

# THE ROMAN IMPERIAL QUAESTOR FROM CONSTANTINE TO THEODOSIUS II\*

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The greatest legal monuments to Late Antiquity are the *Code* of Theodosius II, published in 438, and the *Code*, *Digest* and *Institutes* of Justinian, produced between 529 and 534. The men on whose shoulders the main responsibility for their compilation rested were two imperial quaestors, each backed by teams of experts. Antiochus Chuzon, quaestor in 429, saw the *Theodosian Code* from its inception in the year of his quaestorship through a second stage in 435 to its completion in time for the marriage of Valentinian III and Theodosius' daughter Eudoxia in October 437 and publication in the following year.<sup>1</sup> A century later, under Justinian, Tribonian, perhaps the most famous and powerful of all quaestors, proved his organizational and legal ability during the production of the first edition of Justinian's *Code* in 529 and became the moving force behind the *Digest* of the works of the Roman jurists, the *Institutes* (an update of Gaius on the principles of law) and the second edition of the *Code*, all of which were crammed into the five years that followed.<sup>2</sup>

These were two outstanding and exceptional occasions when quaestors in their legal character were prominent. The routine work of quaestors was conducted largely behind closed doors. By the early fifth century this work was formally defined in the *Notitia Dignitatum* as *leges dictandae*.<sup>3</sup> The *leges* referred to bore little resemblance to the *leges*, or statutes, of the Roman Republic: this was the term used for the constitutions of emperors, mainly *edicta* and *epistulae*, which were of general application.<sup>4</sup> The *Theodosian Code* was made up of extracts from these 'general laws' from the time of Constantine to that of Theodosius II, which contained the *ius*, or legal point, of the enactment used but omitted the superfluous verbiage. Quaestors, therefore, both supervised the compiling of the *Code* and were responsible for 'dictating the laws' that it contained (although even the phrase *leges dictandae* is less simple than it looks).

The history of the rise of the late Roman imperial quaestor from obscure beginnings is important for the development of the imperial bureaucracy. The quaestor did not deal only with *leges*. Initially he seems to have been simply an official honoured with the confidence of the emperor, who used the rhetorical skills with which Roman administrators were almost by definition endowed in the emperor's service, often as his spokesman.<sup>5</sup> It is a mistaken emphasis to label the quaestor as the emperor's 'legal adviser',<sup>6</sup> as if that was, from the beginning, the quaestor's main function. In fact, as we shall see, the office evolved and changed as the fourth century progressed: the earliest known quaestors date from the reign of Constantius II, but the first quaestor known to have supplied advice on the law was Eupraxius, quaestor under Valentinian I. Eloquence and law cannot easily be separated and every educated man knew something about law. There was therefore no formal obstacle to any cultured man applying his eloquence to the framing of laws.

In his legal role, the quaestor 'dictated' laws for the benefit of emperor and consistory, and his activities were therefore carried on at the centre of administration, framing decisions on such legal and administrative matters as were brought to the

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<sup>1</sup> For the stages: *CT* 1. 1. 5 (26 March 429) repeated *Gesta Sen.* 4 (December 438); *CT* 1. 1. 6 (20 December 435); *Nov. Theod.* 1 (15 February 438).

<sup>2</sup> On this the standard work is Tony Honoré, *Tribonian* (1978), esp. chs. 1, 2, 5-7.

<sup>3</sup> *Not. Dig. Or.* 12 and *Occ.* 10.

<sup>4</sup> *CJ* 1. 14. 3, cited below. This was part of a long

*oratio* addressed to the Roman Senate on 7 November 426. Excerpts from it are scattered through the *Theodosian* and *Justinianic Codes*, and include the famous, or notorious, 'Law of Citations' at *CT* 1. 4. 3 on how the opinions of the jurists were to be treated by trial judges.

<sup>5</sup> For a clear statement of the point that 'eloquence is one of the main requirements of the ancient administrator', applied to the early Empire, see N. Purcell, 'The Arts of Government', in J. Boardman, J. Griffin and O. Murray (edd.), *The Oxford History of the Classical World* (1986), 589.

<sup>6</sup> Jones, *LRE*, 368.

emperor's attention by his officials and subjects. It should, however, be emphasized that the concentration on activity at the centre, which is entailed by examination of the quaestor as the framer of constitutions at the point in the long and complex process of imperial decision-making when the texts came into being, should not automatically lead to assumptions of greater overall centralization of control in the later Roman Empire as a whole. As under the early Empire, the process of the evolution of Roman law was—as this study will show—far more complex and diffuse than concentration on the emperor's role or that of the palatine service alone would indicate. Many legal decisions made in the provinces would never have come to the emperor's notice at all and local laws and customs would, in many cases, have continued to be observed unobtrusively and without interference from outside. The rise of the quaestor as a court official does not in itself affect the picture presented by Fergus Millar<sup>7</sup> and others of the emperor reacting to information, requests and petitions offered to him from below. After all, the job performed by the quaestor in the later Empire of framing laws had been carried out, perhaps by the emperors or perhaps by other officials whose identity is uncertain, under the early Empire as well; it could be argued, therefore, that the change was no more than one of administrative convenience, which took place in the central bureaucracy and did not affect the provinces or the Roman Empire at large.<sup>8</sup> But was it?

Although no society is static and some changes obviously took place between the earlier and the later Empires, the broad question of the evolving nature of late Roman administration is beyond the scope of the present investigation. The significance of the quaestor is that his rise ran parallel to a growing awareness on the part of the central imperial administration, perhaps fostered by the quaestors themselves, that imperial pronouncements, specifically *edicta* and *epistulae*, although in form often designed for specific occasions or addressed to individuals in response to problems raised by them, were nevertheless also based on general rules. This had been well understood in practice under the early Empire,<sup>9</sup> but there had been little attempt to disentangle the general from the specific in early imperial pronouncements. By the early fifth century, the need to make explicit the universal application of what could now be known as *leges generales* had been acknowledged, and an anonymous quaestor of Valentinian III laid down in an *oratio* to the Roman Senate how, in future, these *leges generales* were to be defined and recognized; 'quae vel missa ad venerabilem coetum oratione conduntur vel inserto edicti vocabulo nuncupantur, sive eas nobis spontaneus motus ingesserit sive precatio vel relatio vel lis mota legis occasionem postulaverit'.<sup>10</sup> In other words, whatever the initial inspiration of a constitution, be it the emperor's own idea or a response to a petition or legal problem, the imperial pronouncement couched in the form of an *oratio* to the Senate or explicitly signalled as an edict or 'with edictal force' would count as being of general application. The point was not that the emperor had never issued general laws before but that he (as an institution) had become more consciously and explicitly the source of general law for the empire. It was the same awareness of the need for a body of general imperial law which led to the creation of the *Theodosian Code*.

<sup>7</sup> F. Millar, *The Emperor in the Roman World* (1977), *passim*.

<sup>8</sup> On *edicta*, Millar observes (*ERW*, 257) that we have no examples of general imperial edicts recorded on inscriptions between the Flavian and Tetrarchic periods. However, under Constantine large numbers of edicts are attested and 'it would not be unreasonable to see this as suggesting a real change in the nature and ambitions of government' (*ERW*, 258). Millar does not seem to commit himself on this very broad issue. However, he does accept a connection of some kind between changes in administrative structures and 'the nature and ambitions of government': if the change was real, 'the striking fact remains that we cannot trace even in this period any officials or secretaries in the imperial entourage who were specifically concerned with edicts, even though both the original composition of them and the making of large numbers of copies must have

involved considerable labour'. As will be argued below for the late Empire, the quaestor was known to be concerned with edicts and their publication was the job of other officials and the scribes of the *scrinia*. The question of whether the change was 'real' or not is one that may be pursued by others.

<sup>9</sup> On the difficult problem of the relationship of imperial responses to individual cases and general rules, see F. Millar, 'Empire and City, Augustus to Julian: Obligations, Excuses and Status', *JRS* 73 (1983), 76–96. His introductory remarks are especially relevant: 'it can be suggested with some justice that to concentrate on the form or occasion of typical Imperial pronouncements is to miss the extent to which these pronouncements did in fact have the function of formulating general rules' (p. 76).

<sup>10</sup> *CJ* I. 14. 3 (see above, n. 4).

It should by now be clear that there is a close relationship between understanding the functions (and limitations) of the quaestor and appreciating some of the problems of the text of the *Theodosian Code* itself. The recent studies of Tony Honoré on Tribonian and, in 1986, on the *Theodosian Code*<sup>11</sup> have concentrated on what he sees as the quaestor's responsibility for the style of imperial laws. Building on the work of Voss<sup>12</sup> on the rhetorical language expected of these cultivated composers of constitutions, Honoré has used arguments based on analysis of style to identify the hands of various quaestors in the *leges generales* of the *Theodosian Code*. These include such famous figures as Eupraxius (quaestor 367–70), praised by Ammianus for his fearless defence of law and justice; Ausonius, the poet-professor from Bordeaux, whose quaestorship (375–7) is adorned by constitutions displaying a greater flair for language than understanding of legal principle; and Virius Nicomachus Flavianus, whose period of office under Theodosius I can be dated on both stylistic and historical grounds to 388–90.<sup>13</sup>

Arguments about quaestorian authorship of *leges* based on style are bound to be to a great extent intuitive and therefore controversial, and there are further complexities. The quaestor was only one of many people who contributed to the formulation of the text of an imperial constitution, from the time that a problem was raised requiring imperial action through the framing of a draft proposal (*suggestio*), which as a rule originated with the provincial or palatine office-holder most closely involved, to final imperial subscription and promulgation. As Honoré observed, constitutions were the product of extensive and often no doubt spirited discussions both of the proposal and of the quaestor's draft constitution, in some of which political considerations would also have played a part, as palatine ministers strove both to impress and (if possible) undermine their rivals. The result, Honoré argues, could sometimes be a 'layering' of text,<sup>14</sup> in which the stages of proposal (*suggestio*), quaestorian draft constitution and discussion can be seen to be reflected. Honoré's pioneering work allows for two aspects of this process, which limit the importance of quaestors in the making of the text of a constitution, namely the language of the *suggestio* and the possibility of additions to the quaestor's version at a later stage. However, two points require additional emphasis. One is that a suitably well-drafted and non-controversial *suggestio* could have gone through the consistory, where final decisions were made and imperial authorization given, 'on the nod'. This would mean that not only content but also language will be the work not of the quaestor but of the *suggerens*. Secondly, and perhaps more important, the combining of *edicta* and *epistulae* by fifth-century lawyers under the umbrella title of *leges generales* may obscure (for us) the fact that *edicta* and *epistulae* were not all produced by the same palatine secretaries—a division of responsibility that one might expect, given that some *epistulae*, written for a limited and specific purpose, were not *leges generales*. It will be argued below that the quaestor was responsible, on the whole, for the style of whatever document was authorized in the consistory, but that the transmission of imperial constitutions in the form of *epistulae* to relevant officials probably did not lie with the quaestor but with the *magister memoriae*, who had the authority to make minor stylistic alterations, if he chose.

By the early fifth century, the office of imperial quaestor had been in existence for nearly a century. In the course of its evolution, the legal character of the office had come to predominate over its other functions: Antiochus Chuzon, the master-mind behind the *Theodosian Code* in the 430s, is recognizably the forerunner of Tribonian.

<sup>11</sup> Honoré, 'The Making of the Theodosian Code', *ZSS Röm. Abt.* (1986), 133–222.

<sup>12</sup> W. E. Voss, *Recht und Rhetorik in den Kaiser-gesetzen der Spätantike. Eine Untersuchung zum nach-klassischen Kauf- und Ubereignungsrecht* (Forsch. zur Byzantinischen Rechtsgeschichte 9, 1982).

<sup>13</sup> *PLRE* I Fl. Eupraxius, pp. 299–300; Decimius Magnus Ausonius 7, pp. 40–1; Virius Nicomachus Flavianus 15, pp. 347–9. In support of the *PLRE* dating of Flavianus' quaestorship to 388–90 see Tony

Honoré, 'Some writings of Nicomachus' Flavianus', backed by John Matthews, 'Nicomachus Flavianus' quaestorship: the historical evidence', in *Xenia*, ed. W. Schuller (forthcoming).

<sup>14</sup> Honoré, art. cit. (n. 11), also uses the German term 'Textstufen' in deference to L. Wieacker, *Textstufen Klassischer Juristen* (1960), thus evoking the wider scholarly context of the analysis of the texts of the Justinianic corpus.

Moreover, we are better informed about the imperial quaestor of the early fifth century than about quaestors under Constantius II. Our point of departure, then, is the quaestor in the decades immediately preceding the compilation of the *Theodosian Code*. What did he do?

#### I. FUNCTION: *LEGES DICTANDAE*

At the time of the *Notitia Dignitatum*, the quaestor was a *vir illustris*<sup>15</sup> and a member of the consistory.<sup>16</sup> His main responsibilities, according to the *Notitia*, were *leges dictandae* and *preces*, petitions; he also supervised the *laterculum minus*, the 'lesser register' of minor administrators.<sup>17</sup> The quaestor had no *officium*:<sup>18</sup> he was expected to use the services of clerks and, presumably, advisers, from the three main secretariats of the *memoria*, *epistulae* and *libelli*, whose *magistri* were subject, not to him, but to the overall head of the court civil and military departments, the *magister officiorum*.

