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DID JULIAN COMBAT VENAL *SUFFRAGIUM*? A NOTE ON *CTh* 2. 29. 1

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THE Emperor Julian often represented himself as the restorer of the sound principles of the past, and modern commentators have stressed his role as a conservative reformer. But this side of Julian's reign can be exaggerated. The matter of venal *suffragium*, or influence-peddling, is a case in point.

The evidence for Julian's attitude toward such practices is confined to a few items. Ammianus reports a military assembly in 360, at which Julian promised that higher civilian and military officials would be promoted only by merit, so that "the rewards of brave men might remain untainted, and secret courting might not usurp high dignities."[1] Ammianus merely tells of the Emperor's intentions, which are also stated in the panegyric of Mamertinus;[2] neither passage bears witness to Julian's actions. Consequently, the decisive text is a law of 362 (*CTh* 2. 29. 1), which is generally understood to contrast sharply with a law of Theodosius I on the same subject (394 *CTh* 2. 29. 2).[3] De Ste Croix cites Julian's law as evidence that "earlier emperors had at least protested" against the practice of obtaining government favors by bought *suffragium*, whereas Theodosius capitulated to the nefarious forces of the age by comprehensively regulating the terms of payment.[4] Collot begins a lengthy commentary by stating that Julian "entend combattre le suffrage . . . sur le plan du droit privé classique."[5] Jones offers a comprehensive explanation:

> Julian severely reprobated the practice, and gave the rather curious ruling that, as such contracts were unknown to Roman law, those who gave anyone lands or money for his *suffragium* should be debarred from recovering them. The object was presumably, by making bargains legally unenforceable, to compel aspirants to pay money down before the service was rendered. This they might well be reluctant to do, since great men were in the habit of "selling smoke" (*fumum vendere*), as the contemporary phrase went. Theodosius I took a more indulgent view . . .[6]

1. Ammian. *Rer. gest.* 20. 5. 7.

2. Claudianus Mamertinus *Gratiarum actio Iuliano Imp.* 16–21. It is interesting to observe that Mamertinus presents the shamefulness of canvassing for favors at the imperial court as prolonging the no less shameful practice of soliciting votes under the Republic.

3. The two laws form the title "Si certum petatur de suffragiis."

4. G. E. M. de Ste Croix, "Suffragium: From Vote to Patronage," *British Journal of Sociology*, V (1954), 29. In view of the abundant evidence he found for *suffragium* by highly respectable citizens (Cicero, Pliny, Fronto, Libanius, Symmachus), De Ste Croix should have reconsidered whether the tone of disapproval he adopted toward any form of *suffragium* other than votes was appropriate.

5. C. Collot, "La pratique et l'institution du suffragium au Bas-Empire," *Revue historique de droit français et étranger*, 4th ser. XLIII (1965), 195. The pages on Julian close Part I of the article, entitled "La prohibition du suffrage considéré comme le trafic honteux des emplois et dignités publiques" (pp. 187–98), but no evidence is given that *suffragium* was ever forbidden.

6. A. H. M. Jones, *The Later Roman Empire, 284–602* (U.S. ed.; Norman, Okla., 1964), p. 393. A similar, though less circumstantial explanation is given by R. Andreotti, "L'opera legislativa ed amministrativa dell'Imperatore Giuliano," *Nuova rivista storica*, XIV (1930), 356.

On this interpretation, the law bears witness not only to Julian's determined opposition to corrupt *suffragium*, but also to the proverbial deceitfulness of "great men."

