legal Transformation

Eusebius' collection and reuse of legal material can also be profitably reread against a second widespread cultural phenomenon, namely changing attitudes towards, and reuse of, law in the late third and early fourth centuries. The tetrarchic moment that saw the explosion of the late antique 'aesthetic of bricolage' also saw a similar explosion in the codification of law. Indeed in many ways it was here that the late antique penchant for collection was most obvious to scholars (but since legal material has traditionally been the concern of historians rather than scholars of literature, this did not influence scholarship on late antique literature until more recently). There had always been elements of legal collection, going right back to the Twelve Tables,⁴³ but it was only under Diocletian that these activities took off.⁴⁴ His accession in 284 prompted the production of the *Codex Gregorius* in 292 and its addendum the *Codex Hermogenianus* in 295. The author of the latter also produced an anthology of legal propositions from earlier legal writers, the *iusuris epitomae*, around 300, and this period also saw the production of the *Pauli sententiae*.⁴⁵ All these steps were taken just before Eusebius came to write his *History*.

This drive towards codification was, as so often, about power.⁴⁶ Since legal documents "fixed" authority in static form, collecting them enabled one to accumulate their latent power.⁴⁷ For both Theodosius and Justinian in the following centuries the law codes that bore their name were important prestige projects designed to assert their importance in the legal sphere as in all others. With Diocletian it is less clear that the projects were imperially driven, but Hermogenianus was certainly *magister libellorum* under Diocletian (and Gregorianus likely held a similar position) and was thus close to the emperor's ear. This codification can therefore be read alongside the more extensive tetrarchic move towards bureaucratic centralisation.⁴⁸ Imperial collection, editing, framing and publication of legal material made the emperors and their appointed arbiters the authoritative source of justice in the Empire, and thus gave them increased control over their subjects' lives.

Older interpretations of Eusebius might have seen his collection of legal material as part of this centralised impulse towards codification. Pegged as Constantine's court theologian, as is traditional,⁴⁹ Eusebius' collection of law would might appear to be a furtherance of the ruler's project. But while this might hold for the *Life* (and even there questions remain as to how far this was an "authorised" biography),⁵⁰ it has become untenable for the *History*. Timothy Barnes' groundbreaking work has made clear that Eusebius was a peripheral rather than a centralised figure. Eusebius, unlike Lactantius, was not an important figure at court; in fact he was in Constantine's presence at most five times, and they did not meet before 325.⁵¹ There is no evidence for any contact with Licinius in the east. Though he travelled impressively for a man of his day, Eusebius was nevertheless a home-bird. He wrote from Caesarea, the highly Romanised provincial capital of the Roman province of Syria Palaestina, which apart from a brief visit of Maximin Daia

each quoted law not only has an immediate import in its narrative context, but is also designed to be read together with others to serve a greater point. It is that dual purpose which was characteristic of the late antique aesthetic of bricolage; see Elsner, 'Late Antique Art', 308-309.

⁴³ For more on the history of codification see Jill Harries, 'How to Make a Law-Code', in Michel Austin, Jill Harries & Christopher Smith (eds.) *Modus Operandi: Essays in Honour of Geoffrey Rickman*. Bulletin of the Institute of Classical Studies Supplement 71 (1998), 63–78; and now Schmidt-Hofner in this volume.

⁴⁴ Simon Corcoran, 'The publication of law in the era of the Tetrarchs - Diocletian, Galerius, Gregorius, Hermogenian', in Alexander Demandt et al (eds.) *Diokletian und die Tetrarchie. Aspekte einer Zeitwende* (Berlin/New York: De Gruyter, 2004), 56-73, sees the codes as fitting the wider tetrarchic tendency towards publication and multiplication of legal pronouncements.

⁴⁵ For a brief survey of these works see David Johnstone, 'Epiclassical Law', in Bowman, Garnsey & Cameron, *The Cambridge Ancient History Volume XII*, 200-207; at 202-205, with further bibliography.

⁴⁶ This approach found early expression in Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1999).