The difficult phrase *leges dictandae* defines, and limits, the quaestor's place in the court legislative procedure of the later Empire. It means what it says, and no more. The quaestor did not 'make laws' nor was he responsible for their content; he only 'dictated' them.

The primary sense of *dictare* is to dictate something to another as opposed to writing it with one's own hand. Licinius, for example, is said to have seen an angel in a dream, who told him the words of a prayer he was to use before a battle; he awoke, summoned a secretary 'and dictated these words just as he had heard them'.<sup>19</sup> Dictation was resorted to by anyone unable to write due to illiteracy, illness or approaching death. The jurist Paulus considered whether a will was valid if it had been dictated to a scribe, who took it down in shorthand, by a soldier, who then died before it could be copied out in full; Paulus decided that a soldier could make a will however he liked, provided there were full proofs of authenticity.<sup>20</sup> The situation was parodied in the undated parody of a soldier's will, the *Testamentum Porcelli*, in which Piglet, about to meet his doom at the butcher's knife, affirms that 'inasmuch as I, Piglet, was unable to write with my own hand, I have dictated this to be written down by another'.<sup>21</sup>

But *dictare* also, by extension, meant 'to write' or 'to compose'. Jerome, for example, claimed that Origen wrote (*dictasse*) two books of his *Commentary on Genesis* on one particular topic. Symmachus, writing to Ausonius as quaestor, acknowledged that Ausonius, being a busy man, had time neither for reading nor for writing even short letters ('cui vix otium est pauca dictare'). In the 460s Sidonius Apollinaris claimed that 'to have written' (*dictasse*) satire in his period of imperial service would have been presumptuous, and to have published it, dangerous ('publicasse autem periculosum').<sup>22</sup> But the usage that is perhaps most illuminating for understanding the quaestor comes also from the *Notitia Dignitatum* and combines the ideas of 'dictating' and 'composing': the *magister epistularum graecarum*, who is not attested in the Western *Notitia*, 'either dictates himself those letters which are customarily sent out in Greek or translates into Greek letters dictated in Latin' ('eas epistulas, quae graece solent emitti, aut ipse dictat aut latine dictatas transfert in graecum').<sup>23</sup>

<sup>15</sup> *Not. Dig. Or.* 12 and *Occ.* 10, 'insignia viri illustris quaestoris'.

<sup>16</sup> *CT* 11. 39. 5, minutes of the consistory for 23 March 362, 'adstante Iovio viro clarissimo quaestore'; *Amm. Marc.* 28. 1. 25 for the quaestor Eupraxius in consistory. See below, p. 158.

<sup>17</sup> Three constitutions about challenges to the quaestor's control of the *laterculum minus* between 416 and 424 comprise *CT* 1. 8. 1-3, 'De Officio Quaestoris'.

<sup>18</sup> *Not. Dig. Or.* 12, 'officium non habet sed adiutores de scriniis quos voluerit', with *Occ.* 10, 'habet subadiutores adiutores memoriales de scriniis diversis'. These are the *scrinia* of the secretariat, cf. *CJ* 12. 28. 1, 'in illis qui in scriniis nobis, id est memoriae epistularum libellorumque versati sunt' (29 Oct. 314).

<sup>19</sup> Lactant., *de mort. pers.* 46. 5.

<sup>20</sup> *Dig.* 29. 1. 40 *pr.*

<sup>21</sup> *Testamentum Porcelli*, p. 243. 3. This is first referred to by Jerome, *Comm. in Isai.* 12 *pr.* and *Cont. Ruf.* 1. 17. It may therefore date from the fourth century. See B. Baldwin, 'The Testamentum Porcelli', most accessible in his *Studies in Late Roman and Byzantine History, Literature and Language* (1984), 137-48.

<sup>22</sup> *Jer., Ep.* 36. 9. 2; *Symm., Ep.* 1. 23. 4; *Sid. Ap., Ep.* 1. 11. 1 and for other refs. *Thesaurus*, s.v. 'dicto', coll. 1009-14.

<sup>23</sup> *Not. Dig. Or.* 19. 13.

On the whole, it seems that the quaestor by 'dictating' laws, made himself responsible for their style. However, the linguistic usage exemplified by Licinius' angel, who reportedly supplied him with the exact words of the prayer he was to dictate to his secretary, shows that the one who dictated may not always have determined the style of the resulting document. Thus the quaestor's dictation of some laws may have meant in practice little more than a regurgitation of the wording of the *suggestio*, although one suspects that most quaestors would not have been able to resist adding some flourishes of their own. But the quaestors were not responsible for the content of what they dictated. That was determined by those who proposed laws, who were mainly praetorian prefects or palatine ministers with departments to look after.<sup>24</sup> The quaestor had no provincial responsibility and no department, and may have been expected not to propose laws himself but to give unbiased advice on the proposals of others.

If the responsibility of a quaestor for any constitution extended no further than the style, and the content was determined by others, it follows that the quaestor had to write what he was told. When Valentinian in 369 issued a law removing exemption from torture from all suspected of treasonable acts, it would have been dictated by the quaestor Eupraxius, presumably much against his conscience, as he was to be quick to lend support to a senatorial delegation arguing successfully for its repeal in the following year.<sup>25</sup> It was also possible for a situation to arise in which a pagan quaestor might compose laws for a Christian emperor. Nicomachus Flavianus, quaestor to Theodosius I from late 388 to 390, was, in 389, given the congenial task of dictating several constitutions against Christian heretics. This he did with verve and vituperative panache, referring to one sect as 'Eunomiani spadones', Eunomian eunuchs, and expelling all heretical clergy and 'si qui clericatus velamine religioni maculam conantur infligere' from the city and suburbs 'ex funestis conciliabulis'.<sup>26</sup> Insiders may have been quietly amused by this famous hater of Christians being allowed to engage in Christian-bashing at the behest of the Christian Theodosius I.

The emperor subscribed the laws personally; they, like the victories of his generals, were technically 'his'. To the world outside the court, the style of the law was the style of the imperial legislator and set the tone of his reign. Under the early empire there had been a convention that the emperor did a lot of his own work and wrote in his own words,<sup>27</sup> although given the sheer amount of work to be done 'by the emperor', it was probably not humanly possible to observe that convention in practice. However, as late as the reign of Marcus Aurelius it could be maintained that emperors needed eloquence of their own because they could not run the empire without it, implying that the emperor was still expected to be responsible for his style and that it was not meant to be the work of others (although elsewhere the same writer supplies a list of inadequate emperors who did employ ghost-writers).<sup>28</sup> The convention that emperors were expected to write something themselves continued into the fourth century. Eusebius in his panegyric *Life of Constantine* stated that Constantine wrote a letter on the errors of paganism 'in his own hand'; that he composed orations in Latin himself, which were translated into Greek by special interpreters; and that he even delivered to large audiences talks on theological subjects composed by himself.<sup>29</sup> The tradition of imperial authorship continued after him. Ammianus grumbled about Constantius II's self-glorifying style in letters 'dictated' by him,<sup>30</sup> and Julian had his own extravagant and idiosyncratic ideas about personal communications with his subjects, justifying himself in Greek and at length from

<sup>24</sup> See below, p. 164.

<sup>25</sup> Amm. 28. 1. 10.

<sup>26</sup> *CT* 16. 5. 17 (4 May 389); 18 (17 June 389); 19 (26 Nov. 389).

<sup>27</sup> Millar, *ERW*, 203–6 (on *orationes*); 'that not all emperors approached the distinction of Julius Caesar, and that some received assistance in composition is less important than the expectation itself' (p. 206).

<sup>28</sup> Fronto, *De Eloq.* 1. 5 and for discussion, E. Champlin, *Fronto and Antonine Rome* (1980), 122–5. For the other side see Fronto, *Ad Verum Imp.* 2. 1. 5 for

(exaggerated) allegations of borrowed eloquence, e.g. 'Nerva facta sua in senatu verbis rogaticis commendavit'; *ibid.* 7 on emperors from Gaius to Vitellius, 'quis eorum oratione sua aut senatum adfari, quis edictum, quis epistulam suismet verbis componere potuit?'

<sup>29</sup> Eus., *V.C.* 4. 8, φέρεται μὲν οὖν ῥωμαία γλώττη παρ' αὐτοῖς ἡμῖν καὶ τοῦτο τὸ βασιλέως ἰδιόγραφον γράμμα; also *V.C.* 4. 32; 4. 29. 2; 2. 47, with Millar, *ERW*, 205–6.

<sup>30</sup> Amm. 15. 1. 3.

Athens to Antioch. What cannot be assessed is how far the eloquence of others was being regularly borrowed in official documents. The use of experts in the drafting of rescript-law at least must go back to the *a libellis* of the Severans and the early third century: the styles of Papinian, Ulpian and Modestinus, all secretaries *a libellis*, have been identified, by comparison with their writings in the *Digest*, in imperial rescripts of the period.<sup>31</sup> The composing or dictating of laws by the quaestor merely took the process of delegation one stage further.

A gap therefore opened and widened between the convention of the direct involvement of the emperor and the fact that his laws were proposed, discussed and even composed by others. Nevertheless, in the cities of the empire, the 'tone' of laws would be read as that of the emperor himself. Thus, to revert to Nicomachus Flavianus and his laws, the strident denunciations of heretics would be taken not as anti-Christian polemic by a pagan but as the righteous anger against heretics of an orthodox Christian emperor. In the Roman world, the *persona* of the quaestor was absorbed in that of the emperor. Yet the emperor depended on the quaestor as his channel of communication; with the dictation of laws a control of a part of the emperor's image had passed into the quaestor's keeping.

## II. ORIGINS AND EVOLUTION

The beginnings of the imperial quaestorship are shrouded in mystery. In an aside on the murder of a quaestor by mutinous soldiers in 408, the Byzantine historian Zosimus observed that the quaestor 'was the man appointed to communicate the emperor's decisions (ὁ τὰ βασιλεῖ δοκοῦντα τεταγμένος ὑπαγορεύειν), who has been called the quaestor since the time of Constantine'.<sup>32</sup> This is the only evidence for ascribing the creation of the post to the first Christian emperor. It is not impressive, but does receive some corroboration from the appearance of some quaestors in the historical record soon after. The first quaestors of certain date, Fl. Taurus, Montius and Leontius, occur in 354.<sup>33</sup>

Zosimus' view of the quaestor as the communicator of imperial decisions rather than simply the man who dictated laws reveals a broader perspective on the functions of the quaestor than any so far examined. He is seen now acting for the emperor in a wider sense. This, and the title 'quaestor', may together provide a clue as to how the office was initially envisaged. According to A. H. M. Jones, 'the curious title is probably an antiquarian reminiscence of the *quaestores Augusti* of the Principate, who used to read the emperor's speeches in the senate'.<sup>34</sup> In fact, the title may be less curious and reflect a greater degree of continuity than the comment allows. The *quaestores Augusti* under the early Empire were two out of the twenty senatorial *quaestores* selected annually for the honorific task of reading out the emperor's letters (*orationes*) to the Senate in the absence of the emperor.<sup>35</sup> The title 'quaestor Augusti' continued in use down to the reign of Antoninus Pius. For the first half of the second century it overlapped with, and marked a superior status to, the *quaestor candidatus*, who is first heard of at the end of the first century; both types of quaestor were favoured by the emperor. Under Marcus Aurelius the titles were fused, and thereafter all quaestors who received the *commendatio* of the emperor were *quaestores candidati*.<sup>36</sup> In the time of Ulpian, under the Severans, the *quaestores candidati* were still given the unique privilege of reading out imperial letters in the Senate.<sup>37</sup> *Quaestores candidati* continue to be attested through the third century down into the reign of

<sup>31</sup> Tony Honoré, "'Imperial' Rescripts A.D. 193-305: Authorship and Authenticity', *JRS* 69 (1979), 51-64.

<sup>32</sup> Zos., *Hist. Nov.* 5. 32. 6.

<sup>33</sup> *Amm.* 14. 11. 14, 'Taurus quaestor ad Armeniam missus' and 'inter quos Leontius erat...ut quaestor'; *Amm.* 14. 7 for Montius as quaestor.

<sup>34</sup> Jones, *LRE*, 104.

<sup>35</sup> R. J. A. Talbert, *The Senate of Imperial Rome* (1984), 163-84.

<sup>36</sup> In general, see M. Cébeillac, *Les 'Quaestores Principis et Candidati' aux Ier et IIème siècles de l'Empire* (1972).

<sup>37</sup> Ulpian at *Dig.* 1. 13. 1. 2. and 4, 'verum excepti erant candidati principis: hi enim solis libris principalibus in senatu legendis vacant. (4) Ex his, sicut dicimus, quidam sunt qui candidati principis dicebantur quique epistulas eius in senatu legunt'.

Diocletian.<sup>38</sup> By the time of Constantine, the senatorial quaestorship had come to be reserved for sons of senators, and all senatorial quaestors from then on were effectively *quaestores candidati*, whether or not they left their full title on record. The quaestorship could be held by teenage sons of senators, but access to the Senate was reserved for holders of the praetorship.<sup>39</sup> It follows that these quaestors could no longer read out imperial *orationes* in the Senate.