Although Julian's disapproval of influence-peddling is unquestionable, he did not differ in this from his immediate predecessors, who were particularly opposed to deals (*pactiones*) of the kind that diminished the revenue by giving exemption from public obligations. Constantine quashed codicils of honorary rank, duly prepared and delivered, "si ad hoc pecuniam constabit speratam"; even those who had obtained such dignities "bonorum virorum suffragio nulla data pecunia" were nevertheless to perform *munera publica*.[7] The accent was upon insuring that public *munera* be performed; although it went almost without saying that the payment of money was reprehensible, the law was intended not so much to discourage this practice as, more specifically, to confine the material benefits of honorary rank to palatines and *administrationibus functi*.[8] A law of Constans, which seems to renew Constantine's law, points in the same direction. Some persons have, by *suffragium*, obtained the dignities of ex-counts or ex-*praesides* (provincial governors); they are to be subject to all forms of public obligations, "ne commoda publica cum umbratili suffragiorum pactione lacerentur."[9] Again, as in Constantine's law, the qualifications for exemption from *civilia munera* are specifically stated.[10] The law of Constans embodies a certain retreat from Constantine's position, in that the dignities obtained by *suffragium* are no longer withdrawn, but this was a logical consequence of the earlier law: if the honorary rank did not in itself carry exemption from *munera*, even though obtained "bonorum virorum suffragio nulla data pecunia," then there was no point in taking the dignity away when money was promised or paid; if people persisted in buying valueless dignities, that was their own problem.[11] The Emperor did not like "the shady deals of *suffragia*," but he did not combat them as a matter of policy.

7. *CTh* 6. 22. 1 (324, according to Seeck; 325/6, according to Mommsen). Cf. 317 *CTh* 12. 1. 5, 331 *CTh* 12. 1. 20, which also specify that the codicils were to be taken away. This is the most explicit measure of disapproval of *suffragium*; but its object appears to be to protect the face value of honorary codicils, and not to punish the purchase of influence.

CTh 6. 22. 1 also provides that *administratio procurationum*, which is specifically stated to be bought (presumably from the government), no longer secures immunity from curial service after retirement. Nine years later (333 *CTh* 1. 32. 1), we find Constantine forbidding on pain of death that procuratorships of imperial dye works and the like be acquired by *suffragia* (used without qualification and, in context, probably meaning "bribes"), on the grounds that this resulted in spoiling the output of the workshops. In other words, once the inducement of future immunity was removed, this sort of procuratorship could no longer officially be sold; it was bestowed gratis and thereby became open to the play of influence. But the candidate who bribed his way into the job, lacking hope of future reward, had to recoup his investment in influence by adulterating the dyes or making other damaging inroads upon production. In this case, the government's enemy was not so much influence-peddling as the even less irradicable desire for gain.

8. 317 *CTh* 12. 1. 5 and 331 *CTh* 12. 1. 20 also stress the positive qualifications required for enjoyment of the dignity in question, with *suffragium* being cited chiefly as an unworthy alternative to them. *CTh* 6. 38. 1 (317, according to Seeck) lays down a series of disqualifications, including *venale suffragium*, for enjoyment of codicils of perfectissimate.

9. 343 *CTh* 12. 1. 36, cf. 338 *CTh* 12. 1. 25, which Collot (above, n. 5), p. 192, n. 19, regards as the renewal. There is no doubt that the three laws have marked resemblances. The more particular affinity of the law of 343 to that of Constantine stems from the phrase *nihilominus reiectus in plebem* (Constantine), paralleled by *plebeiam quoque sustineant capitationem* (Constans). By contrast, the law of 338 applies to curials, as did 317 *CTh* 12. 1. 5.

In the light of *CTh* 6. 22. 1 (as well as 329 *CTh* 13. 5. 5, 362 *CTh* 12. 1. 53, 364 *CTh* 16. 2. 17, 383 *CTh* 12. 1. 96), the reading of *CTh* 12. 1. 36 offered by F. Lot, *L'Impôt foncier et la capitation personnelle sous le Bas-Empire*, "Bibliothèque de l'Ecole pratique des Hautes-études," fasc. 253 (Paris, 1928), pp. 71–76 (after Savigny), cannot be accepted. It is plain that *plebei* were taken by the legislator to be simply commoners, as distinct from dignitaries, and not, in Lot's words, "de pauvres diables." The word need not have had the same denotation in 343 (or even 383) as it did to Sidonius Apollinaris.