⁴⁷ In general see Harries, *Law and Empire*, at e.g. 37 & 42. For discussion of the later Theodosian Code and Justinianic Code along these lines see respectively John Matthews, *Laying Down the Law: A Study of the Theodosian Code* (New Haven, CT.: Yale University Press, 2000) and Caroline Humfress, 'Law and Legal Practice in the Age of Justinian' in Michael Maas (ed.) *The Cambridge Companion to the Age of Justinian* (Cambridge/New York: Cambridge University Press), 161-184.

⁴⁸ As presented by A.H.M. Jones, *The Later Roman Empire, 284-602: A Social Economic and Administrative Survey*. 2 Vols. (Oxford: Blackwell, 1964).

⁴⁹ Most famously – and not positively – by Joseph Burckhardt, *Die Zeit Constantin's des Grossen* (Leipzig: E. A. Seemann, 1853 [rep. 1880]), at e.g. 375.

⁵⁰ Michael Williams, *Authorised Lives in Early Christian Biography* (Cambridge: Cambridge University Press, 2008), **ch1**.

⁵¹ Barnes, *Constantine and Eusebius*, 266-267.

between 306 and 308 was not a city in which any of the tetrarchs' courts were based.⁵² Eusebius' was first and foremost a provincial perspective, and his writings reflect the concerns of the local Romanised elites common to the eastern Empire. His legal collection thus does not fit the centralising tendencies of an imperial codification project.

Recent work however has revealed an entirely different drive towards legal codification in the Roman world that used it not as a bastion of authority but as a means of challenging it.⁵³ Christopher Kelly had already explored the 'uncomfortable and ambiguous relationship between autocracy and bureaucracy'.⁵⁴ Written documents – and written precedents in particular – by their very rigidity acted as a check on emperors' autocratic freedom. The formalisation of law then, as well as the access that physically collecting it provided, handed a potential means of authority to those wishing to place limits on imperial authority. Kelly's discussion is rooted in the theoretical legal discussions of late antiquity's elites. But the exciting agency that such collection allowed to the "common man" has become clear only via recent studies of changing legal strategies in judicial papyri. Ari Bryen has argued that the high Empire witnessed a gradually increasing provincial agency in the use of law.⁵⁵ The Egyptian papyri provide ample evidence of provincials hunting out and collating rulings for use as precedents in future legal interactions. They did so, Bryen suggests, because they learned that access to legal documents gave them a degree of control over centrally appointed officials – if one could brandish an earlier imperial or gubernatorial precedent one had the power to force a more junior Roman magistrate's hand.⁵⁶ Bryen's study reveals in the gritty evidence of ancient daily life the latent resistant capital in the collection of legal material that was being exploited with increasing regularity throughout the high Empire.

Such provincial codification of law makes a much more appropriate backdrop for Eusebius' use of law in the *History*. Read thus, Eusebius' collection of apparent imperial precedents protecting Christians would have served as ammunition for Christian readers who might find themselves confronted with local officials less than sympathetically inclined towards them.⁵⁷ As we have seen above, that remained a real possibility in eastern provinces even after the "Great Persecution", not simply because of the likelihood of local officials taking a while to shed anti-Christian habits, but because Licinius himself seems to have turned both against the Christians and a blind eye to anti-Christian activity. Eusebius' cooption of this second cultural tendency then, provincial codification of law, was thus a powerful means via which he could resist imperial will – by acquiring (or in fact creating) legal material that could serve as concrete protection in the provincial courtroom.

That this was Eusebius' intention finds some support, I suggest, in the second unusual feature of the Constantinian documents of Book 10 mentioned above, namely their eventual removal from the version of the *History* produced in 325. The traditional thesis holds that this was part of a broader *damnatio memoriae* of Licinius after that emperor's fall from grace. But this must contend with the fact that, as we have seen, only one of the six documents was actually issued in the emperors' dual names. Eusebius could thus simply have removed the first. But if these documents were an attempt to influence officials' attitude towards Christians in the ambivalent times of Licinius' rule, their removal in the edition of 325 is entirely explicable – with Licinius removed from power, and the empire reunited under Constantine, they were simply no longer needed.