There is a clear conceptual link between the early *quaestores Augusti* (with the later *quaestores candidati*), who spoke the emperor's words in the Senate, and the late Roman imperial quaestor, who, as Zosimus said, communicated the emperor's decisions and was, as a late Greek epitaph put it, the στόμα βασιλέως.<sup>40</sup> The late Roman quaestor who 'dictated laws' in the consistory was responsible for literary and legal productions which, once promulgated and published in the cities of the empire, were taken to be the words of the emperor. As they were, for the most part, the words of the quaestor, it was no exaggeration to claim, as did Cassiodorus, the Roman quaestor of the Ostrogoths, writing as if he were the king commenting on the quaestorship, that 'we embrace with our whole heart the quaestorship, which we hold to be the utterance of our tongue'.<sup>41</sup> That feature of the quaestor, his role of publicist, had remained constant from Constantine to Theodoric. In the early fourth century, the main difference between the new-style imperial quaestorian communicators and their senatorial predecessors was that the new quaestors were based at court and their careers were not tied to the senatorial *cursus* of the Roman senators at Rome.

But is this appearance of continuity illusory? The distinction between the old senatorial and the new imperial types of quaestor would surely have been obvious at once, if the imperial quaestor were called, not the 'quaestor', but the 'quaestor sacri palatii', as he is throughout the first and second volumes of the *Prosopography of the Later Roman Empire*. It is true that one would expect late Roman writers to make the distinction obvious by the use of a separate formal title. In fact, and *contra PLRE*, in the fourth century and even in the fifth, there was no such fixed formal title. Ammianus, Symmachus, the *Notitia Dignitatum* and the relevant headings of the *Codes* of Theodosius and Justinian all refer simply to the 'quaestor': the context was to speak for itself. It has to be conceded that Fl. Taurus, quaestor in 354, is referred to on his inscription dating from the mid-360s as 'quaestor sacri palatii'.<sup>42</sup> As against that, I have found no other reference to a 'quaestor sacri palatii' before the designation of Antiochus Chuzon as such in the constitution of 429 which sets up the first *Theodosian Code* commission.<sup>43</sup> But a more important objection is that when the distinction between the senatorial and imperial quaestors was made explicit, a number of different formulae were used, none of which can be shown to carry an official stamp: the elder Nicomachus Flavianus, quaestor in 388–90 and the usurper Eugenius' most formidable pagan backer in 392–4, was called 'quaestor intra palatium' in an inscription of 394;<sup>44</sup> and, in an inscription set up to rehabilitate his memory in 431, he was 'quaestor aulae divi Theodosii'.<sup>45</sup> One suspects here an element of improvisation for what may have been an exceptional case. Flavianus, unlike any other known quaestor, had risen through the Roman senatorial *cursus*, which began with (senatorial) quaestor, praetor and proceeded to senatorial governorships.<sup>46</sup> He had therefore held both types of quaestorship, and it made sense to differentiate between them when they were combined on the same inscriptions.

Throughout the fourth century, then, and well into the fifth, the imperial quaestor was referred to simply as such; if some more impressive-sounding addition

<sup>38</sup> e.g. T. Flavius Postumius Titianus 9, *PLRE* 1, pp. 919–20, who was *quaestor candidatus*, praetor and suffect consul before becoming *corrector* of Italia Transpadana in 291; he was then *cos. ord.* in 301 and *PUR* in 305–6.

<sup>39</sup> *CT* 6. 4. 1 (9 March 329) protecting quaestors under 16. On senatorial careers in general, see A. Chastagnol, 'La carrière sénatoriale du Bas-Empire', *Epigrafia e ordine senatorio*, Tituli 4 (1982), 167–93. For *quaestores candidati* after Constantine see *ibid.*, 173 n. 21.

<sup>40</sup> *Anth. Pal.* 16. 48 (epitaph of Proclus).

<sup>41</sup> Cass., *Var.* 6. 5, 'quaesturam toto corde recipimus, quam nostrae linguae vocem esse censemus'.

<sup>42</sup> *AE* 1934, 159, Rome 364/7.

<sup>43</sup> *CT* 1. 1. 5, 'Antiochum virum inlustrem quaestorem sacri palatii'.

<sup>44</sup> *CIL* vi. 1782 = ILS 2947.

<sup>45</sup> *CIL* vi. 1783 = ILS 2948.

<sup>46</sup> Chastagnol, *art. cit.* (n. 39), 175–80.

was required, there was, as yet, no fixed formula. With the growth of court ceremonial in the fifth century, the addition of 'sacri palatii' became more common, although never strictly official, and quaestors continued to be described simply as such without further embroidery down to the time of Justinian.<sup>47</sup> We may therefore continue to do the same. And we may also be sure that the continuity from quaestors of the Early Empire reflected in their title entailed a broader definition of their function than that implied by concentration on their work with *leges* to the exclusion of all else.

When quaestors first emerge into the evidence in 354, they are found acting as the emperor's representatives and have no apparent connection with laws. They serve on embassies or safeguard imperial interests in delicate and even dangerous situations. In 354 Fl. Taurus went on a mission to Armenia; its object is not known, but Armenia was, as always, poised uneasily between the Roman and Persian empires, then in a state of war, and required careful handling.<sup>48</sup> In the same year an elderly quaestor, Montius, was serving with the Caesar Gallus when the latter ordered the arrest of the prefect Domitianus because of his arrogance. Montius tried to warn the soldiers that Gallus' arrest of Constantius' prefect would be treasonable, but Gallus turned the tables with an inflammatory speech of his own and Montius (with Domitianus) was torn to pieces.<sup>49</sup> As a result of this and other suspicious actions, Gallus was summoned to Constantius II, who by now was running short of quaestors: one Leontius was included 'ut quaestor' in Gallus' escort (which ultimately led Gallus not to the emperor but to his execution).<sup>50</sup> At the end of the decade Constantius once again made extensive use of quaestors. In 360, he appointed his own man, Nebridius, to Julian's staff, an unpopular choice, as it turned out. Later that year he sent his own quaestor on an embassy to the Caesar Julian conveying a letter from Constantius refusing him the title of Augustus, which had been conferred, or imposed, on Julian by his soldiers at Paris. The quaestor, Leonas, may have been apprehensive about his reception, but Julian was too wise publicly to blame the messenger for the message.<sup>51</sup> In all the situations outlined the quaestor acted in the interests, and as the representative of, the ruling Augustus, speaking with the emperor's voice when the emperor himself was unavoidably (and prudently) absent.

Quaestors had no monopoly of the ambassadorial function, which could devolve on anybody with the requisite qualifications of experience, eloquence and the confidence of the emperor. Thus, for example, it was Helion, the master of the offices, who negotiated on behalf of Theodosius II with the Persians in 422, not the quaestor of that year.<sup>52</sup> But quaestors continued to act from time to time as roving officials, even when their legal role was well established. As late as the 470s in the West we find Julius Nepos' quaestor, Licinianus, conveying the codicils of the patriciate from Nepos to a Gallic nobleman who had spear-headed resistance to Visigothic encroachments; and the same Licinianus was also charged with the task of negotiating a treaty with the Visigoths themselves, who were at that time (474–5) engaged in overrunning what was left of Roman Gaul with little effective opposition.<sup>53</sup> Like other quaestorian envoys, Licinianus was undertaking to act as the emperor's spokesman and was not serving purely as the man who dictated laws. Therefore it may be suggested that the quaestor, in speaking for the emperor, was a recognizable descendant of the early

<sup>47</sup> In support of this I quote, by kind permission of author and recipient, Tony Honoré's letter to John Matthews, which responds to doubts about the 'QSP' raised by the present writer, 'in a sense the phrase QSP never becomes the official designation of the holder of the office; thus Cod. Just. 1. 30 *De Officio Quaestoris*. Nevertheless CTh 1. 1. 5 (429) line 30 *Antiochum virum inlustrem quaestorem sacri palatii* seems to have been copied quite a lot e.g. CJ 7. 62. 32 (440), 7. 62. 34 (Justin), 12. 19. 15 (527), C. Tanta (530) pr. Tribonianus...ex quaestore sacri nostri palatii. I can't trace the expression back beyond 429 but cf. *archiatri sacri palatii* CTh. 13. 3. 14 (387), *universis officiis atque sacri palatii ministeriis* CTh. 7. 4. 35 (423). In other words, you can if you want to make it sound grand add

*sacri palatii* to any palatine office, and the temptation to do so is not just a modern fad'.

<sup>48</sup> Amm. 14. 11. 14.

<sup>49</sup> Amm. 14. 7. 12–18.

<sup>50</sup> Amm. 14. 11. 14.

<sup>51</sup> Amm. 20. 9. 4 with *PLRE I* Leonas, p. 498. Also Nebridius 1, p. 619.

<sup>52</sup> Soc., *HE* 7. 20. 1: Theophanes, *Chron. Anno Mundi* 5921. Helion also stood in for Theodosius II when Valentinian III was made Caesar (424) and Augustus (425).

<sup>53</sup> Sid. Ap., *Ep.* 5. 16. 1 (codicils of patriciate for Ecdicius); 3. 7. 2–4 (embassy to Euric of Visigoths); *PLRE II* Licinianus 1, p. 682.

senatorial *quaestores Augusti* and that this was, perhaps, how his role was initially conceived.

While quaestors went on missions as occasion arose, the most enduring forum for the exertion of quaestorian influence was the imperial consistory. Like quaestors, the *consistorium* is attested under that name only from the reign of Constantius II.<sup>54</sup> But emperors had always retained a *consilium*, and it may have been Constantine who made more formal the traditional *consilium principis*, staffing it with chosen advisers known as *comites Flaviales* or *comites intra palatium*.<sup>55</sup> Under Constantius II these became known as *comites ordinis primi intra consistorium*: the first known is Vulcacius Rufinus, *v.c.* and *comes intra consistorium* at some point before becoming *comes Orientis* by April 342.<sup>56</sup> The office was not of the highest dignity but tended to be held early in the career: some holders at least, such as Rufinus and Memmius Vitrasius Orfitus, *comes ordinis primi iterum intra consistorium* (before 352), were destined for greater things.<sup>57</sup>

The evidence for the quaestors of 354, Taurus, Montius, and Leontius, does not establish membership of the consistory. However, one stage in the evolution of the quaestorship may be marked by the career inscription of Saturninius Secundus Salutius who was *item comes ordinis primi intra consistorium et quaestor*, an office immediately preceding his prefecture, which was that of the Orient, to which he was appointed by Julian in 361.<sup>58</sup> Quaestors were already being drawn from *comites ordinis primi*. Fl. Taurus had been *comes*, but not necessarily in the consistory, in 345; Salutius himself had earlier been *comes ordinis primi*, then proconsul of Africa; and Leonas was *v.c.* and *comes* in 359 before becoming quaestor to Constantius II in 360. Salutius' combination of offices suggests that the quaestor was perhaps at that stage more a special kind of *comes* and not even automatically recognized as having consistory membership. The impression given that Salutius had a special status in the consistory would fit with the supposition that the joint office was held under Julian (with whom he was in high favour) in Gaul. In his *Letter to the Athenians*, Julian complained that Constantius had allowed him only one good man, Salutius, among a large number of bad ones. Later, when Salutius turned out to be too good for the job, Constantius 'took measures to remove Salutius, as being my friend, and immediately to give me Lucillianus as his replacement (*διάδοχον*)'.<sup>59</sup> Julian's language, and especially the mention of a replacement or successor to Salutius, points to his having held some kind of office in which he could be replaced. Taken with the inscription, Julian's version of events lends support to the idea that Salutius' office in Gaul was that of *comes intra consistorium et quaestor*; and that it was Julian who first made or confirmed the connection between the quaestorship and consistory membership. It may, therefore, not be a coincidence that a quaestor is first attested in consistory minutes under Julian in Constantinople in 362.<sup>60</sup> However, in the present state of the evidence, most of this can be little more than hypothesis.

The rise of the quaestor took place in the context of the development of the consistory and of the *comites* in the consistory, all of whom may have ranked as *spectabiles* under Constantius II.<sup>61</sup> Slowly the quaestor, also on occasion known as the *comes et quaestor*,<sup>62</sup> along with the master of the offices and the two financial *comites*,

<sup>54</sup> On evolution of the consistory under Constantius II, see C. Vogler, *Constance II et l'Administration impériale* (1979), 216–20.

<sup>55</sup> e.g. L. Crepereius Madalianus, *PLRE* I, p. 530, *comes Flavialis* c. 337.

<sup>56</sup> *CT* 12. 1. 33 (5 April 342). See *PLRE* I Vulcacius Rufinus 25, pp. 782–3, Vogler, *op. cit.*, 218.

<sup>57</sup> *PLRE* I Memmius Vitrasius Orfitus, pp. 651–3. Rufinus was PPO Gall. in 354 and It. Illyr. et Afr. in 356–8. Orfitus was PUR in 353–5 and 357–9.

<sup>58</sup> *CIL* vi. 1764 = *ILS* 1255 (Trajan's Forum). For all refs., *PLRE* I Saturninius Secundus Salutius 3, pp. 814–17.

<sup>59</sup> Julian, *Letter to the Athenians*, 281C and 282C.