10. The terms are somewhat different: those who engaged *vel in administratione* (which may cover the two categories mentioned by Constantine) *vel in legationibus publicis* (which gives a positive formulation to Constantine's words *nulla provinciae legatione suscepta*).

11. Cf. 353 *CTh* 12. 1. 41, where the idea is specifically stated. The sons of Constantine had begun by continuing their father's policy: Oct. 338 *CTh* 12. 1. 25. Subsequently, the

Constantine took for granted the reprehensibility of paying money; while using sharper language, his son was, in practice, even less concerned to act against influence-peddlers. Julian's law of 362 is in a direct line of development from the recent past. He begins by setting out a hypothetical case: X gave Y (later called the *suffragator*) money or property so that Y would obtain for X some public office; when, by Y's interposition, X had obtained what he wished, he sued Y for recovery of the money or took back by force the property which he had given him.[12] Julian's language in describing such transactions is even more vehement than that of Constans: a deal (*pactum*) is involved; the money is dishonestly paid; and the favors in question, which are destined to reward the merits of good men, are thus obtained *foedis commentis*. The practice is reprobated, but nowhere is it forbidden. For the legislator proceeds to deny X all rights to sue Y for recovery of the bribe: if X attempts suit for recovery, "what he gave will remain with his *suffragator*, or let him restore what he took back, and he is forced to pay as much again to the resources of the fisc."[13] In other words, Julian brings the assistance of the law to the side of the *suffragator*, to insure that he will on no account be deprived of his bribe by the ungrateful aspirant. The comprehensive law of Theodosius I merely completed what Julian began.

Ammianus supplies an account of the circumstances that attended Julian's issuance of this law, whose terms he precisely summarizes.[14] Apparently, a horde of Egyptian litigants had been encouraged by rumors—presumably of Julian's reforming intentions—to come to Constantinople with all sorts of claims for recovery, some extending back seventy years. As elsewhere in his work, Ammianus covers the Egyptians with scorn;[15] they were a contentious people, who, among other things, were always "eager to charge wealthy men with extortion and threaten them with court proceedings." Julian tricked them into going to Chalcedon and then forbade all shipmasters to ferry Egyptians back to the capital; thus they were forced at length to go home. Ammianus continues: "Unde velut aequitate ipsa dictante lex est promulgata, qua cavetur nullum interpellari

face value of honorary codicils was no longer protected. On the other hand, some effort was still made to save the credit of codicils relating to palatine service; see 358 *CTh* 12. 1. 44, which again insists on deprivation. Otherwise, the needs of the state were sufficiently served by forcing purely honorary dignitaries to perform *munera* like everyone else; cf. 340 *CTh* 6. 22. 3. The same pattern would recur in the matter of buying one's way into the senate. Even if an honorary dignity did not exempt from *munera*, it may nevertheless have offered some shelter against corporal punishment.

Dec. 338 *CTh* 6. 22. 2 states: "Ab honoribus mercandis per suffragia vel qualibet ambitione quaerendis certa multa prohibuit." The *multa* consists of an *inlatio auri* to which the present law adds a further levy of 30 lb. of silver (cf. *CTh* 12. 1. 24, the twin of 6. 22. 2, but not saying that the 30 lb. are a fine). This is the closest any of these laws comes to forbidding *suffragia*, for the reference to a fine suggests that the practice was illegal. It seems, however, that *multa* in this context is simply a sharp word for a surtax levied upon holders of such dignities; *prohibuit* should be read "inhibits," "discourages." Perhaps this "fine" was imposed in lieu of taking the codicils away. As is invariably the case, the onus falls on the buyer of *suffragium*, not on the *suffragator*.