IV. Bishops: Artist and Jurist

Eusebius' collection of legal material in the *History* thus employs twin strategies in an attempt to contain the potential anti-Christian tendencies of his emperor in the east, Licinius. The first was the late antique "aesthetic of bricolage" that was also employed in this way and at this time by, among others, the senate in Rome in the Arch they dedicated to Constantine. The second was the tendency towards preserving for future courtroom use the legal documents of Roman authority, employed with increasing prevalence by law-savvy provincials throughout the high imperial period. In using both, I suggest, Eusebius was in some sense claiming a right to operate in both spheres, the artistic (by which I mean

⁵² Timothy Barnes, *The New Empire of Diocletian and Constantine* (Cambridge, MA.: Harvard University Press, 1982), 65-66.

⁵³ On other potential means of subversion of imperial constitutions, see the survey in Caroline Humfress, 'Law in Practice', in Philip Rousseau (ed.) *A Companion to Late Antiquity* (Oxford: Wiley-Blackwell, 2009), 377-391.

⁵⁴ Christopher Kelly, 'Later Roman Bureaucracy: going through the files', in Alan Bowman & Greg Woolf (eds.) *Literacy and Power in the Ancient World* (Cambridge: Cambridge University Press, 1994), 161-176; at 169. See too Harries, *Law and Empire*, at e.g. 9.

⁵⁵ Ari Bryen, 'Judging Empire: Courts and Culture in Rome's Eastern Provinces', *Law and History Review* 30.3 (2012), 771-811.

⁵⁶ Bryen, 'Judging Empire', 798-802, with detailed evidence (for private collections of legal documents, see n90 in particular).

⁵⁷ On Eusebius' Christian audience see Marie Verdoner, 'Überlegungen zum Adressaten von Eusebs *Historia ecclesiastica*', *ZAC* 14 (2010), 362-378.

elite literary culture) and the judicial. More to the point, he was claiming this not just for himself but for bishops more generally.

Eusebius' claim that his fellow Christian bishops could, and did, not only mix with, but surpass, the Empire's literary elite is the backbone of his *History*. Throughout it bishops and presbyters are constantly celebrated for their intellectual brilliance and their literary output. Indeed the *History* even begins with a programmatic promise to record 'the many people in the most distinguished parishes who were appointed over the church and who lead it magnificently, and the many who in each generation either in unwritten or written form maintained the divine discourse...' (HE 1.1.1). I have made this case in detail elsewhere, and will not belabor it here.⁵⁸ But it is also true, I think, that Eusebius establishes a historical basis in this work for bishops' excellence in the legal sphere.

Early in the *History*, for example, Eusebius describes the Carthaginian Christian apologist Tertullian, his source for, among other things, the paraphrased rescript of Trajan, as 'a man who had thoroughly understood the laws of the Romans, held in high esteem for other things, and among the brightest and best in Rome (τοὺς Ῥωμαίων νόμους ἡκριβωκώς, ἀνὴρ τὰ τε ἄλλα ἐνδοξος καὶ τῶν μάλιστα ἐπὶ Ῥώμῃ λαμπρῶν)' (HE 2.2.4). Eusebius states that Tertullian delivers his *Apology* before the Senate in Rome (HE 5.5.5). This is regarded as an error by Timothy Barnes,⁵⁹ but may perhaps be read instead as Eusebius working early in his *History* to position a Christian as a legal expert, lecturing to the Senate on the proper interpretation of Roman law. The myth that Tertullian was a Roman jurist, repeated in scholarship until recently,⁶⁰ has persisted so long in part because it was the picture championed by Eusebius.