<sup>60</sup> *CT* 11. 39. 5, minutes of the consistory, 23 March 362, 'adstante Iovio viro clarissimo quaestore, Anatolio

magistro officiorum, Felice comite sacrarum largitionum'.

<sup>61</sup> No direct evidence for Constantius (see below n. 63 for first attestations of *v.i.* and *v.s.*). The four palatine ministers on the consistory are *spectabiles* in Valentinian's fixing of orders of precedence, *CT* 6. 9. 1 (372). For later *comites consistoriani* as *spectabiles*, *CT* 6. 12. 1 (399), 'ut eos qui tranquillitatis nostrae consistorii dici comites meruerunt, proconsularibus aequari generaliter iuberemus'.

<sup>62</sup> Aus., *Praef.* 1. 35, 'ego comes et quaestor'; Eubulus (quaestor 435), *CT* 1. 1. 6. 2, 'Eubulus inlustris ac magnificus comes et quaestor noster'; Martyrius (quaestor 438), *Nov. Theod.* 1. 7, 'Martyrius v. inl. comes et quaestor'.

drew ahead of the other *comites* of the consistory until, by the fifth century, the four palatine ministers had become *illustres* and, in the East, distinct from the other *comites consistoriani*, who remained *spectabiles*. The stages in the rise are marked by a series of laws about positions in the administrative hierarchy. By the reign of Valentinian I it had become necessary for the ranking of consistory ministers to be defined by comparison with the senatorial offices, which were part of a separate *cursus* and themselves only recently arranged into the triple ranking of *clarissimi* (for young senators), *spectabiles* (*vicarii* and proconsuls) and *illustres* (praetorian and city prefects and ordinary consuls).<sup>63</sup> On 5 July 372 Valentinian stated that the four ex-officio members of the consistory were now to rank above proconsuls.<sup>64</sup> Thus the quaestor and his three palatine colleagues were still in the 370s only *spectabiles*. But by the reigns of Gratian and Theodosius I in the early 380s, they were finally recognized as *illustres*, while behind them the *magistri scriniorum* were firmly established as *spectabiles*.<sup>65</sup> Thus the status of the quaestor improved steadily through the fourth century, but it was an improvement which took place as part of the evolution and strengthening of the palace bureaucracy as a whole and of the *consistorium* in particular during this period.

With the notable exception of Nicomachus Flavianus, quaestors during the fourth century were drawn from provincial *clarissimi* making their way up in the world through the palace bureaucracy rather than the Roman senatorial *cursus* of quaestor (*candidatus*), praetor, *vicarius* and/or proconsul.<sup>66</sup> The two types of career dovetailed at the *illustris* level with prefectures and the ordinary consulship. Early quaestors, such as Salutiarius (from Gaul) and Eupraxius (from Africa), had previously been *magistri memoriae*: Eupraxius had earned promotion straight to the quaestorship in 367 by intervening at an opportune moment to engineer the acclamation of Gratian as Augustus.<sup>67</sup> Quaestors continued to be drawn from the *magistri scriniorum* into the fifth century, and for good reason—there was considerable overlap between the quaestor's function and those of the *scrinia*.<sup>68</sup> But in the late fourth century the quaestorship is also found following the countship of the *sacrae largitiones*, as in the careers of the Spaniard Maternus Cynegius (quaestor, East, 383) and Florentinus (quaestor, West, 395), one of the many Gauls drawn into the palatine service during the reigns of Valentinian I and Gratian.<sup>69</sup> Nicomachus Flavianus stands out as a quaestor chosen after a purely Roman senatorial career, but there are indications that some quaestors may have 'mixed' their careers by holding senatorial governorships or vicariates as well as palatine offices: Cynegius, appointed, like Flavianus, by Theodosius, had earlier been a *vicarius*; Cl. Lachanius, the father of Rutilius Namatianus, governed Tuscia and Umbria; Cl. Postumus Dardanus was both *magister libellorum* and *consularis* of Viennensis; and Volusianus, like Dardanus a holder of office in the early fifth century, was proconsul of Africa. The last three all derive from the West, and there are no corresponding examples of mixed careers from the East, where quaestors seem to have come, as they had done earlier, from the *comites consistoriani* and the *scrinia*.<sup>70</sup> All known quaestors of the fourth century went on to prefectures, but we should perhaps be careful of assuming that such promotion was automatic. There are many gaps in the record, and we know of many quaestors precisely because they became prefects later.

<sup>63</sup> Chastagnol, art. cit. (n. 39), 176. First attested *v.i.* *CT* 11. 30. 31 (363); first attested *v.s.* is proconsul of Africa in 365 (*CT* 7. 6. 1).

<sup>64</sup> *CT* 6. 9. 1 (5 July 372), 'eorum homines qui sacrario nostro explorata sedulitate oboediunt, hac volumus observatione distingui, ut quaestor atque officiorum magister nec non duo largitionum comites proconsularium honoribus praeferantur'.

<sup>65</sup> *CT* 6. 9. 2 (25 May 380) and 6. 26. 2 (29 March 381) and 4 (28 February 386).

<sup>66</sup> Chastagnol, art. cit. (n. 39), 184–9.

<sup>67</sup> Amm. 27. 6. 14, 'his dictis solemnitate omni firmatis, Eupraxius (Caesariensis Maurus) magister ea tempestate memoriae, primus omnium exclamavit,

'Familia Gratiani hoc meretur' statimque promotus quaestor...'

<sup>68</sup> See below, section III.

<sup>69</sup> *PLRE* I Maternus Cynegius 3, pp. 235–6; Florentinus 2, p. 362.

<sup>70</sup> On Cl. Lachanius as quaestor, Rut. Nam., *de red. suo*, 1. 579–80, with *PLRE* 1, p. 491; on Cl. Postumus Dardanus, *PLRE* II, pp. 346–7; on Rufius Antonius Agrypnus Volusianus 6 as quaestor, Rut. Nam. 1. 171–2, 'huius facundae commissa palatia linguae, primaevus meruit principis ore loqui', with *PLRE* II, pp. 1184–5. For Eubulus, *PLRE* II, p. 403, cited in 429 (*CT* 1. 1. 5) as 'v. sp. ex magistro scrinii.'

We do not know when quaestors first acquired the honorific task of *leges dictandae*, which had become their prerogative by the early fifth century. Such evidence as there is for fourth-century quaestors does, however, suggest that the prime requirement was eloquence, rather than any profound legal expertise that could have been gained by, for example, prolonged study of juristic works. It is true that literary and legal culture went hand in hand, but they were not the same thing. Most educated men knew something about law, but not all specialized; some fourth-century quaestors had other preoccupations. Salutius, for example, was known to be more interested in history, an interest shared by his successor thirty years later, Nicomachus Flavianus.<sup>71</sup> Some might have thought it was carrying respect for literary merit to extremes when Valentinian I appointed Ausonius, the poet-professor from Bordeaux, as quaestor, partly as a reward for services rendered as the tutor to Gratian; Ausonius seems to have known the names of a few ancient statutes suitable for deployment in epigrams but to have had little interest in legal principles.<sup>72</sup> These instances underline the point that although most cultured men knew something about law and could apply their eloquence to the framing of legal texts, the expertise in law appropriate for 'legal advisers' was not expected of quaestors in the fourth century.

The first quaestor to be attested as advising on matters legal is Eupraxius (367–70), who was in the consistory with Valentinian I in 370 when three distinguished senators arrived to complain that senators were being tortured, contrary to all precedent. Valentinian, whose understanding of the treason law seems to have been imperfect, indignantly denied that he had agreed to any such thing. The irate emperor was gently but firmly corrected by his quaestor 'and by this freedom of speech was abrogated a harsh provision which exceeded all previous instances of cruelty'.<sup>73</sup>

The fourth-century evidence seldom shows quaestors in the act of dictating the 'words of the emperor'. In a bizarre episode in 365 the skills of an ex-quaestor, Nebridius, were exploited by the usurper Procopius. Nebridius, Julian's quaestor in Gaul in 360, was Valens' praetorian prefect of the East in 365 when he was thrown into prison by the usurper and was there made to write a letter to a military commander in Thrace, who had not yet heard of the revolt, summoning him to Constantinople 'as if at the order of Valens'.<sup>74</sup> The deceit depended on the pretence that Nebridius was still praetorian prefect and a free man—and on the assumption that the ill-fated former quaestor could draft imperial-style letters.

A rather different picture, in which the importance of the quaestor is considerably down-graded, is given by an episode recounted in Mark the Deacon's *Life of Porphyry of Gaza*, a document which has been denounced by some as largely fictitious.<sup>75</sup> In 402 a group of clergy arrive at Constantinople requesting the destruction of pagan temples and privileges for the clergy. They enlist the help of the empress Eudoxia and various intrigues take place, which result in Arcadius reluctantly agreeing to the petition. Neither the quaestor nor any member of the consistory is consulted. Instead, the quaestor is summoned by Eudoxia, given the petition and ordered to compose a favourable reply in accordance with the gist of the petition (κατὰ τὴν δύνάμιν αὐτοῦ). The quaestor dictates (ὑπηγόρευσεν) the text himself, but is clearly responsible only for the style; the content has already been determined by others.<sup>76</sup> This agrees with the picture offered above of the quaestor himself dictating laws and being personally responsible for the style but not the content. And although

<sup>71</sup> *CIL* vi. 1782 = *ILS* 2947. To Flavianus as 'historico disertissimo'. *CIL* vi. 1783 = *ILS* 2948 (of 431) includes an *oratio ad senatum* in which Theodosius I is represented as hoping for the dedication of the *Annales*: 'et usque ad annuum quos consecrari sibi a quaestore et praefecto suo voluit'.

<sup>72</sup> e.g. Aus., *Epig.* 92 on a gay lawyer with an unfaithful wife, citing, in four lines, *Leges Papia, Iulia, Scantinia* and *Titia*.

<sup>73</sup> *Amm.* 20. 1. 25, 'qui (senatores) cum intromissi in consistorium haec referrent, negantem Valentinianum se id statuisset... moderate redarguit quaestor Eupraxius, hacque libertate emendatum est crudele praecep-

tum supergressum omnia diritatis exempla'. The 'crudele praeceptum' had arisen from a *relatio* of Maximinus on treason trials conducted by him as *praefectus annonae* in 369 (*Amm.* 28. 1. 10–11), for which see further below, p. 169.

<sup>74</sup> *Amm.* 26. 7. 4–5; also *Zos.*, *Hist. Nov.* 4. 6. 2.

<sup>75</sup> See the edition of H. Grégoire and M.-A. Kugener, *Marc le Diacre, Vie de Porphyre, Évêque de Gaza* (Budé, Coll. Byz., 1930), introduction, xii–xxxvii in defence of its accuracy.

<sup>76</sup> *Vit. Porph.* 50. The text was then 'subscribed' (51) by an unknown; texts composed by the quaestor should have been subscribed by the emperor.

the empress took the step of summoning the quaestor, she did already have Arcadius' grudging authority for the decision. Whether the empress and her allies could bypass the consistory and use the quaestor as a form of glorified secretary is another matter. If the story is true (which may be doubted), it is an intriguing example of how the accepted official function of a palatine minister could be distorted (the quaestor was not in fact just a secretary) when boudoir politics were allowed to count for more than consistory procedure.

Quaestors, then, had the literary talent to compose eloquent imperial laws. Their qualifications and what has been so far dimly glimpsed of their actions show them as, primarily, legal draftsmen, not legal advisers, although Eupraxius was clearly capable of being both, and educated Romans tended to have at least a smattering of legal culture. No doubt the men 'appointed to communicate the decisions of the emperor', as Zosimus put it, added legal advice on occasion to their other multifarious duties. But the quaestor, as initially conceived in the fourth century, was not yet uniquely connected with laws. His evolution and rise were gradual and must be seen in the context of a consistory which grew in authority as the emperor's advisory council within a generally ever-stronger palace bureaucracy. Within the consistory, the quaestor did not (as a rule) propose laws, nor did he make them, but he formulated their style. But outside the consistory others, as we shall now see, both advised on laws and had a hand in their publication.

### III. QUAESTOR, *MAGISTRI*, *SCRINIA*

The quaestor employed *adiutores* from the *scrinia*. The offices of the palace secretariat, consisting principally of the *a memoria*, *ab epistulis* and *a libellis*, had existed from the early empire.<sup>77</sup> Under Diocletian the principal secretaries were called *magistri*. The *Notitia* records that they, like the quaestor, did not have *officia* of their own but also used assistants from the *scrinia* as required.<sup>78</sup> The quaestor and the *magistri scriniorum* were therefore drawing on the same pool of expertise, and some similarity and perhaps even overlap of function between them may be anticipated.