12. "Foedis commentis quae bonorum merito deferuntur quidam occupare meruerunt et, cum meruissent in republica quolibet pacto versari, repetendam sibi pecuniam, quam inhoneste solverant, inpudentius atque inhonestius arbitrantur: alii etiam, quae tunc donaverant vel potius proiecerant ob inmeritas causas, invadenda denuo crediderunt." In spite of the phrase *in re publica . . . versari* (and the reading of the *Interpretatio*: "cum ad militiam pervenerunt"), one may doubt whether the legislator intended to mean that the favor to be obtained was invariably an office. Cf. 394 *CTh* 2. 29. 2, "Si qui desideria sua explicare cupientes"; I assume that such an eventuality was also implicit in 362.

For one probable basis for X to sue Y, see *CTh* 8. 15, "De his, quae administrantibus vel publicum officium gerentibus distracta sunt vel donata," and h.t., 1 (Constantine): "Sed iure continetur, ne quis in administratione constitutus aliquid compararet," for whose basis, *Digest* 49. 14. 46. 2 (Hermogenian). The legality of *suffragium* allowed these rules to be circumvented but also established the requirement that some value be given in return by the *suffragator*.

13. "Qui itaque repetere nititur vel repetisse convincitur, et quod dedit apud suffragatorem eius manebit vel extortum restituet et alterum tantum fisci viribus inferre cogetur." The sentence that has caused trouble (and will shortly be discussed) lies between this and the quotation in n. 12.

14. Ammian. 22. 6.

15. Ammian. 22. 11. 4–5 and esp. 22. 16. 23.

suffragatorem, super his quae eum recte constiterit accepisse."[16] It was equitable and just that influence-peddlers who delivered what they promised be protected from chicanery.

Julian's reputation as an active enemy of venal *suffragium* stems from a single passage of the law. After describing how X sought to recover from Y, Julian says: "Sed quia leges Romanae huiusmodi contractus penitus ignorant, omnem repetendi eorum, quae prodige nefarieque proiecerunt, copiam prohibemus." The difficulty lies in the first clause. Kübler quoted it with bemusement, and so did Levy, who called it "seltsam elliptisch," and suggested that, though forbidden agreements were invalid, violation of an agreement over *suffragium* was regarded as even more disgraceful than its observance.[17] Levy, though hesitant, joined the commentators quoted earlier in assuming that *contractus* refers to *suffragium* itself. This is certainly what Collot and Jones took Julian to mean: Roman laws do not recognize contracts by which payment is made to an influential man for the acquisition of a favor.[18] This proud assertion of the illegality of *suffragium* earned Julian his praise. It is apparent, however, that Julian has been misunderstood.

He did not outlaw purchased *suffragium* any more than his predecessors had; on the contrary, he gave such agreements legal support. The *contractus* unknown to Roman laws was simply one "of the kind" in which X both gets what he bargained for and regains the price he paid, or conversely, in which Y both delivers what he promised and loses the price he earned; in other words, a legal contract required that both parties benefit. Rhetorical grandeur succeeded in obscuring an obvious and trivial statement.[19]

In order that contracts might continue to be of mutual advantage, Julian set obstacles to claims for recovery. Some eighty years later, in a passage worth quoting for comparison, Salvian inveighed against another sort of contract, that by which a powerful man gave protection to one of modest means (*humilis*), in return for his patrimony. This, in Salvian's view, was an intolerable innovation:

Et quod dixi vendunt, utinam venderent usitato more atque communi: aliquid forsitan remaneret emptoribus. Novum quippe hoc genus venditionis et emptionis est. Venditor nihil tradit et totum accipit: emptor nihil accipit et totum penitus amittit. Cumque omnis ferme contractus hoc in se habeat, ut invidia penes emptorem, inopia penes venditorem esse videatur, quia emptor ad hoc emit, ut substantiam suam augeat, venditor ad hoc vendit, ut minuat, inauditum hoc commercii genus est: venditoribus crescat facultas, emptoribus nihil remanet nisi sola mendicitas.[20]

