

# The Quaestor Proclus

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*In the history of legislation, this case of a camouflaged provision is far from unique; many illustrations could be given from present-day law ... what is required is an understanding between those charged with the debate or (quite enough) between the knowing ones among them.<sup>1</sup>*

*Bill-drafting was called by Albany insiders “the black art of politics.” An expert bill-drafter had to know thousands of precedents ... He had to know a myriad ways of conferring or denying power by the written word.<sup>2</sup>*

IN A 2007 article Brian Croke proposed to “reconfigure” the reign of the emperor Justin I.<sup>3</sup> Croke alleges that scholarship on Justin has credulously and uncritically subscribed to the caricature in Procopius of Caesarea’s *Secret History*. Consequently we think of Justin as a boorish and illiterate Thracian peasant who bribed his way to the throne in the disputed succession following the death of Anastasius; he thereafter remained, so the story goes, under the thumb of his nephew and adopted son Petrus Sabbatius Iustinianus, who exercised effective power behind the scenes from Justin’s accession in July 518 down to Justinian’s proclamation as co-Augustus shortly before his uncle’s death in August 527.

Croke makes a compelling case for Justin’s vigor and his

<sup>1</sup> David Daube, “The Marriage of Justinian and Theodora. Legal and Theological Reflections,” *Catholic University Law Review* 16 (1966/7) 380–399, at 394.

<sup>2</sup> Robert A. Caro, “The Power Broker, I: The Best Bill-drafter in Albany,” *The New Yorker* (22 July 1974) 32–64, at 48 (repr. *The Power Broker: Robert Moses and the Fall of New York* [New York 1975] 114).

<sup>3</sup> Brian Croke, “Justinian under Justin: Reconfiguring a Reign,” *BZ* 100 (2007) 13–56 [hereafter “Croke”].

ability, down to the very end of the reign, to pursue policies distinguishable from Justinian's own narrow interests. Procopius' writing, in the *Secret History* and elsewhere, plainly serves rhetorical and ideological ends that invite skepticism about his reliability in a narrowly positivistic sense. In particular, the avowedly anti-Justinianic animus of the *Secret History* produces a focalization upon Justinian's agency to which prosopographical approaches examining the wider circle of Justin's supporters supply an important corrective.

As important as Croke's revisionist assessment of Justin's reign undoubtedly is, it remains notably reluctant, however, to address directly the predominating influence that Procopius assigns, not only in the *Secret History* but also in the *Wars*, to Justin's Quaestor of the Imperial Palace (*quaestor sacri palatii*), who is identified as Proclus (Πρόκλος) or Proculus. Proclus' introduction in the *Secret History* is integral with Procopius' dismissal of Justin at the time of his accession as an illiterate old dotard (*Arc.* 6.12–13):

εἰθισμένον δὲ γράμματα οἰκεῖα τοῖς βιβλίοις ἐντιθέναι τὸν βασιλέα, ὅσα ἂν ἐπαγγέλλοντος αὐτοῦ γίνοιτο, αὐτὸς μέντοι οὔτε ἐπαγγέλλειν οὔτε τοῖς πρασσομένοις ξυνεπίστασθαι οἶός τε ἦν. ὃς δὲ παρεδρεύειν αὐτῷ ἔλαχεν, ἀρχὴν <ἔχων> τὴν τοῦ καλουμένου κοιαίστωρος Πρόκλος ὄνομα, αὐτὸς δὲ αὐτονόμῳ γνώμῃ ἅπαντα ἔπρασεν.

The custom, after all, is for the emperor to authorize with letters of his own writing all of the documents that contain his official orders, but this one [Justin] was incapable either of authorizing his own orders or of understanding what any official act was about. Rather, the man who happened to be his *assessor* (he was named Proclus and held the position that is called *quaestor*) handled everything with independent judgment. (transl. Kaldellis, with modifications)

Croke does not discuss this passage, and the omission is remarkable not only because the passage figures prominently in the derogatory attitude toward Justin that Croke means to redress, but also because it indicates that, in the *Secret History*, Procopius is positing Proclus, rather than Justinian, as an effec-

tive power behind the throne.<sup>4</sup>

The purpose of this paper is not so much to quibble with Croke but rather to suggest that the Quaestor Proclus merits closer attention than he has tended to receive and that Procopius' portrait of him is much more nuanced than has been recognized. Procopius presents Proclus as a figure who is remarkable for his disarming candor and willingness to speak truth to power. Couched within that representation, however, is a recognition that the pragmatics of courtly influence, particularly where the manipulation of language in the formation of policy is concerned, represent (in words taken from the two epigraphs to this paper) a "black art of politics" in which understanding is premised upon covert dialogue between "the knowing ones" at the expense of the uninitiated. In the former category Procopius situates Proclus and, implicitly, himself and his inscribed reader;<sup>5</sup> in the latter, both Justin and Justinian.