As described in the *Notitia*, all three main *magistri* dealt with legal problems, including *preces* (petitions). The *magister memoriae*, who was the senior of the three, 'dictates all *annotationes* and sends them out and responds to petitions'.<sup>79</sup> The *magister epistularum* 'handles embassies from cities, requests for legal advice (*consultationes*) and petitions'.<sup>80</sup> And the *magister libellorum*, who took over the early imperial office of the *a cognitionibus* sometime in the fourth century, 'handles (the organization of) court cases (*cognitiones*) and petitions'.<sup>81</sup> All this legal business flowing into the *scrinia* would have required a large staff of reasonably skilled lawyers to deal with even the routine requests. Difficult problems would require an imperial decision, but the quaestor, if he was wise (and especially if, as so often, he was more rhetorician than lawyer), would have taken advice from legal experts in the *scrinia*.<sup>82</sup>

As we have seen, several quaestors, notably Salutius and Eupraxius in the fourth century and Dardanus (West) and Eubulus (East) in the fifth, had themselves been *magistri scriniorum*. This is not a large proportion of known quaestors, but there are several of whose careers before their quaestorships nothing is known and who could have risen through the *scrinia*. The close association between quaestors, *magistri scriniorum* and the process of creating constitutions is most effectively illustrated by the composition of the first *Theodosian Code* commission of 429. It consisted of one

<sup>77</sup> The functions and status of the *a memoria* under the early Empire are uncertain. See Millar, *ERW*, 264–6.

<sup>78</sup> *Not. Dig. Or.* 19. 14, 'officium autem de ipsis nemo habet sed adiutores electos de scriniis'.

<sup>79</sup> *ibid.*, 6–7, 'adnotationes omnes dictat et emittit, et precibus respondet'.

<sup>80</sup> *ibid.* 8–9, 'legationes civitatum, consultationes et preces tractat'.

<sup>81</sup> *ibid.* 10–11, 'cognitiones et preces tractat'. For the continuing legal character of the *magister libellorum*, see

Voss, *op. cit.* (n. 12), 31–3. The absorption of the *cognitiones* by the *libelli* may be signalled in the career of Sextilius Agesilaus Aedesius, *PLRE* 1, pp. 15–16. His inscription, *CIL* vi. 510 = *ILS* 4152 (of 376), gives mid-career offices as 'item magister libellor. et cognition. sacrarum [combining *libelli* and *cognitiones*], magister epistular., magister memoriae...'

<sup>82</sup> As pointed out by Honoré, discussing the tension that could arise between *scrinia* and quaestor, 'Ausonius and Vulgar Law', *Jura* 35 (1984, publ. 1987), 75–85, esp. 75 and 80.

quaestor, one ex-quaestor, three current *magistri scriniorum* and two former *magistri* (one of whom, Eubulus, was to be quaestor in 435), plus a jurist and one other—a total of seven quaestors and *magistri* out of a membership of nine.<sup>83</sup> These formed the group expected to have the strongest grasp of the nature of imperial law.

Too many experts can pose problems of their own. Lines of demarcation, perhaps never properly drawn in the first place, could become blurred. The *magistri* went back, in principle, many centuries before the imperial quaestor was thought of, and emperors had been issuing legal pronouncements of various kinds relying on the help of those offices for as long.<sup>84</sup> For much of the fourth century, the quaestor, whose job may not initially have been seen as legally related at all, was faced with defining his role in face of functions previously exercised by the *magistri scriniorum*. His membership of the consistory gave him an advantage over them as a counsellor with direct access to the emperor's ear, which was to prove decisive by the time that the quaestor rose to his full glory in the fifth century. But if the quaestor dictated *leges*, the *scrinia* had been drafting imperial pronouncements for years and they did not surrender that function now. The *magistri*, and in particular the *magister memoriae*, also spoke with the emperor's voice and could exert some influence on the style of *epistulae* preserved in the *Theodosian Code* as 'general laws'.

The evidence for the exact division between a quaestor's duties in the dictating of laws and those of the *magister memoriae* is allusive and hard to assess. Yet the attempt must be made if we are to appreciate the precise scope of the quaestor's role in the making of constitutions.

Eloquence was, in the 370s, the main qualification for both offices, a fact which could lead to both being described in identical terms. Symmachus is instructive on Fl. Claudius Antonius (quaestor 370/3).<sup>85</sup> Antonius had 'recently' drafted an *oratio* to the Senate, in which he had improved on his already high reputation for eloquence gained as a *magister*. Symmachus had heard of his gift with words before, but the *oratio* had added to the reputation Antonius had gained as *magister*, which was 'fitted to great affairs and well suited to the writings of emperors' ('maiestatis scriptis aptata'). Assuming that Antonius had not held two *magisteria* in succession (*epistulae/libelli* with promotion to the *memoria*), the passage reveals him as holding one *magisterium scrinii* followed by the quaestorship. In both capacities, the glory of Antonius' eloquence was put at the service of composing and enhancing the 'emperor's' writings. But since we do not know the subject of the *oratio*, there is no evidence to be gleaned from this incident to undermine the assumption that an *oratio* dictated by the quaestor Antonius was on some legal matter.

Another *oratio* to the Senate, this time on Gratian's victories over the Alamanni, was read out by Symmachus in the Senate in 379.<sup>86</sup> Its composer was Proculus Gregorius, who had been congratulated by Symmachus elsewhere on his promotion 'to the headship of a literary office' ('pontificio litterati honoris auctus').<sup>87</sup> This is all we know about Gregorius' office, which could be either quaestorship or *magisterium memoriae*; Symmachus, of course, knew which, but his description could allude to either. If the quaestor was acting as the emperor's spokesman on all matters, Gregorius must have been a quaestor. But there are two reasons for hesitation. One is that this *oratio* is not a law but a report, and we have no evidence for quaestors dictating things that were not laws. Second, there is some slight evidence that *orationes* to the Senate that were reports were written by the *magister memoriae*. Although the author of the *Historia Augusta*, who wrote c. 395, is not a reliable witness for anything, it has recently been argued by Honoré that he was familiar with

<sup>83</sup> *CT* 1. 1. 5, 'Antiochum virum inlustrem exquaestore et praefectum elegimus, Antiochum virum inlustrem quaestorem sacri palatii, Theodorum v.s. comitem et magistrum memoriae, Eudicium et Eusebium v.s. magistros scriniorum, Iohannem v.s. ex comite nostri sacrarii, Comazontem atque Eubulum v.s. ex magistris scriniorum et Apellem virum disertissimum scholasticum'.

<sup>84</sup> But we do not know which office composed edicts

under the principate or under Diocletian, on which see Millar, *ERW*, 258–9.

<sup>85</sup> *PLRE* 1 Fl. Claudius Antonius 5, p. 77. Symm., *Ep.* 1. 89, 'sed magnis rebus accommodatam et maiestatis scriptis aptatam gloriam, quam magisterio ante quaesisti, recens auxit oratio'.

<sup>86</sup> Symm., *Ep.* 1. 95 (to Syagrius). *PLRE* 1 Proculus Gregorius 9, p. 404.

<sup>87</sup> Symm., *Ep.* 3. 17.

*scrinia* procedure.<sup>88</sup> So when he describes *magistri memoriae* writing letters on behalf of emperors to the Senate, he should perhaps be taken seriously. This happens on the death of Carus, when the *magister memoriae* is made by the author to write a letter to the Senate (in fact composed by the author) which is solemnly adduced to 'prove' that Carus died a natural death.<sup>89</sup> Earlier, in the *Life* of Claudius Gothicus, the biographer invents a letter which he then learnedly attributes to Claudius himself—and not to his *magister memoriae*: 'ego verba magistri memoriae non requiro'.<sup>90</sup> If the *Historia Augusta* does accurately reflect the procedure of the late fourth century, the *magister memoriae* employed his eloquence in non-legal imperial *orationes* to the Senate, and Gregorius therefore was *magister memoriae*, not quaestor.

The debatable offices of Antonius and, even more, Gregorius in the 370s show the possibility of ambiguities in references to quaestors and *magistri memoriae* deriving from their shared expertise in eloquence and (perhaps) the fact that they both drafted emperors' *orationes* to the Senate. A more important, and more difficult, problem arises from the language used to describe the early offices of Fl. Mallius Theodorus, whose consulship of 399 was celebrated by Claudian in a panegyric.<sup>91</sup> Theodorus began as an advocate at the court of the praetorian prefect and then held governorships in Africa and Macedonia. He then held an office, *c.* 379, which the editors of *PLRE* I take to be the *memoria*, because his next office, as *comes rei privatae*, is attested in a constitution of March 380<sup>92</sup> (although Claudian describes it in terms more applicable to the *comes sacrarum largitionum*)<sup>93</sup> and quaestorships were held after financial countships, not before. Theodorus, on this argument, could not have held the two offices of *quaestura* followed by *comitiva* because this would have been in the wrong order.

In a society dominated by hierarchy and debates about orders of precedence, holding offices in the right order would have seemed no less important than in the more flexible years of the early Empire. But if Theodorus was *magister memoriae* in 379, it must still be explained why Claudian's description of the office reads so much like that of the quaestor:

Sed non ulterius te praebuit urbibus aula:  
maluit esse suum; terris edicta daturus,  
supplicibus responsa venis. oracula regis  
eloquio crevere tuo, nec dignius umquam  
maiestas meminit se Romana locutam.

(*Paneg. dict. Mall. Theodoro cons.* 33–7)

Theodorus returns from the cities of the provinces to the court (*aula*) 'to give edicts to the lands and responses to petitioners'. His eloquence enhances the pronouncements of the emperor and the imperial *maiestas* of Rome has a style worthy of her. All this reads so much like a job description for the imperial quaestor that Theodorus' quaestorship has been accepted by some without question on the basis of the language alone.<sup>94</sup> The juxtaposition of *edicta* and *responsa* parallels the language of Symmachus to Ausonius as quaestor, 'precum arbiter, legum conditor', and, later, of the *Notitia*, 'leges dictandae; preces'.<sup>95</sup>

For the purposes of the present argument, the best interpretation of Claudian's words is, however, that they do refer to the *magister memoriae*; they thus provide the best evidence so far produced for the overlap between the duties of *magister* and

<sup>88</sup> Honoré, 'Scriptor *Historiae Augustae*', *JRS* 77 (1987), pp. 156–76.

<sup>89</sup> SHA, *Vit. Cat.* 8. 4.

<sup>90</sup> SHA, *Vit. Claud. Goth.* 7. 1–2, 'exstat ipsius epistula missa ad senatum, legenda ad populum... quae talis est: "Senatui populoque Romano Claudius princeps"; haec autem ipse dictasse perhibetur, ego verba magistri memoriae non requiro'.

<sup>91</sup> *PLRE* I Fl. Mallius Theodorus 27, pp. 900–1.

<sup>92</sup> *CT* II. 16 (18 March 380).

<sup>93</sup> Claud., *Theod.* 38–41, 'hinc sacrae mandantur opes orbisque tributa / possessi quidquid fluvius evolvitur auri / quid luce procul venas rimatur sequaces / abdite pallentis fodit sollertia Bessi'.

<sup>94</sup> e.g. by Voss, *op. cit.* (n. 12), 36.

<sup>95</sup> See also Symm., *Ep.* 4. 50, associating laws with quaestorship, 'quid quod te magis quaesturae honor et condendarum sanctionum usus excoluit?' On *oracula*, see Symm., *Ep.* 5. 54 to Felix, quaestor 396–7, 'quaeso te, cogites quid de augusto adyto, cuius loqueris oracula, decet impetrari'.

quaestor. There are, however, two other options, which should be acknowledged. One is that Theodorus was actually quaestor before being *comes rei privatae* (and/or *sacrarum largitionum*). This is anomalous, but only in the light of later careers: Maternus Cynegius (quaestor 383) and Florentinus (395),<sup>96</sup> as mentioned above (p. 157), were *comites sacrarum largitionum* before becoming quaestors; they held office in the reign of Theodosius I or later and it is therefore possible that the order of offices within the consistory, where all four palatine ministers ranked equally, was only fixed in his day. The second option is that Claudian simply made a mistake, thought that Theodorus was the quaestor (although he was really *magister memoriae*) and described him as such. It would have been surprising, however, if Claudian had not checked with his honorand first; further, as a *tribunus et notarius* himself with a friend who married the daughter of a *primicerius notariorum*,<sup>97</sup> he should have known the order in which court offices were normally held.

But could Claudian also have been accurately describing the office of the *memoria*? As we have seen, *magistri*, like Fl. Claudius Antonius and perhaps Proculus Gregorius, did contribute their eloquence to the 'oracula regis', and write things appropriate for the 'maiestas Romana'. On the responses to *supplices*, petitions were officially handled by the *magistri scriniorum* as well as by the quaestor. Finally, Claudian says that he was to 'give' edicts to the world, not that he was to 'make' them. Assuming that Claudian's choice of word is not dictated by the need to make the line scan, he seems to be referring not to the formulation of edicts by quaestors in the consistory, but to their publication after the quaestor's text had received imperial authorization in the consistory.