16. Ammian. 22. 6. 5. Cf. Eunapius, Frag. 16, in *FHG*, IV, 21.

17. B. Kübler, *s.v.* "Suffragium," in *RE*, 2e R., IV (1931), 656–58; he rightly insisted that "a general prohibition was nowhere expressed." E. Levy, *Weströmisches Vulgarrecht: Das Obligationsrecht*, "Forschungen zum römischen Recht," edd. M. Kaser, H. Kreller, and W. Kunkel, VII (Weimar 1956), p. 25 with n. 47. His comment is based on the contrast *inhoneste . . . inhonestius* (above, n. 12); but this looks like rhetoric rather than law.

18. As above, nn. 5–6. Also in this sense, W. Ensslin, "Kaiser Julians Gesetzgebungswerk und Reichsverwaltung," *Klio*, XVIII (1923), 120–22, whose explanation for the terms of the law is that, though Julian barred *suffragium* in his own rule, he did not intend to take responsibility for the mistakes of his predecessors. The translation of Clyde Pharr (Princeton, 1952), p. 59, reads: "But because Roman law completely refuses to recognize such contracts."

19. To clarify the sense of the phrase, one would have to translate: "But since contracts of the (unfair) kind (just described) are completely unknown to Roman law." This is the passage Ammianus appears to have had in mind when he said "velut aequitate ipsa dictante."

In view of the restriction laid down in *CTh* 8. 15. 1 (above, n. 12) as a safeguard against extortion by government officials, Julian's ruling may well illustrate a conservatism toward private law (here, the nature of contracts) that nullified or undercut measures of public interest. Cf. 391 *CTh* 3. 1. 6, in which the right to dispose freely of private property is invoked against a law advantageous to public finance.

20. Salvian. *De gub. Dei* 5. 40–41 (*MGH:AA*, I, 62–63).

The mutuality of contracts is again in question. Owing to Salvian's presupposition that the seller normally loses while the buyer gains,[21] the proper form of contract appears to be utterly reversed. Rhetoric, rather than patrons, may be at fault; but Salvian was right at least to the extent that, when patronage was sold, no physical *traditio* of any sort took place on the patron's part. In the absence of mutual advantage, the contract became *inauditum commercii genus*. If he had been writing the laws, he might well have echoed Julian's clause, "leges Romanae huiusmodi contractus penitus ignorant."

That the "contract unknown to Roman laws" is not *suffragium* itself bears only slightly upon the subtle explanation of Jones. His view, quoted earlier, is that *CTh* 2. 29. 1 forced buyers of favors to pay in advance and thereby discouraged them from indulging in the practice, "since great men were in the habit of 'selling smoke.'" Several objections may be raised to this interpretation.

For one thing, the terms of Julian's law in no way deny action to a buyer of favors against deceitful *suffragatores*. He is forbidden to sue only after he got what he paid for. Theodosius would repeat this stipulation, and we even have a law of 416 where favor-seekers, whom legislation now deprives of the fruit of their *suffragium*, are invited to recover their vain bribes.[22] Moreover, Julian's law, far from making advance payment mandatory, must have encouraged credit transactions, whose proliferation after 362 is attested by their prominence in the law of 394.[23] Such a development is easy to understand. Julian did not make *suffragium* unenforceable, nor did he forbid unsuccessful aspirants to sue for recovery of their payment in advance. But by threatening dire penalties against successful petitioners who sued, he gave scope for dispute between *suffragatores* and their clients over the question whether or not the specific favor bargained for had been obtained. A legally binding promise to pay after the favor was granted was a sensible way to obviate arguments of this sort.[24]