The *quaestor sacri palatii* was well placed to exercise such arts. This office, which emerges in the fourth and fifth centuries as the seat of the emperor's principal legal advisor, was charged with the preparation of imperial enactments. It has been the subject of careful study, notably by Tony Honoré, Jill Harries, and John Matthews;<sup>6</sup> Honoré's treatment of the sixth-century

<sup>4</sup> *PLRE* II Proculus 5. Croke (40) remarks that Proclus/Proculus "was considered the outstanding person of those times," with reference to *Wars* 1.11.11 and *Arc.* 9.41, discussed below; see also Croke 43–44 with reference to *Wars* 1.11.16.

<sup>5</sup> "The kind of reader that the text posits": Denis Feeney, "Becoming an Authority: Horace on His Own Reception," in L. B. T. Houghton and Maria Wyke (eds.), *Perceptions of Horace: A Roman Poet and His Readers* (Cambridge/New York 2009) 16–38, at 18–19 and n.9, citing S. R. Suleiman.

<sup>6</sup> Tony Honoré, "The Making of the Theodosian Code," *Σav Rom. Abt.* 103 (1986) 133–222, esp. 136–144, "Some Quaestors of the Reign of Theodosius II," in Jill Harries and Ian Wood (eds.), *The Theodosian Code* (Ithaca 1993) 68–94, and *Law in the Crisis of Empire, 379–455 AD: The Theodosian Dynasty and its Quaestors* (Oxford 1998) 11–23; Jill Harries, "The Roman Imperial Quaestor from Constantine to Theodosius II," *JRS* 78 (1988) 148–172, and *Law and Empire in Late Antiquity* (Cambridge 1999) 42–47; John

quaestorship in his 1978 book on Tribonian, Justinian's famous quaestor and the driving force behind the compilation of the *Digest* and other legal reforms, remains the fullest treatment of Proclus to date.<sup>7</sup>

### 1. *Background*

Croke's revisionist account, building on the work of Geoffrey Greatrex among others,<sup>8</sup> stresses the extent to which Justin filled key positions with older and more experienced figures who effectively marginalized Justinian at the beginning of the reign. These included former colleagues who shared Justin's military background and also potential rivals for the throne. Not until his consulship in 521, for example, did Justinian enjoy official standing comparable to that of the Chalcedonian stalwart and *magister militum* Vitalian,<sup>9</sup> and only after Vitalian himself had been murdered during his own consulship in the preceding year. In 523 Justin cracked down on rioting by the Blue circus faction in Constantinople and other eastern cities, in which Justinian was implicated; the Chronicle of John of Nikiu,<sup>10</sup> providing an account now otherwise preserved only in

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Matthews, *Laying Down the Law: A Study of the Theodosian Code* (New Haven 2000), esp. 168–199. Also W. E. Voss, *Recht und Rhetorik in den Kaisergesetzen der Spätantike* (Frankfurt 1982) 33–39.

<sup>7</sup> Tony Honoré, *Tribonian* (London 1978), esp. 7–10, 16, 226–232.

<sup>8</sup> Croke 56 n.227: esp. Geoffrey Greatrex, "Flavius Hypatius, *quem vidit validum Parthus sensitque timendum*," *Byzantion* 66 (1996) 120–142, and *Rome and Persia at War, 502–532* (Leeds 1998); see now also "The Early Years of Justin I's Reign in the Sources," *Electrum* 12 (2007) 99–113.

<sup>9</sup> *PLRE* II Flavius Vitalianus; Croke 37.

<sup>10</sup> John of Nikiu 90.16–19, transl. Charles: "And there arose many men belonging to the people who in Constantinople and the cities of Hellas loudly accused the patrician Justinian, his [Justin's] brother's son. Now Justinian helped the Blue Faction to commit murder and pillage among the various nations. And (the emperor) appointed a prefect named Theodotus, (formerly count) of the East, to punish all who had been guilty of crime, and he made him swear that he would show no partiality. And beginning with Constantinople he punished many guilty persons, and subsequently had Theodosius arrested and put to death. And he was very rich. And next he

an abbreviated form in the Baroccianus manuscript of the Chronicle of John Malalas,<sup>11</sup> indicates that the crusading urban prefect at the time, a certain Theodotus who was known by the nickname *Colocynthus*, ‘The Pumpkin’ [*PLRE* II Theodotus *qui et Colocynthus* 11], was only prevented from prosecuting Justinian himself because the latter had been struck down by a sudden, life-threatening illness.<sup>12</sup>

Having survived both the illness and the brush with the law, Justinian’s standing improved to the point that he was advanced to the patriciate and then, reportedly at the urging of the senate, the nobilissimate; he also finally overcame any legal impediments to his marriage with Theodora as a result of legis-

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had Justinian the patrician arrested, and wished to put him to death. But when he fell ill, he let him go. And the emperor on hearing these things was wroth with the prefect and stripped him of his dignities and sent him in exile from Constantinople into the east. And fearing lest he should be put to death there, he went to the holy places of Jerusalem and lived there in seclusion.”