Tertullian is representative of Eusebius' portrayal of the Christian apologists. They are all represented as corresponding with emperors and their appointees on legal questions. Quadratus 'addressed a discourse' to Hadrian, 'having drawn up a defence of our piety (ἀπολογία... ὑπὲρ τῆς καθ' ἡμᾶς θεοσεβείας)' (HE 4.3.1-3). Aristides, 'echoing Quadratus, left behind a defence on behalf of the faith (ὑπὲρ τῆς πίστεως ἀπολογία)' addressed to Hadrian' (HE 4.3.3). Eusebius records in similar language how Justin Martyr 'addressed other discourses containing a defence of our faith (ὑπὲρ τῆς ἡμετέρας πίστεως ἀπολογία)' to the Emperor Antoninus, called Pius, and to the Senate of the Romans' (HE 4.11.11; see too 4.8.3), which he then quotes, and which addresses itself not only to Antoninus Pius and the Senate but to Pius' adopted sons Marcus Aurelius and Lucius Verus (HE 4.12.1) and refers to itself as a 'declaration and a petition (τὴν προσφώνησιν καὶ ἐντευξίν)'. Eusebius also records Justin's second *Defence*, this time addressed to Marcus Aurelius (HE 4.18.2). With identical phraseology Eusebius records the defence speeches of Melito of Sardis (HE 4.13.8; 4.26.1; 4.26.5-11) and Miltiades (HE 5.17.5). The extracts Eusebius quotes from the former showcase him not simply as an advocate for the Christians but as a defender of the emperors' legal intentions against 'shameless informers and admirers of others' property' (HE 4.26.5; see too 4.26.9). Melito comments on the nature of just rule before laying out his own commentary on the validity, or lack thereof, of the 'new decrees (καίνοις... δόγμασιν)' circulating in Asia, whose imperial origins he doubts (HE 4.26.6).⁶¹

A further telling anecdote is Eusebius' quotation of an account of three early Christian martyrdoms, taken from Justin Martyr, which includes the tale of how when a Roman official, Urbicius, sentences one Christian, Ptolemaeus, another, named Lucius, steps forward to condemn the decision (HE 4.17.2-13). The language in which he does so is particularly interesting. Lucius speaks, we are told, 'because he saw judgment being passed so unjustly (ὁρῶν τὴν ἀλόγως οὕτως γενομένην κρίσιν)' (HE 4.17.12). And he declares to the official, 'You are passing judgment (κρίνεις), Urbicius, in a way incompatible with the Emperor Pius, the philosophical son of the Caesar, and the holy Senate'. Lucius is thus set up as an authoritative commentator on Roman imperial law. Finally, Eusebius carefully constructs his *History* to imply that on at least one occasion these legal appeals elicited positive responses from their imperial addressee. By positioning the (likely inauthentic) rescript of Antoninus immediately after Justin's appeal Eusebius implies that it was issued in response to it (HE 4.13.2-7; see also 4.9.1-3).⁶² Christian leaders are set up as not just literary but legal experts.⁶³ What is more, their expertise is acknowledged and has concrete effects.

⁵⁸ Corke-Webster, *Eusebius and Empire*, 89-120.

⁵⁹ Barnes, *Constantine and Eusebius*, 131.

⁶⁰ Established by Timothy Barnes, *Tertullian: A Historical and Literary Study* (Oxford: Clarendon Press, 1971), 22-29; nuanced by David I. Rankin, 'Was Tertullian a Jurist?', *Studia Patristica* 31 (1997), 335-342.

⁶¹ In addition to the apologists, Bardesanes writes a treatise on fate (HE 4.30.2) to Antoninus.

⁶² Discussed at greater length in Corke-Webster, *Eusebius and Empire*.

⁶³ We might compare Apphianus, Eusebius' schoolfellow in Caesarea, who had already been educated in Berytus (*DMP* 4.3 LR), famous in antiquity for its law school. It is perhaps interesting too in this regard that after relating the famous anecdote wherein Constantine compared himself to a bishop (*VC* 4.24), Eusebius segues immediately into discussing Constantine's issuing of laws: 'Hence, naturally, in successive laws and constitutions... (ἐπαλλήλοις νόμοις τε καὶ διατάξεσι...)' (*VC* 4.25.1); noted by Warmington,

V. Conclusion: From Constantine to Theodosius

By positioning Christian bishops as both literary and legal experts Eusebius was of course in part justifying his own right to appeal to both traditions in his use of legal material in the *History*. By collecting and embedding laws in his prose, and commenting upon them - introducing, framing and discussing them to dictate and define their meaning – he was himself acting as both artist and jurist. According to his own presentation of Christian history, he stood in a long tradition of both. In the tale of Lucius before Urbicius we are perhaps supposed to see Eusebius before Licinius and his appointees. Moreover, just as in quoting and framing the vast literary traditions he samples in his *Preparation* and *Proof* Eusebius was in part making a claim to literary superiority (since the act of collection asserts the right of selection over one's predecessors),⁶⁴ so his use of legal material, including that of the apologists, presents Eusebius in some sense as the climactic Christian jurist.⁶⁵