Finally, Jones's supposition that fourth-century *suffragatores*, whom he qualifies as "great men," were proverbially deceitful in their influence-peddling is incompatible with the prevalent scale of the practice, against which the government, with its feeble aspiration to promote by merit, was quite incapable of defending itself. Why should great men have deceived when success was comparatively easy? To be sure, the *Scriptores historiae Augustae* attest to the existence of the proverb *fumum vendere*, perhaps as a bit of antiquarianism, perhaps as an expression in current fourth-century use.[25] The phrase first appears during the early Empire, in Martial: "vendere nec vanos circa palatia fumos." In context, it may mean little more than

21. Not unique with him. Cf. 451 *NValent* 32. 1. 5, in which the buyer of a curial's property is looked upon as coming to the assistance of the seller; Cassiod. *Variae* 3. 50 (ed. Mommsen, p. 105): "et quod raro solet emergere, in una mercatione utrique videamini desiderata compendia [= lucra] percepisse."

22. *CTh* 2. 29. 1: "cum meruissent in re publica"; Ammianus (n. 16): "super his quae [suffragatorem] recte constiterit accepisse"; Theodosius: "cum ea quae optaverint consequantur." There is no reason to doubt that this stipulation was seriously meant. The law of 416, *CTh* 12. 12. 15.

23. The terms of *CTh* 2. 29. 2 suggest that, in 394, *suffragium* was almost invariably obtained on credit; if any payment was made in advance, it is assumed to have consisted only of movable property. Cf. *SHA Alex. Sev.* 36. 2, where payment follows receipt of the favor.

24. The law of 362, by defending the *suffragator* and putting the client in some jeopardy, had the natural effect of shifting the initiative in actions for recovery from the client to the *suffragator*, and of generalizing the promises of future payment from which such actions would arise. Accordingly, the chief culprit envisaged by the law of 394 is the *suffragator* who seizes property on the mere basis of a *commonitorium de suffragio*, whereas that of the law of 362 had been a client who took back property paid in advance.

25. A. Otto, *Die Sprichwörter und sprichwörtlichen Redensarten der Römer* (Leipzig, 1890; rp. 1962), p. 149, No. 731, assembles the evidence. Only Martial and the *SHA* set *fumum vendere* in a context of imperial affairs (cf. Apuleius *Apolog.* 60; *Anthol. lat.* 379. 61).

Owing to the highly restrictive sense given to the phrase in

"to trade on rumors"; and, since it stands as an alternative to being a pimp, gigolo, court attendant, or member of a claque, one finds no implication that "selling smoke" was the occupation of great men.[26] In the *SHA*, the phrase is more restricted in meaning, and a circumstantial anecdote illustrates the practice. Here, too, we are not given to understand that the habitual sellers of smoke were respectable and truly influential men; rather, they were persons who played domestic roles in the palace: court servants, a eunuch, the Emperor's *quasi maritus*.[27] Besides, while the seller of smoke made a false promise in respect to what he said he would do, he was not deceitful in respect to the favor which he said the petitioner would obtain. In every context, *fumum vendere* means "to sell prior knowledge of a decision which one has done nothing to secure"; the information is true, but the credit taken for obtaining the favor is unearned.[28] Far from having exercised *suffragium*, the seller of advanced notice had merely traded upon his access to secrets of state. Therein lay the blame. What gave life to the marginal market for "smoke" was in part the secrecy of the imperial court,[29] but also the implicit certainty that men close to the emperors were respectably and reliably influencing their decisions.[30]

It is an obvious error to proceed from our own frequently disappointed expectations of honesty in government and promotion by merit to describing in dark language the ravages of corrupt *suffragium* in the Late Roman state. Influence, even influence for which money was paid, was no novelty indicative of decadence but a daily occurrence in Roman life, to whose beginnings no definite date can be attached.[31] To have distinguished worthy from reprehensible *suffragia* on the sole basis of whether money changed hands would have been naïve, and though one emperor or the other adopted this course, at least in his rhetoric, none was so foolish as to suppose that the government could combat the practice as such.[32] *Suffragium* was far too respectable a feature of everyday life to be officially attacked. In fact,