<sup>11</sup> Malalas 17.12 (416); transl. Jeffreys et al.: “At that time the Blue faction rioted in all the cities and threw the cities into confusion with stone-throwing, violence, and murder. They even attacked the officials in each city, beginning in Byzantium. These activities continued until the appointment in Constantinople of the *ex-comes Orientis* Theodotus as city prefect. He was appointed during the first indiction [522/3] and restored order over the rioting among the Byzantines by punishing many of the rioters at the emperor Justin’s command. Among these he arrested a certain Theodosius, nicknamed *Zikkas*, who was very wealthy and held the rank of *illustris*. Theodotus, on his own authority, put him to death without reporting this to the emperor. This met with the emperor’s anger, and he was dismissed from office, deprived of his rank, and ordered into exile in the East. After reaching the East, he fled in terror in the third indiction [524/5] and sought asylum in Jerusalem, where he stayed in hiding. Theodorus, the *ex-consul*, nicknamed *Teganistes* [discussed below], was appointed city prefect in his place.”

<sup>12</sup> On the relationship between the two texts see Elizabeth Jeffreys, “The Transmission of Malalas’ Chronicle, 1: Malalas in Greek,” in *Studies in John Malalas* (Sydney 1990) 245–268, esp. 254. Cf. *Proc. Arc.* 9.35–42, discussed below.

lation promulgated on 19 November 524. In 525 uncertainty over his claim to the succession was sufficiently fraught that, Procopius tells us, it scuttled a diplomatic initiative on the part of the Persian king Kavadh to garner Roman support for the dynastic ambitions of his favorite son, the future Khusro I Anushirvan.<sup>13</sup> Not until 525 did Justin make Justinian *Caesar* and his presumptive successor, again reportedly at the urging of the senate; only on 1 April 527, at the age of 74 and in the face of deteriorating health due to the aggravation of an old wound, did Justin proclaim Justinian as his fellow *Augustus*, following which Justin died four months later.

Proclus' career prior to his quaestorship is documented solely by the inscription from an honorific statue celebrating an honorary consulship of uncertain date. From it we learn that he was a native of Byzantium and that his father, a certain Paul, apparently served with some distinction in the imperial administration (*Anth. Gr.* 16.48):

Πρόκλος ἐγὼ Παύλου Βυζάντιος, ὄν περι δῶμα  
 τηλεθάοντα Δίκης βασιλῆιος ἤρπασεν αὐλή,  
 ὄφρ' εἶην στόμα πιστὸν ἐρισθενέος βασιλῆος.  
 ἀγγέλλει δ' ὄδε χαλκός, ὅσον γέρας ἐστὶν ἀέθλων.  
 καὶ τὰ μὲν εἵκελα πάντα καὶ υἱεὶ καὶ γενετῆρι,  
 ἐν δ' ὑπάτων ῥάβδοισι πάις νίκησε τοκῆα.

I am Proclus, son of Paul [*PLRE* II Paulus 27], of Byzantium. The Imperial Palace took me from a flourishing practice in the halls of Justice, that I might be the trusty mouthpiece of the mighty emperor. This bronze effigy declares how great were the rewards of my exploits. Son and father won like prizes, but in winning the consular fasces the son outdid the father. (transl. Browning)

The description of Proclus' role as the emperor's "trusty

<sup>13</sup> *Wars* 1.11.1–30; cf. Evagr. Schol. *HE* 4.12; Theophanes A.M. 6013; Zonaras 14.5. The date provided by Theophanes, 522 CE, cannot be reconciled with evidence placing one of the envoys conveying Justin's response to Kavadh's proposal, Rufinus [*PLRE* II Rufinus 13], in Persia in 525/6: Croke 43, with references.

mouthpiece” is more than a poetic metaphor for the quaestorship. The *formula* for the conferral of the western quaestorship, as preserved in Cassiodorus’ *Variae*, expresses the aspirations of an office that Cassiodorus himself had held and employs the same idea that the quaestor’s function is to voice the emperor’s thoughts.<sup>14</sup>

Proclus’ inscription suggests that he had been practicing as an advocate at the time of his appointment to the quaestorship. The verb ἥρπασεν, declaring him to have been “snatched up, seized, plucked,” seems strikingly vivid in this context, particularly when its object is described as “flourishing/flowering/blooming” (τηλεθάοντα): Proclus is figured, deliberately or otherwise, as a kind of bureaucratic Ganymede. Procopius, in contrast, employs a curiously unemphatic verb, ἔλαχεν, to describe how Proclus “happened” to occupy his role (*Arc.* 6.13).