Eusebius was also, however, establishing a historical basis on which bishops more generally might lay claim to these twin paths to authority. The power implicit in ancient *paideia* has been well documented.⁶⁶ And, due to the fact that collecting knowledge renders the collector a gatekeeper,⁶⁷ the jurists too became players of increasing importance as the Empire developed, and in particular from the Severans in the early third century on.⁶⁸ Eusebius, writing at a watershed moment, here claimed both sources of power for bishops. As it turned out, both would prove central to the tussles between emperors and bishops that occupied much of the following century. In closing, we can consider one such confrontation, and the place of law and legal expertise within it.

Glen Bowersock has described the process by which the repercussions of Constantine's conversion for the relationship between church and state worked themselves out in the turbulent fourth century as a 'self-conscious transformation of political power'.⁶⁹ For Bowersock, the transition was marked by two symbolic moments: the assembled bishops summoned by a gilded Constantine at Nicaea in 325, and the penitent Theodosius humbled before Ambrose in Milan in 390.⁷⁰ Where once bishops gathered at the whim of the emperor, now an emperor wilted before the will of a bishop. Before that seminal showdown, however, Ambrose had tested his relationship with imperial power on the young emperor Valentinian II, in the now-famous Altar of Victory controversy. After that altar was removed from its traditional home in the senate by the young emperor Gratian in 382 (perhaps under Ambrose's influence),⁷¹ the pagan senator Symmachus appealed to Gratian's half brother Valentinian II in his third *Relation* of 384. Becoming aware of this, Ambrose penned his *Letter* 17 to the emperor, followed swiftly by *Letter* 18 once he had actually seen the text of the *Relation*.⁷² The bishop's position prevailed, and the rhetorical back-and-forth between Ambrose and Symmachus has become a staple of research and teaching in late antiquity as a literary window onto the evolving power struggle between church and state.⁷³ But it is less commonly observed that the appeal to documentation and juristic authority with which we have been concerned runs like a spine through Ambrose and Symmachus' literary manoeuvring.

'Eusebius of Caesarea's Versions of Constantine's Laws', 202-203. I have discussed the episcopal equivalency further in Corke-Webster, 'A Bishop's Biography'.

⁶⁴ Past references are collected in Aaron Johnson, 'Words at War: Textual Violence in Eusebius of Caesarea', in Kate Cooper (ed.), *Between Heaven and Earth: Law, Ideology, and the Social Order in Late Antiquity* (in progress).

⁶⁵ In some sense then he represents an intermediary step on the gradual transition from the traditional senatorial historians of the high Empire to the professional lawyers writing history in late antiquity, identified by Geoffrey Greatrex, 'Lawyers and Historians in Late Antiquity', in Ralph Mathisen (ed.) *Law, Society and Authority in Late Antiquity* (New York/Oxford: Oxford University Press, 2001), 148-161. See too from a different angle Harries, 'Sozomen and Eusebius'.

⁶⁶ Most famously Peter Brown, *Power and Persuasion in Late Antiquity: Towards a Christian Empire* (Madison, WI.: University of Wisconsin Press, 1992).

⁶⁷ See for example Jason König & Tim Whitmarsh (eds.), *Ordering Knowledge in the Roman Empire* (Cambridge/New York: Cambridge University Press, 2007).

⁶⁸ On the earlier period see especially Bruce W. Frier, *The Rise of the Roman Jurists. Studies in Cicero's Pro Caecina* (Princeton University Press, 1985).

⁶⁹ Glen Bowersock, 'From Emperor to Bishop: The Self-Conscious Transformation of Political Power in the Fourth Century A.D.', *Classical Philology* 81.4 (1986), 298-307.

⁷⁰ Bowersock, 'From Emperor to Bishop', 299; see too 306.