We have here, then, some indication of a two-tier system in the production of 'edicts', the first involving the quaestor dictating the law in the consistory, the second, the dissemination of the law by the *magister memoriae*. In view of the doubt about Theodorus' office, the evidence for this, thus far, is inconclusive. But the argument becomes less tenuous when we turn to the salutary tale of Benivolus, *magister memoriae* in the West in 386. This orthodox Christian was summoned by the Arian empress Justina, mother of Valentinian II, and 'entrusted with imperial decrees to be dictated against the faith of the fathers' ('dictanda adversum fidem patrum imperialia decreta mandantur Benivolo...'). He was promised promotion if he obeyed, but instead he refused and resigned his office. The ecclesiastical historian Rufinus who reports this story does not seem to have been much interested in technical language or bureaucratic procedure, so his language should not be pushed too hard.<sup>98</sup>

It appears, however, that again a *magister memoriae* is found acting like a quaestor, even down to the use of the word 'dictanda...imperialia decreta'. The situation, it has to be admitted, is anomalous, as empresses do not make laws, and there is no indication given of whether this had gone through the consistory or formal discussion, or received authorization from Valentinian II already; such details were irrelevant to Rufinus' purpose. We do not know the form in which the *decreta* were, when they were submitted to Benivolus 'to be dictated'. Had they already been drafted by the quaestor before being handed on to Benivolus to be dictated (in some sense) again? It should be noted here that *dictare* is ambiguous. On the one hand it could refer to a quaestor using the gist of a previous document or decision on which to base his own version, which would be couched in the appropriate style, as Eudoxia's quaestor is represented as doing.<sup>99</sup> On the other, it could, on rarer occasions, refer to the process of dictating, to be written down by others, a text which has already been formulated, as, in a usage cited above, when Lactantius has Licinius 'dictate' to a secretary the exact words supplied to him by the angel.<sup>100</sup> If the second meaning is the one applicable to Benivolus, his job was to 'dictate' further copies of the law, not draft it. And a duty as publicist rather than draftsman is implied in the language of

<sup>96</sup> See above, n. 69.

<sup>97</sup> For Claudian as *tribunus et notarius*, *CIL* vi. 1710 = *ILS* 2949. For the marriage of Palladius and Celerina and Palladius' powerful father-in-law, the *primicerius notariorum*, see Claudian, *Carm. min.* 25.

<sup>98</sup> Ruf., *HE* 11. 16. For 'decreta', compare language of Symm., *Ep.* 2. 13. 3.

<sup>99</sup> *Vit. Porph.* 50, see above p. 158.

<sup>100</sup> Lactant., *de mort. pers.* 46. 5, see above, p. 151.

Benivolus' refusal to 'put forward' impious words ('abnegat se impia posse verba proferre').

More enlightenment is afforded by Sozomen's version of the same story.<sup>101</sup> Where Rufinus had stopped with Benivolus' act of conscience, Sozomen had done some original research and was able to continue the story. Sozomen had read Rufinus, but as an advocate himself in Constantinople he was more interested both in *scrinia* procedure and the texts of laws. Benivolus, whom he knew from Rufinus was *magister memoriae*, is described as being 'in charge of those who write laws (θεσμοί)'. We now have a third level, the scribes in the *scrinia* who wrote (in a strictly physical sense) what are loosely termed 'laws'. This supports the suggestion that Benivolus was entrusted with the job of producing copies of laws. But Sozomen, writing between 439 and 450, also had the *Theodosian Code* to hand (and perhaps other archives) and he identified the νόμος, as he called it, with CT 16. 1. 4 of 23 January 386, which allowed freedom of assembly to Arians, who are described in the text of the law and by Sozomen as the adherents of the doctrines expounded at Rimini and Constantinople. Sozomen seems to have made this identification for himself, and he connects his discovery with Rufinus' narrative by a little inference of his own: 'others' (ἕτεροι) were found and so the law came into being. Assuming that Sozomen was using the *Theodosian Code*, he would have known that the 'law' in question was in fact an *epistula* to Eusignius, the praetorian prefect of Italy and Africa. This text could have been dictated by the *magister memoriae*, already at one remove from the *lex generalis* authorized in the consistory. 'Others' as a group could never have been made responsible for the master-text of a law; they could attend only to its publication, not, in essential respects, to its formulation.

The wording of both accounts of this perhaps atypical incident, especially that of Sozomen, assumes a system of two, perhaps three, tiers for making and communicating imperial laws to officials and subjects. The first stage, which is held to be irrelevant by Rufinus and Sozomen, was that the quaestor dictated a 'law', meaning a *lex generalis* or master-text, in the consistory. This must have carried considerable authority and was the text subscribed by the emperor. The second stage brought in the *magister memoriae*, and perhaps other *magistri* as well. The 'dictating' by the *magister* entailed the production of further texts of the law, in the form of *epistulae*, which incorporated the quaestor's text but also may have contained special directives to the recipients. The scribes in the *scrinia* who took down the 'laws' at the *magister's* dictation form the third tier and are the 'people who write laws' in Sozomen's account.

Clearly the quaestor's text would have to be respected. It came from the top and carried the imperial authority. *Magistri* had no power to make laws. But they were allowed to tamper with the text in minor ways, of which the most significant was the inclusion of extra provisions addressed to selected recipients. Thus, for example, in a constitution about heretics and Jews issued by Valentinian III (then aged 5) in 425, the fullest surviving text, an *epistula* to the praetorian prefect of the Gauls,<sup>102</sup> contains a special clause about the powers of the bishop of Arles, which would not have been included in the *epistulae* containing the same law addressed to the *comes rei privatae*, the Prefect of the City of Rome and the proconsul of Africa, extracts of which (also featuring small stylistic variants) are preserved in the *Theodosian Code* itself.<sup>103</sup> All these small adaptations would have come from the second level, that of the *magistri*, not the quaestor.

All this imports an extra hazard into analysing the style of texts of the *Theodosian Code*. We have already seen that laws may take their character from the *suggestio*

<sup>101</sup> Soz., *HE* 7. 13. 5-7. For Sozomen's use of the *Theodosian Code* (and possibly private archives) to improve Eusebius' account of Constantine, see my 'Sozomen and Eusebius: the lawyer as Church historian in the fifth century', in C. Holdsworth and T. P. Wiseman (edd.), *The Inheritance of Historiography* (1986), 45-52.

<sup>102</sup> *Const. Sirm.* 6.

<sup>103</sup> *CT* 16. 2. 47; 5. 64 (to Bassus, CRP); *CT* 16. 5. 62 (to Faustus, PUR); *CT* 16. 2. 46; 5. 63 (to Georgius, *procos. Africae*), discussed by Seeck, *Regesten*, 5. For stylistic variations between *epistulae* based on the same *lex generalis*, see *CT* 15. 7. 4 (*dat.* 24 April 380, to PUR) and *CT* 15. 7. 9 (*proposita* Carthage, 28 August 381, to *procos. Afr.*).

rather than from the quaestor, and it may further be inferred, although it is hard to get direct proof, that the quaestor may have dictated not only the gist but perhaps at times even the wording of the *suggestio*.<sup>104</sup> Now we have the extra complication of the *magister memoriae*. The quaestor's text had authority and should not have been altered unnecessarily; therefore we would still expect most texts in the *Code* to reflect quaestors' styles. But officials outside the consistory had the power to modify both style and content. Thus the hand of the *magister memoriae* may be present in any extract of any *epistula*.

#### IV. THE MAKING OF A CONSTITUTION

The quaestor dictated laws, the emperor subscribed them, and palace officials outside the consistory communicated them to the appropriate recipients. But the creators of the content of laws were not quaestor or emperor but the individuals who proposed and discussed them. The separation of responsibility for style from that for content is an important limitation of the quaestor's role in the making of constitutions.

The *suggestio*, proposal, acted as the launching pad for a new law. It was usually put forward formally by a praetorian or city prefect or palatine minister, although it could have originated lower down.<sup>105</sup> On the whole, *suggestiones* had to do with problems or proposed reforms within the sphere of operations of the proposer, as he was the one to whom difficulties would have been referred by his subordinates in the provincial or palatine hierarchies. This is why quaestors, who had no *officium*, seem seldom to have originated *suggestiones*:<sup>106</sup> as hinted above (p. 152), this may have been to ensure that the quaestor had no official axe of his own to grind and could therefore (in theory) act as an impartial assessor of the proposals of others.

Thus heads of court bureaux petitioned for reorganization of their staffs or sought benefits for them. Such proposals included, for example, one by the *comes sacrarum largitionum* of 385 to Theodosius I on retirements of lower bureaucrats,<sup>107</sup> or, in 439, a grant of privileges to the *scholae* requested by the *magister officiorum*.<sup>108</sup> This last, with his overall responsibility for the palatine civil and military services, was no doubt a prolific originator of *suggestiones* both on his own account and at the prompting of subordinates.<sup>109</sup> Praetorian prefects' *suggestiones* covered the whole range of provincial affairs, from privileges for the Church, to *defensores civitatis*, to the juridical powers of substitute provincial governors,<sup>110</sup> and the Prefect of the City of Rome represented the interests of both Senate and City to the imperial court.

The extensive use of the *suggestio* (which the extracts in the *Code* usually edit out, so that it was far more often used than attested) conveys the image of a passive emperor responding to ideas from below. In practice, the situation was more complex. Emperors received not only proposals but also reports and information, some of which they had requested for themselves.<sup>111</sup> Any one *suggestio* would have been considered in a context of information and expertise beyond the range of an individual *suggerens*. Travelling emperors would have acquired further experience by some direct contact with their subjects, although this would have applied less in the East once emperors became permanently fixed at Constantinople.<sup>112</sup> Precedent,

<sup>104</sup> Above p. 150.

<sup>105</sup> *CT* 1. 15. 3 (?357) shows *suggestiones* and *relationes* being forwarded from provinces through the office of the *vicarius*. For *suggestiones* about new laws, *CJ* 1. 14. 11 (474), 'necessaria est tam suggestio iudicantis quam sententiae principis auctoritas'.

<sup>106</sup> *CT* 1. 8. 1-3 shows the quaestor *suggerens* on the subject of his control of the *laterculum minus*. It would be interesting to know how the idea of creating a 'Theodosian Code' first arose.

<sup>107</sup> *CT* 6. 30. 8.

<sup>108</sup> *Nov. Theod.* 21.

<sup>109</sup> *CJ* 12. 19. 5 is addressed to Tatianus, *mag. off.*, on the privileges of clerks of the *scrinia* relayed through

Proculus, the *mag. mem.*, 'quod ex ipsorum adiutorum petitione idem magnificae memoriae Proculus ad nos retulit'.

<sup>110</sup> *Const. Sirm.* 10. 1; *CT* 1. 29. 1; *CJ* 1. 50. 2.

<sup>111</sup> *CT* 7. 17. 1. (28 January 412) on requisitioning of Danube river craft; *CJ* 1. 29. 4 (Anastasius, undated), request for report on troop movements in Illyricum. For a similar request from Zeno, *CJ* 12. 35. 17.

<sup>112</sup> Although even Theodosius II took short trips on occasion. For one such see *Nov. Theod.* 23, *data* 22 May 443 at Aphrodisias but responding to petitions presented to Theodosius personally by the citizens of Heraclea when he visited them.

policy and the character of an emperor would all play a part in determining responses to *suggestiones*—and perhaps also to the types of proposals submitted in the first place.

Just how difficult it can be to establish where the initiative in policy lay can be illustrated from the variety of contacts known to have existed between the emperor and the Roman Senate. Because the Senate was a body revered for its antiquity, a special procedure existed for making laws which affected the Senate or which were formulated in consultation with it. Symmachus' *Relationes*—a wide term for Symmachus' state papers as Prefect of the City sent to the emperor at Milan and comprising referrals of cases, proposals of his own and attacks on his political enemies—are vital evidence for how Senate and emperor dealt with each other in many areas of politics and government. On the making of laws with the Senate's co-operation, *Relatio* 8 is a key document. In this, Symmachus thanks the emperor for two proposed reforms, one to limit senatorial expenditure, which would help poorer senators, and the other to restore priority in making speeches in the Senate to those who had reached the highest offices. These two proposals had been made in an imperial *oratio* to the Senate (probably dictated by the quaestor), which had now been approved by senatorial resolution. The emperor in his turn is required to give his authority to the senatorial resolution agreeing with his *oratio*, by the making of an imperial law.<sup>113</sup> Symmachus' language discreetly implies that the ideas in the *oratio* were those of the emperor, but motives of tact would anyway have entailed suppression of a possible earlier senatorial approach. Thus four stages can be identified in the production of an imperial law relating to the Senate: proposal, perhaps by senatorial embassy or a *relatio* from the City Prefect; *oratio* from emperor to Senate, which could be termed the emperor's own proposals but which did not in itself count as a law, as Symmachus' evidence shows (and despite the inclusion of extracts from *orationes* in the *Theodosian Code*); the time-honoured *senatus consultum*; finally the formal imperial agreement, which was the actual law, described by Symmachus as 'lex augusta' and 'oraculum'. The process would have taken a long time, and although part of the object was to maintain a formal impression of co-operation and harmony between the emperor and the Senate, it also allowed for extensive discussion and modification of original proposals on their tortuous journey from *suggestio* to *lex*.

While the emperors were on the move during the fourth century and the consistory was itself in process of evolution, the discussion of *suggestiones* and the issue of constitutions dictated (from some unknown date) by the quaestor must have had something of an *ad hoc* character.<sup>114</sup> However, once the successors of Theodosius I were permanently established at Constantinople, it is possible to discern a fixed and accepted procedure for the making of constitutions. This is documented in an eastern law of 446,<sup>115</sup> which conceals behind a façade of dry impersonal passives the complicated interplay of policies and personal ambitions which could affect the content of any law. It had been decided in 446 that the Senate at Constantinople was to be involved in the discussions about making a law, and this was stated in a constitution which described the process of which the Senate was now to be part. In one long sentence, which can be broken into sections for convenience of reference, the stages in the production of a new law are identified:

(1) First, a need for a new law arises. A problem is found in public or private law which requires a general enactment and is not to be found in existing law.

humanum esse probamus, si quid de cetero in publica vel in privata causa emerit necessarium, quod formam generalem et antiquis legibus non insertam exposcat

<sup>113</sup> *Rel.* 8. 3, 'superest ut ea, quae serenitas vestra patribus deliberanda legavit, cognito senatus consulto lex augusta confirmet'; and 4, 'haec aeternitas vestra venerabilis cum senatui statuenda mandaret, referri ad se protinus imperavit ut placita cunctis immortalis lege solidentur. iussis parvum; expectamus oraculum, quo salutariter, ut vestro numini familiare est, patrum decreta firmetis'.