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the *SHA* one may at least raise the possibility that its use is learned (inspired by Martial) rather than popular. In view of what R. Syme, *Ammianus and the "Historia Augusta"* (Oxford, 1968), has to say of the author's "rare and recondite erudition that betray[s] the tastes and habits of a scholiast" (p. 127), I am more inclined than ever to doubt that *fumum vendere* in the *SHA* reflects popular contemporary usage. The very Life in which the phrase is most circumstantially explicated also contains a direct quotation from Martial (*Alex. Sev.* 38. 2). On this reading, the treatment of *fumum vendere* would resemble the explanation in *Alice in Wonderland*, chap. xi, of the phrase, "applause, which was immediately suppressed by the officers of the court."

I am indebted to Professor F. Gilliam, of the Institute for Advanced Study, and Professor Otto Skutsch, of the University of London, for helping me with *fumum vendere*.

26. Martial 4. 5. 7. The poet asks his honest but poor friend Fabian what he has come to Rome for; and, after cataloguing the occupations for which Fabian is disqualified, he concludes that his virtues as a faithful friend will not allow him to emulate Philomenus, a rich freedman of dubious reputation. He is not concerned with "great men." Though the *SHA* permits a specific meaning to be given to *vendere circa palatia fumos*, it is hardly certain that Martial had precisely the same thing in mind.

27. *SHA Pius* 11. 1 (*aulici ministri*); *Alex. Ser.* 23. 8 (the eunuch); *Heliog.* 10. 3 (Zoticus, an athlete from Smyrna, son of a cook); *Alex Sev.* 35. 5, does not specify the culprit's rank, which need not have been high.

28. The key passage is *SHA Alex Sev.* 35. 5–36, also *ibid.* 23. 8, in which it is certain that the soldier who paid the eunuch got what he wished. *Pius* 11. 1 naturally omits details ("numquam de eo ... per fumum aliquid vendiderunt"), but we need not doubt that the sales thus prevented would have been in the usual form. Although it is said of Zoticus (*Heliog.* 10. 3) that *omnes falleret*, this is not directly connected with the statement that "omnia Heliogabali dicta et facta venderet fumis"; the disgraceful act of selling smoke was piled upon many others including that of deceiving everyone.

29. This is particularly indicated by *SHA Pius* 6. 4. Presumably, secrecy at court was no more favorable to *suffragium* itself than a court that acted publicly; but it permitted insiders to take unmerited credit for *suffragium*.

30. *SHA Aurel.* 43. 3–4, an anecdote attributed to Diocletian, well describes *suffragium* by great men. So does Jones, *Later Roman Empire*, pp. 391–93.

31. De Ste Croix (above, n. 4), pp. 40–41, rightly recognized its intimate relations to patronage and clientship.

32. The distinction is plain in Constantine's law, *CTh* 6. 22. 1 (above, p. 146); but even he used *suffragium* without qualification in a law denying some privilege to those having acquired it in this manner (331 *CTh* 12. 1. 20; also *CTh* 1. 32. 1, as above, n. 7). In the next generation, the word is generally used without qualification (*CTh* 6. 22. 3, 12. 1. 44, 1. 9. 1).

one may wonder whether the novelty of the later Empire reflected in the laws concerning *suffragia* has not been generally misconstrued. Far from its having been the appearance of the sale of influence, which is known in any case to have taken place in the Principate,[33] that novelty may well have consisted in the government's repeatedly voiced aspiration to regard proved merit as the criterion for promotions and rewards, and in its legislative efforts to implement this ideal.[34]

As far as Julian is concerned, one should not overlook the continuity between his reign and that of Constantius II. Ammianus singles out Julian for praise in limiting extraordinary taxation, and we have several laws bearing this out; all the same, the basic legislation against *extraordinaria* was issued by Constantius in 356.[35] Even Julian's curtailment of clerical privileges seems less novel when set alongside a law of 360.[36] So was it also in the matter of *suffragium*, a subject on which Julian's law marks no detour on the path from Constantine to Theodosius I.[37]

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33. E.g., an anecdote about Vespasian in Suet. *Vesp.* 23; and the other evidence cited by Collot (above, n. 5), pp. 188–89.