⁷¹ Ambrose's initial influence is questioned by Neil B. McLynn, *Ambrose of Milan: Church and Court in a Christian Capital* (Berkeley, CA.: University of California Press, 1994), 151-2, though not his contribution in preventing senatorial objection being heard.

⁷² On the curated appearance of the exchange, as constructed by Ambrose, see McLynn, *Ambrose of Milan*, 264-5.

⁷³ For a good overview of this episode see James J. Sheridan, 'The Altar of Victory - Paganism's Last Battle', *L'antiquité classique* 35.1 (1966), 186-206; for a longer-view history see Hans A. Pohlsander, 'Victory: The Story of a Statue', *Historia* 18.5 (1969), 588-97; for a reading within the traditional narrative of the "decline of paganism" see John Matthews, *Western Aristocracies and Imperial Court*

Much of Symmachus' initial appeal concerns legal precedent. He begins by noting that his writing is prompted by the Senate's realization 'that crimes were being subjected to laws (*subjecta legibus vitia*), and... that pious princes were cleansing the notoriety of recent times' (*Rel.* 3.1).⁷⁴ He then asserts that his role is to 'defend the customs of our ancestors (*instituta majorum*), the laws and destiny of our country (*patriae jura et fata*)', and observes that 'you have no license (*nil licere*) to do anything that is contrary to the custom of our forbears (*vobis contra morem parentum*)' (*Rel.* 3.2). Symmachus' job is made harder by the fact that multiple previous emperors (not just Gratian but Constantius II too) had ordered the altar removed. Symmachus must therefore find a reason to dismiss these legal precedents. His solution for Constantius was that legal acts that lasted only a short time should have only limited force (*Rel.* 3.5) and that his error regarding the altar was caused by a lack of earlier guidance (*Rel.* 3.7). For Gratian, he suggests that the young emperor was both misled and ignorant of the significance of what he did (*Rel.* 3.18).

Symmachus also knew that he had to put forward more convincing legal precedents in favour of the altar's presence. And so he did, highlighting in detail Constantius' preservation of other privileges for pagan cults – 'Let your Eternity be reminded of other actions of the same emperor, which are more worthy of your imitation' (*Rel.* 3.7). He then mobilises the legal weight of history behind imperial support for the altar and other pagan cults in his appeal to 'The law of our parents (*lex parentum*)' (*Rel.* 3.15). He closes with an emotional appeal to the imagined reaction of Valentinian II's father to this abandonment of his own position: he 'thinks that he personally is being criticised by the abolition of a practice (*more violato*) which he had gladly observed' (*Rel.* 3.20). His whole case, in other words, is built of the relative weightings of the proffered precedents.

Symmachus' closing urging of Valentinian II – 'Do a favour also to your deified brother, and by correcting a policy that was not his own (*alieni consilii correctionem*), hide an act which, unknown to him, had offended the senate' – is a veiled condemnation of the influence of bishop Ambrose. And interestingly, in his own petition to the emperor, Ambrose also chose this battleground of legal documentation. Before he had even read Symmachus' *Relation*, in his knee-jerk *Letter* 17 he focused on the legal precedents against any restoration of the altar.⁷⁵

'Even if these privileges had not been withdrawn already, I would show you that they ought to be abolished at your command. But seeing that they have been curtailed or forbidden over almost the whole world by several previous emperors, and that at Rome Gratian of august memory, the brother of your Clemency, withdrew them for the sake of the true faith, publishing rescripts to repeal them (*datis antiquata rescriptis*), do not, I beg you, tear down what has been decided in accordance with our faith (*fideliter statuta*), do not annul your brother's orders (*fraterna praecepta*).' (*Ep.* 17.5)

Ambrose knew that this was the strongest basis for his response – we might keep in mind how hard Symmachus had to work to negate this precedent of Gratian – and his language accordingly emphasises the legal force of what has come before. For added emotional force Ambrose puts the same appeal in the voice of his addressee's brother: 'You have abolished my decrees (*Abrogasti decreta mea*), which so far he who rebelled against me has not done. Now a more painful weapon is piercing my body, for it is my brother who is condemning my laws (*statuta damnantur*)' (*Ep.* 17.16). The same prosopopoeiac tactic is used to explain why Valentinian II and Gratian's father, Valentinian, had not removed the altar himself – in other words, to explain away a legal precedent unhelpful to Ambrose's cause (*Ep.* 17.17)