<sup>114</sup> For pertinent remarks on *comites* and travelling emperors, see F. Millar, 'Emperors, Frontiers and Foreign Relations, 31 B.C. to A.D. 378', *Britannia* 13 (1982), 1–23, esp. 4–7.

<sup>115</sup> *CJ* 1. 14. 8 (17 October 446), discussed by Honoré, 'The Making of the Theodosian Code' art. cit. (n. 11), 136–7.

(2) This condition fulfilled, the first stage of discussion, which includes senators and court ministers, takes place. The wording does not specify discussion in the consistory itself.<sup>116</sup>

id ab omnibus antea tam proceribus nostri palatii quam gloriosissimo coetu vestro, patres conscripti, tractari

(3) Then the quaestor takes over. After agreement has been reached, the law is produced and dictated.

et si universis tam iudicibus quam nobis placuerit, tunc allegata dictari

(4) Then everyone meets again to discuss the draft (and alterations).

et sic denuo collectis omnibus recenseri

(5) When agreement is reached about that there follows the formal reading out of the law in the consistory, so that

et cum omnes consenserint, tunc demum in sacro nostri numinis consistorio recitari, ut

(6) the final stage, the emperor's subscription, can be reached and the new law be validated by imperial authority.

universorum consensus nostrae serenitatis auctoritate firmetur.

Throughout this text we hear a lot about discussion by 'everyone', consent and unanimity. Although debates may have taken place within the consistory in the early stages as well as later, the wording encourages wider participation. However, the emphasis on 'universorum consensus' is in part an expression of the standard propaganda view that everything the emperor did had the unanimous support of his subjects. Ritual acclamations, vividly documented in the *Gesta Senatus* of 25 December 438 when the *Theodosian Code* was formally received in the West, and the convention that, at least in literary and artistic representations, admiring crowds attended and applauded imperial ceremonies were, like the language of this law, a furtherance of the image of the emperor, not as an autocrat accountable to no one, but as a benign ruler enjoying the unanimous consent of the governed.<sup>117</sup>

Such were the stages in, and influences on, the formulation of an imperial constitution. The 'dictating' by the quaestor was central to its creation because, even if he followed the text of a *suggestio* closely, he was still technically responsible for the style. Style and content combined to produce both the emperor's laws and the emperor's image as a lawgiver, and they cannot easily be separated. Yet situations could and did arise in which the content of the proposal and the philosophy of the proposer seem to dominate, while the quaestor, despite his stylistic flair, takes a subordinate role. It is important to understand that this could happen, if the processes which led to the creation of some of the contents of the *Theodosian Code* are to be appreciated. Therefore one example will be looked at in some detail, a constitution of 376, drafted by the literary but legally naive quaestor Ausonius and proposed by the Gallic praetorian prefect, Maximinus.

The constitution (*CT* 9. 19. 4) was addressed to Maximinus and posted at Rome.<sup>118</sup> This is anomalous, as Rome was technically well outside the influence of

<sup>116</sup> Honore, loc. cit., implies that all discussions took place in consistory. The wording does not require a formal consistory meeting before the law is read out and subscribed and leaves open the opportunity for wider consultations, which need not have involved the emperor until a late stage.

<sup>117</sup> The *Gesta Senatus* (25 December 438) are printed in Mommsen's edition of the *Theodosian Code*

1. 2 (1905), 1--4. On panegyric and imperial ceremonial, see S. MacCormack, *Art and Ceremony in Late Antiquity* (1981), introd. and ch. 1.

<sup>118</sup> 'p.p. Romae XVI Kal. Mai. (16 April), Valente V et Valentiniano AA cons.' I take it that the subscription is not textually corrupt, although Mommsen found parts of the main body of the constitution to be suspect.

Maximinus and was not part of the sphere of the praetorian prefect of Italy either.<sup>119</sup> The explanation is to be found in Ammianus' account of the excessive power of Maximinus who, after a period of trying and executing numerous senators at Rome on various charges as *praefectus annonae* and then as *vicarius* in Rome, had been appointed praetorian prefect of the Gauls in 371. From his position at the emperor's side at Trier he continued, wrote Ammianus, to harrass senators through his 'emissarii' and 'apparitores' in Rome, harming from a distance, 'ut basilisci serpentes'.<sup>120</sup> Maximinus, then, continued to affect events in Rome through his agents, one of whom could have posted the constitution. The anomaly and its context guarantee that Maximinus, the recipient of the law, was also its proposer: in a world of multiple copies of laws addressed, as we have seen, to those whom they might concern as *epistulae*,<sup>121</sup> it is not always possible to take the addressee of the extant version, whether in the *Code* or elsewhere, as the originator of a law, unless explicitly stated. In this case, we are on safe ground.

Now the content.<sup>122</sup> Litigants in a civil suit where forgery of documents is suspected are to have the right to pursue the matter either by a criminal prosecution under the *Lex Cornelia de falso* or as a civil case. Either Ausonius as quaestor or the *Code* exccrptors in the course of their work omit the point that the suit for forgery is to be allowed before the original, civil suit is decided. This reversed a ruling of Constantine that the civil suit must be completed before the forgery proceedings are begun.<sup>123</sup> The situation left by Constantine was admittedly unsatisfactory, as the first, civil suit could be decided on the basis of a document which later investigation might prove a fraud. This gave the reform its appeal, but its danger was that the cure would prove worse than the disease.

The controversial and sinister part of the law is paragraph 1. In this, the lodging of a criminal charge of forgery is to be allowed, at the discretion of the judge, without the formality of writing it down in the proper wording and signing it, technically known as *inscriptio*.<sup>124</sup> This apparent attempt to speed things up was in fact no such thing. The formality was not simply designed to keep the record straight. By lodging an *inscriptio*, the accuser formally bound himself to suffer the same penalty as that facing the defendant, should he fail to prove his accusation.<sup>125</sup> In an era of harsh punishments, the *inscriptio* rule was an effective deterrent to false or unprovable accusations. In this law, the deterrent was to be set aside and the penalty for a false accusation was to be left to the discretion of the judge:

Quod si expetens vindictam falsi crimen intenderit, erit in arbitrio iudicantis, an eum sinat etiam sine inscriptione certare. Iudicis etiam potestati committi oportet, ut de eo qui obiecta non probaverit, sumat propositum antiquo iure supplicium

So if a man seeking retribution lodges a criminal accusation of forgery, it will be by the decision of the judge whether to allow him to proceed, even without *inscriptio*. For it should be entrusted to the power of the judge that he who does not prove his charges should receive the punishment established by the ancient law.

<sup>119</sup> *PLRE* 1, p. 578, 'it must belong to the copy of the PPO Italiae' seems doubtful. The PUR, not the PPO It. had authority in Rome on judicial matters and up to the 100th milestone beyond. And the copy of the law to the PPO It. would have been addressed to him by name (see n. 99 above).

<sup>120</sup> *Amm.* 28. 1. 43, 'ad nutum Maximini et voluntatem eiusdem ministris velut apparitoribus gerebantur'. *ibid.* 56, 'haec agitante cum adesset, perque emissarios, cum procul ageret, Maximino...' *ibid.* 41, 'auctusque praefectura praetoriana nihilo lenior fuit, etiam longuis nocens, velut basilisci serpentes'. *CT* 9. 6. 1-2 (*prop.* or *dat.* 15 March 376) are (is) addressed to Maximinus in Gaul but *may* arise out of questions over the witness of freedmen and slaves raised by trials in Rome.

<sup>121</sup> See n. 99 above.

<sup>122</sup> There are a number of legal technicalities not discussed here, for which see Honoré, *art. cit.* (n. 82).

<sup>123</sup> *CT* 9. 19. 2 (25 March 320/6), 'petitori tamen possessorie momentum prolatorum instrumentorum conferret auctoritas ut tunc civili iurgio terminato secunda falsi actio subderetur'. In the forgery suit, the onus of proof did not lie with the accuser (as in criminal proceedings) but was neutral.

<sup>124</sup> *Dig.* 48. 2. 7 (Ulpian), 'si cui crimen obiciatur, praecedere debet crimen subscriptio, quae res ita inventa est, ne facile quis prosiliat ad accusationem, cum sciat inultam sibi accusationem non futuram'.

<sup>125</sup> First mentioned *CT* 9. 10. 3 = *CJ* 9. 12. 7 (6 October 319), 'non ignarus eam se sententiam subituro si crimen obiectum non potuerit comprobare, quam reus debet excipere'. See also *CT* 9. 1. 9 = *CJ* 9. 46. 7 (25 November 366) which insists on the lodging of an *inscriptio* before a trial is begun. For a plea for leniency over the consequences of *inscriptio* for a failed accuser, see Symm., *Rel.* 49.

Ausonius was, superficially, an effective exponent of a bad case. The weakness of the law is in what it does not say or admit. It was unfair that litigants in a civil suit, where only property might be at stake, might find themselves confronted with a criminal charge for forgery, for which the penalty was death or deportation. Worse, and characteristic of Maximinus, who built his career on successful prosecutions, was that it made things easier for the accuser. He was not automatically faced with capital punishment or deportation if his accusation failed, and a powerful man in this position could hope to browbeat both opponent and judge to avoid sentence.<sup>126</sup>

The clause making *inscriptio* optional is followed by a list of precedents justifying the new rule. This could have come from the imperial *scrinia*, on the expertise of which Ausonius as quaestor could draw.<sup>127</sup> But we cannot be sure that it was up to Ausonius to justify the law, unless he was in sympathy with it, and there is no evidence that he was, or that he was a friend of Maximinus.<sup>128</sup> An alternative interpretation is that the precedents were dug up by the proposer of the law in response to controversy in the consistory. This would not have been hard for Maximinus, who had been an advocate of sorts in his youth,<sup>129</sup> and as the law would have been *data* at Trier late in 375 or early in 376,<sup>130</sup> Maximinus would have been able to be present at the consistory discussion at Trier to argue his case.

Here are the precedents:

Rationi quoque huiusmodi plenissime suffragatur antiquitas, quae nequissimos homines et argui voluit et coherceri legibus variis, Cornelia de veneficis, sicariis, parricidis, Iulia de adulteris ambitusve criminibus ceterisque ita promulgatis, ut possit etiam sine inscriptionibus cognosci, poena tamen accusatorum etiam sine solemnibus occuparet.

Moreover, antiquity was strongly in favour of a proceeding of this kind in wishing that very wicked men should be convicted and condemned under various laws, the Lex Cornelia on poisoners, assassins and murderers, the Lex Iulia on adulterers and the crime of bribery, and other laws also passed in such a way that a trial could be conducted even without *inscriptiones*, yet the punishment could be inflicted on the accuser even without the formalities.

The appeal to *antiquitas* reads impressively,<sup>131</sup> despite the careless phraseology of 'legibus variis' and 'ceterisque ita promulgatis'. Unfortunately the precedents are irrelevant. *Inscriptio* was not in use at the time of Sulla and Augustus, so naturally accusations proceeded without *inscriptio*. If an accusation, which was made under oath, failed to be substantiated, a counter-prosecution could be brought for *calumnia*, but punishment was not automatic, as it was under the *inscriptio* rule, nor could it be inflicted by the judge unless the *calumnia* suit was formally lodged. One of two explanations of these precedents is possible. One is that they were adduced in good faith by an expert on legal texts who was not, however, a legal historian in any modern sense. The other is that they were produced by Maximinus because they sounded good to pull the wool over the eyes of Gratian and his consistory.

At this distance one cannot be sure how far Maximinus was prepared to go to persuade emperors into making laws to suit his purposes. The inclusion of this constitution in the *Theodosian Code* argues that it was seen as legally respectable, to a point, although the compilers had barely eighteen months between late 435 and mid-437 to organize and excerpt their material and might have let suspect constitutions through. But if the aim of Maximinus was to make accusations of forgery within civil suits easier with a view to further intimidation, he would not have been too scrupulous about his methods.

<sup>126</sup> In Constantine's law the onus of proof in the forgery suit was neutral. If the same applied here, the defendant would be put yet further at risk.

<sup>127</sup> As Honoré believes, art. cit. (n. 82), 80.

<sup>128</sup> Whereas Ausonius was a friend of Symmachus, who was to rejoice publicly at the fall of Maximinus and his cronies, *Or.* 4. 10-11; *Ep.* 10. 2. 2-3. One of the

cronies, the Pannonian Leo, was probably replaced as *mag. off.* by a friend of Ausonius.

<sup>129</sup> *Amm.* 28. 1. 6, 'post mediocre studium liberalium doctrinarum defensionemque causarum ignobilem'.