34. The difficulty is, then, to establish some objective test of merit (the following selection extends only through Julian's reign): seniority (*CTh* 7. 20. 4, 8. 1. 1–2, 8. 4. 1, 8. 7. 5–6, 6. 29. 4); performance of all *munera civilia* (*CTh* 12. 1. 4, 20); actual *militia* or *administratio* (*CTh* 12. 1. 5, 10. 7. 1, 8. 4. 3, 6. 35. 3, 6. 22. 1, 8. 7. 4, 6. 35. 5, 12. 1. 41, 6. 22. 3, etc.); poverty, in the case of clergy (*CTh* 16. 2. 6, 11); popular opinion politically expressed (*CTh* 16. 2. 16, 12. 1. 49, 13. 3. 5). This last category argues against the contention of De Ste Croix (above, n. 4), p. 35, that by the fourth century "local assemblies [had] ceased to decide anything."

An appropriate illustration of the consequences of identifying merit primarily with long service (as a large bureaucratic institution must do) is found in 395 *CTh* 6. 27. 7, where an *agens in rebus* who has served in a military expedition does not, as a result, earn enough credit to project him over a certain rank attained by seniority. See also 384 *CTh* 6. 30. 7, where an elaborate schedule fixes the order of seniority in the *officium largitionale*, in order to prevent anyone from advancing out of order by *ambitio* (=*suffragium*). Though stimulating to the elaboration of a highly regulated bureaucracy, such strivings after objective criteria of fairness probably resulted in no better government than if the positions had been sold.

35. Ammian. 17. 3. 2–5 (cf. 19. 11. 3); 362 *CTh* 11. 16. 10, 11. 19. 2, cf. 1. 16. 5. Constantius and *extraordinaria*, 356 *CTh* 11. 16. 7, 8, cf. 355 *CTh* 1. 5. 5. See also A. Piganiol in *Journal des savants* (1955), pp. 9–10, rightly objecting to a sharp contrast between Constantius and Julian argued by S. Mazzarino, *Aspetti sociali del quarto secolo* (Rome, 1951).

For an illuminating distinction between the real reign of Julian, which manifested few differences from those of his predecessors, and the reign of Julian as a symbol of a particular political ideology, voiced by such authors as Libanius, Ammianus, and Eunapius, see the prolix but brilliant study of G. Dagron, "L'Empire romain d'Orient au IV^e^ siècle et les traditions politiques de l'hellénisme," *Travaux et mémoires*, III (1968), 65–81.

36. *CTh* 16. 2. 15 (cf. 361 *CTh* 16. 2. 16, 12. 1. 49, which attempt some mitigation of the rule of 360). Julian's curtailment, 362 *CTh* 12. 1. 50, 13. 1. 4.

37. As Collot (above, n. 5), pp. 211–20, points out, *suffragium* in the fifth century enters the realm of public law, along, one might say, with everything else. Collot's survey of this later phase of *suffragium* is valuable, but I doubt that the practice will ever be understood as long as the laws are seen as evidence for honest emperors trying to chasten corrupt officials. Though invoked by the laws, morality was not the primary issue even in the fourth century, much less in the fifth and sixth. *Suffragium* was a form of traffic, an important channel for the circulation of wealth in an economy tending toward immobility. The government rarely limited a form of activity that made wealth move unless such limitation promised to bring greater gain to its coffers. Justinian himself recognized (535 *Novel* 8) that *suffragium*, in its abusive, unreformed guise, procured *reditus non exiguus* to the state; and his reform was merely legalized graft.