Ambrose's subsequent, more considered, response in *Letter* 18, written with the luxury of having seen the text to which it responded, continues the same tactic. Ambrose said again of Constantius that 'He ordered it [the altar] to be taken away. He did not order it to be put back. The removal has the authority of an imperial act (*auctoritatem facti*). The restoration does not have the authority of an instruction from the emperor (*praecepti*)' (*Ep.* 18.32; see too 18.34). He thus reminded his recipient of the legal force of what had been put in place. Finally, his climactic conclusion to the lengthy epistle, which leaves its readers with a reference to Symmachus' *Relation* and the traps in entails, focuses on

A.D. 364-425 (Oxford: Clarendon Press, 1975), 203-211, and for one within an alternative view of the fourth century landscape, see Alan Cameron, *The Last Pagans of Rome* (Oxford: Oxford University Press, 2010), 33-92. For a full commentary see Richard Klein, *Der Streit um den Victoriaaltar: die dritte Relatio des Symmachus und die Briefe 17, 18 und 57 des Mailänder Bischofs Ambrosius*. Texte zur Forschung 7 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1972).

⁷⁴ Translations of Symmachus and Ambrose taken from John H.W.G. Liebeschuetz, *Ambrose of Milan: Political Letters and Speeches*. Translated Texts for Historians 43 (Liverpool: Liverpool University Press, 2005).

⁷⁵ Indeed, the very fact of the rapid reply before even seeing Symmachus' *Relation* can be ascribed to Ambrose's awareness that emperors did not like reversing decrees of previous emperors and hated reversing their own. If Valentinian II decided to reverse his decree after Symmachus' petition, Ambrose had his work cut out. See Sheridan, 'The Altar of Victory', 196.

the question of who has access to the stronger legal precedent, and who's guidance on that point the emperor should heed.⁷⁶

'However, emperor, this address of theirs ought to make you more careful. For when, arguing from the behaviour of previous emperors, he asserted that the early emperors had practiced the ancestral cults, and that their successors had not abolished them, he drew the conclusion: "if the piety of the old emperors is not to be followed as an example, the turning a blind eye of the more recent ones ought to be!" With these words he clearly taught you that you owe it to your faith not to follow the example of pagan cult, and that you owe it to your loyalty to your family not to overturn your brother's decrees (*fratris statuta non viroles*). For if the pagans have praised the turning of a blind eye by emperors, who though they were Christians did not abrogate the decrees of pagans, and this merely for the sake of their faction, how much more ought they to concede to your fraternal love, namely that you, whom they want to turn a blind eye at something even though you perhaps do not approve of it, must on no account diminish the laws of your brother (*ne fraternis derogares statutis*). And now decide on the course, which you judge consistent both with your faith and the obligations of filial piety.' (*Ep.* 18:39)

This brief treatment of one of the most prominent episodes of confrontation between church and state in the fourth century reveals that the twin questions of who had access to and who could lay claim to law were central to that century's wider transformation of power. In the sophisticated, indirect back-and-forth between Symmachus and Ambrose, we see both authors seeking to use the past, and specifically past emperors' legal enactments, to their advantage. By the late fourth century, the two did so on equal terms. But it was, I suggest, Eusebius' work almost a century before that had recognised the potential power clash to come, and explored how the legal strategies of provincial communities of Rome might be used to the advantage of the church.⁷⁷ Eusebius' attempts to transform the church's interactions with Roman law were thus not just pioneering, but also prophetic.

⁷⁶ On this point in particular see Ambrose's later letter on the same topic, *Ep.* 57.10

⁷⁷ Though the argument that Eusebius explored a rhetorical strategy for managing the relationship between church and state that would later prove crucial for later bishops wrestling with that relationship does not require that Ambrose adopted this strategy direct from Eusebius, it is nevertheless interesting to note that Ambrose made extensive use of his Greek predecessor. See e.g. John Moorhead, *Ambrose. Church and Society in the Late Roman World*. The Mediaeval World (London/New York: Longman, 1999), 74 and 217.