<sup>130</sup> Seeck, *Regesten*, 246.

<sup>131</sup> Also cited, a 'rescript of Antoninus Pius', which cannot be identified with any certainty.

Nor would this have been the first time that an emperor had passed an unjust law at his suggestion. As *praefectus annonae* in 369, Maximinus had reported to Valentinian I that severer measures were needed to cover treason. Valentinian had one of his famous rages, and decreed that all who had been exempt from torture 'iuris prisca iustitia' and 'divorum arbitrio' (the wording is that of Ammianus)<sup>132</sup> should be interrogated, under torture if necessary. This constitution, which would have been dictated by the quaestor Eupraxius, was a direct response to Maximinus' *relatio* on the subject, which Ammianus describes as 'maligna'<sup>133</sup> and which could have left the implications of the proposal deliberately unclear. When in 370 Valentinian was challenged by Praetextatus and his fellow-senators on the issue of torture, he at first denied that he had ever authorized the torture of senators, and, as we have seen, it was left to Eupraxius (who may have been afraid to intervene at the time the law was passed) to point out his error. It is true that Valentinian might simply have forgotten about his response to Maximinus' *relatio*. But treason was a sensitive subject with emperors, and it may genuinely have been the case that Maximinus' proposal deliberately fudged the consequences of its being made into law, just as he was to do over prosecutions for forgery in civil suits in 376.

The interpretation here offered for this constitution is speculative in some respects. But it underlines the importance of the proposer of a law, where known, and of political as well as legal considerations which influenced the content of imperial laws. The vast corpus of Roman law was available to be consulted by imperial legislators through advisers in consistory and *scrinia*. But its effectiveness may sometimes have been curtailed by the absence of a truly apolitical civil service or an independent judiciary.

#### V. THE MAKERS OF THE THEODOSIAN CODE

By the fifth century the imperial quaestor was one of the great men of the Roman Empire. The story of his rise reveals a greater variety of roles than can be conveyed by such terms as 'legal adviser' or even the contemporary 'leges dictandae'. His power was based on his association with the imperial consistory, which gave him a forum in which to exert influence as an adviser on all aspects of imperial policy, but like other ministers close to the emperor the quaestor also acted as both ambassador and imperial representative. The breadth of his functions reflects two things: one is the range of duties that could fall to someone trusted by the emperor; the other is a consistory which was itself in a transitional phase in the fourth century, moving from the loose structure of the early imperial *consilium principis* to the more strictly defined (and less physically mobile) group of palatine ministers which formed the royal advisory council of the Byzantine state.

The quaestor's dictating of laws was one, and gradually the chief, manifestation of his job of speaking 'ore principis'.<sup>134</sup> This was a task which in the fourth century perhaps carried with it more honour than power. Certainly during that period the prime requirement for the office was a sense of style. The quaestorship was held by a choice selection of the educated and eloquent, many of whom were drawn from the provincial *clarissimi*, who normally worked their way up a palatine cursus through the *scrinia*, although by the reign of Theodosius I 'mixed' careers are more in evidence. Knowledge of the law was not irrelevant, even in the fourth century, as the quaestorship of Eupraxius testifies, but it was not strictly a necessity; legal advice could be supplied by the *scrinia*.

By the 420s and 430s there are signs of greater legal professionalism in the quaestorship. The name of a less prominent jurist makes a guest appearance in a law of Arcadius;<sup>135</sup> a lengthy legal manifesto is produced by a jurist acting as quaestor to

<sup>132</sup> Amm. 28. 1. 11 (above, n. 73).

<sup>133</sup> *ibid.* 10. 'relatione maligna docuit principem non nisi supplicibus acrioribus perniciose facinora scrutari posse vel vindicari...'

<sup>134</sup> Rut. Nam., *de red. suo* 1. 172, 'primaevus meruit principis ore loqui'.

<sup>135</sup> *CT* 4. 4. 3. The jurist was Cervidius Scaevola.

Valentinian III and read out to the Roman Senate on 7 November 426;<sup>136</sup> from 429 to 437 quaestors combine with others to produce the *Theodosian Code*; and in 440 the eastern quaestor and the Praetorian Prefect of the Orient are put in charge of a special court of appeal, relieving the emperor of a large part of his workload.<sup>137</sup> All this indicates that the legal character of the quaestor had come to predominate, to the point at which Valentinian III (or his quaestor) would declare in 445 that the emperor's quaestor was 'the guardian of our justice, which no pronouncement of ours should be without'.<sup>138</sup>

The quaestor's stylistic contribution to the components of the *Theodosian Code* must be set in the context of the law-making procedure, in which he had a necessary, highly honorific but strictly limited role. The initiative in the making of a law lay with the *suggerens*, and he, it seems, was seldom the quaestor, even though a quaestor might be known or guessed to be sympathetic to the aims of a law: thus, for example, a public-spirited law about doctors in Rome in 368 is more likely to emanate from the enlightened City Prefect, Praetextatus, than the equally noble-minded quaestor, Eupraxius.<sup>139</sup> But even if a quaestor was not himself in support of a measure, he would still be obliged to dictate a law approved by emperor and consistory. Moreover, a constitution could be modified in the course of discussions. Even when subscribed by the emperor, a law was still open to stylistic alteration in the course of its dissemination by the *magister memoriae* and his staff. All this makes the detection of quaestors by stylistic analysis a risky business.

The fifth-century eastern quaestors, as imperial advisers uniquely associated with the formulation of imperial law, had realized the potential of the fourth-century office, due to the establishment of a sedentary bureaucracy in Constantinople and a growing sense of the importance of law. They are also recognizably the forerunners of Justinian's all-powerful Tribonian, who allegedly repealed laws or made them every day at will and for his own personal profit.<sup>140</sup> The significance of the quaestors for the making of the *Theodosian Code* in the 430s (and of earlier quaestors in the dictating of its contents) has been adequately discussed. But the *Code* itself was also a landmark in the making of the quaestor. Not often was an emperor moved to thank a group of officials publicly for a special task well done, as Theodosius II (aided by his quaestor Martyrius) did in February 438. The sonorous language of the roll of honour listing the quaestorian creators of the *Code* conveys the qualities expected of them, their rank, eloquence and role as spokesmen of emperors, and the public eminence they had now achieved as compilers of the imperial lawbook for the Roman world: 'Longum est memorare, quid in huius consummationem negotii contulerint vigiliis suis Antiochus cuncta sublimis ex praefecto et consule, quid Maximinus v. inl. ex quaestore nostri palatii, eminens omni genere litterarum, quid Martyrius v. inl. comes et quaestor, nostrae clementiae fidus interpretus...'.<sup>141</sup>

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<sup>136</sup> *CT* 1. 4. 3 (known as the 'Law of Citations') + *CJ* 1. 14. 3 + 1. 2. 13 + 1. 19. 7 + 1. 22. 5.

<sup>137</sup> *CJ* 7. 62. 32. The court was to hear appeals from the judgements of *spectabiles iudices*, i.e. proconsuls, the *praefectus Augustalis*, the *comes Orientis* and *vicarii*.

<sup>138</sup> *Nov. Val.* 19. 1 *praef.* (10 December 445), (quaestor) 'quem custodem statuimus esse iustitiae quam nullum carere debet oraculum.'

<sup>139</sup> *CT* 13. 3. 8 (30 January 368). The emphasis on Praetextatus differs from that of Honoré on Eupraxius,

art. cit. (n. 11), 200-1.

<sup>140</sup> Procopius, *Bell. Pers.* 1. 24. 16.

<sup>141</sup> *Nov. Theod.* 1. 7: 'it is a long task to record what has been contributed to the completion of this undertaking through their wakeful labours by Antiochus, eminent in all respects, formerly praefect and consul, by Maximinus, v.i. formerly quaestor of our palace, outstanding in every branch of letters, by Martyrius, v.i., comes and quaestor, the faithful exponent of our clemency...'

## APPENDIX. NAMED IMPERIAL QUAESTORS, A.D. 354-438

For convenience of reference names are supplied as in *PLRE* I and II. The list supplied here does not, however, agree with that in *PLRE* in every respect.

354	Fl. Taurus 3 (East) Montius Magnus 11 (East) Fl. Leontius 22 (East)	Amm. 14. 11. 4; <i>AE</i> 1934, 159 at Rome Amm. 14. 7. 12-18 Amm. 14. 11. 14
355/9?	Saturninius Secundus 3 (West, Julian?)	<i>CIL</i> VI. 1764 = <i>ILS</i> 1255; Julian, <i>Ep. ad Ath.</i> 281D with Zos. 3. 2. 2; Julian, <i>Ep. ad Ath.</i> 282C
358/9?	Lucillianus 2 (West, Julian)	Julian, <i>Ep. ad Ath.</i> 281D and 282 C
360	Nebriidius 1 (West, Julian) Leonas (East, Constantius)	Amm. 20. 9. 5 Amm. 20. 6. 8; 9. 4
361-2	Iovius 2 (Julian as sole Augustus)	Amm. 21. 8. 1; 22. 8. 49; <i>CT</i> 11. 39. 5
364	Viventius (West, Valentinian)	Amm. 26. 4. 4; 27. 3. 11
367-70	Fl. Eupraxius (West)	Amm. 27. 6. 14; 27. 7. 6; 28. 1. 25
370/3	Fl. Claudius Antonius 5 (West)	Inferred from Symm., <i>Ep.</i> 1. 89
375-6/7	Decimius Magnus Ausonius 7 (West, Valentinian I and Gratian)	Aus., <i>Praef.</i> 1. 35; Aus., <i>Ep.</i> 22. 90; <i>Grat. Act.</i> 2. 11; <i>Parent.</i> 4. 31; Symm., <i>Epp.</i> 1. 13 and 23; Aus., <i>Ep.</i> 23
379	Proculus Gregorius 9? (but perhaps <i>magister memoriae</i> ) (West)	Symm., <i>Epp.</i> 17 and 18
379	Fl. Mallius Theodorus 27? ( <i>PLRE</i> I as <i>magister memoriae</i> ) (West)	Claud., <i>de cons. Fl. Mallii Theodori v.c.</i> <i>pan.</i> , 33-6
383/4	Maternus Cynegius 3 (East)	Lib., <i>Or.</i> 49. 3
388-90	Virius Nicomachus Flavianus 15 (West, Theodosius I)	<i>CIL</i> VI. 1782 = <i>ILS</i> 2947; <i>CIL</i> VI. 1782 = <i>ILS</i> 2948
?	Cl. Lachanius (West)	Rut. Nam., <i>de red. suo</i> 1. 584
?	Alethius 1 (West)	Claud., <i>carm. min</i> 24 title, <i>Deprecatio in Alethium</i> <i>quaestorem</i>
395?	<i>PLRE</i> II Florentinus 1 = <i>PLRE</i> I Florentinus 2 (West)	Symm., <i>Ep.</i> 4. 50
395?-7	Felix 2 (West)	Symm., <i>Ep.</i> 5. 54
398?-401	<i>PLRE</i> II Caecina Decius Albinus Junior 8 (but perhaps <i>mag. off.</i> ) = <i>PLRE</i> I Caecina Decius Albinus Junior 10 (West)	Symm., <i>Ep.</i> 7. 47
400/7?	Cl. Postumus Dardanus (West)	<i>CIL</i> XII. 1524 = <i>ILS</i> 1279 (near Sisteron)
404	Eustathius 1 (East)	Palladius, <i>Dial.</i> 19
408	Salvius 2 (West)	Zos. 5. 32. 6
409	Potamius (West)	Olymp. fr. 13
before 412	Rufius Antonius Agrypnus Volusianus 6 (West)	Rut. Nam., <i>de red. suo</i> 1. 171-2
Oct. 415- Feb. 416	Fl. Eustathius 12 (East)	<i>CT</i> 1. 8. 1; <i>CT</i> 26. 17
?	Olympius 6 (East)	Nilus, <i>Epp.</i> 2. 305 and 306
424	Sallustius 4 (East)	<i>CT</i> 1. 8. 2 = <i>Cŷ</i> 1. 30. 1
before 427	Antiochus 6 (East)	<i>CT</i> 1. 1. 5 (26 March 429 setting up first <i>CT</i> commission)

429	Antiochus Chuzon 7 (East)	<i>CT</i> I. I. 5; <i>Theod.</i> , <i>Ep.</i> 33
432/3	Domitianus 4 (East)	<i>ACOec.</i> I. 4. 145
435	Eubulus (East)	<i>CT</i> I. I. 6 (20 Dec. 435 setting up second <i>CT</i> commission)
436/Feb.		
438	Maximinus 7 (East)	<i>Nov. Theod.</i> I (15 Feb. 438)
15 Feb. 438	Martyrius 2 (East)	<i>Nov. Theod.</i> I

*Notes*

1. Fl. Hermogenes 9, *PLRE* I, pp. 424–5 is claimed as the first quaestor (330/7); but the evidence for his office is inadequate.
2. Three more uncertain quaestors included in the *PLRE* I *Fasti* are: Aburgius (under Valens); Aurelianus 3, whose earlier career is vaguely described in Synesius' *De Providentia*, *PUC* in 393–4, later PPO Orientis; and Galenus, poorly attested at *Ennar. Brev. Chron.* 11.