Taking the two expressions together lends support to the supposition that Proclus entered high palatine office as a relative outsider rather than as a supporter or partisan of the regime. There is every reason to believe that he served exclusively under Justin for the greater part of the reign. A constitution issued jointly by Justin and Justinian in 527 commemorates the quaestor posthumously as Proculus “of exalted memory” and “of towering memory.”<sup>15</sup> Justinian’s *Novel* 35 of May 535 men-

<sup>14</sup> *Var.* 6.5.1–2: *quaesturam toto corde recipimus, quam nostrae linguae vocem esse censemus. haec nostris cogitationibus necessario familiariter applicatur, ut proprie dicere possit quod nos sentire cognoscit: arbitrium suae voluntatis deponit et ita mentis nostrae velle suscipit, ut a nobis magis putetur exisse quod loquitur. o quam arduum est subiectum verba dominantis assumere, loqui posse quod nostrum credatur et propecti in publicum decorem gloriosam facere falsitatem*, “The quaestorship I value as the words of my tongue, and take it whole-heartedly to myself. Of necessity, this office is linked intimately to my thoughts, that it may speak in its own words what it knows as my sentiments; it discards its own will and judgment, and so absorbs the purpose of my mind that you would think its discourse really came from me. How hard it is for the subject to assume the speech of the ruler, to be able to express what may be supposed my own, and, advanced to public honor, to create a noble lie” (transl. Barnish).

<sup>15</sup> *Cod.Iust.* 12.19.15.2 *Impp. Iustinus et Iustinianus AA. Tatiano magistro*

tions as Proclus' apparently immediate predecessor a certain Iohannes who had served as quaestor for an extended period and allowed the number of his *adiutores*, or principal assistants, to increase beyond their statutory limit.<sup>16</sup> Honoré identified seven Latin constitutions of Anastasius dated between 500 and 506 as the work of this Iohannes, and Justinian's dismissive tone suggests that he had little if anything to do with Justin's regime, as we should suppose also from John Lydus' statement that upon his accession Justin dismissed all of Anastasius'

*officiorum* [PLRE II Tatianus 3]: *excelsae memoriae Proculo viro suggerente ... idem magnificae memoriae Proculus.*

<sup>16</sup> *Nov. 35: sed postea sic effusam esse licentiam, ut innumerabiles paene adiutores extarent temporibus Iohannis viri magnifici quaestoris, cum per prolixum tempus tale gessisset officium; et Proculum excelsae memoriae de confusione adiutorum imperiali culmini suggessisse, et divino nutu sacram constitutionem esse promulgatam,* (the statutory number of principal assistants [*adiutores*] of the quaestor had been fixed at 26), "but later, during the time of Iohannes [PLRE II Ioannes 68; cf. Honoré, *Tribonian* 223–226], the quaestor, *vir magnificus*, who filled that office for an extended time, the bars were let down to such an extent that there were almost innumerable assistants; Proculus of exalted memory had made a *suggestio* with reference to the confusion as to the assistants to the emperor, and by the latter's order an imperial constitution was promulgated" (transl. Blume, with modifications). Cf. *Cod.Iust.* 12.19.13 (522–526 CE): *comperimus divinitus quidem fuisse dispositum viros devotos adiutores tuae magnitudinis certo esse in numero nec ad huiusmodi nomen vel operam plures licitum esse adspirare, quam in scrinio quidem sacrae memoriae duodecim tantum, septenos vero in duobus reliquis scriniis, id est sacrarum epistularum sacrorumque libellorum, sed posterioris licentiam temporis supra modum indulgendo ambitionibus disturbasse rei merita ac in multitudinem divulgasse, ut inter memorialium et adiutorum numerum non longum paene intersit,* "We have learned that an imperial enactment provided that the devoted principal assistants of Your Greatness should be of a definite number and that no more should be permitted to aspire to that name and work than twelve in the imperial bureau of memorials, and seven each in both of the other bureaux, that is to say, in that of the imperial correspondence and of the imperial petitions; but that the liberty taken in later times, by indulging corrupt solicitations beyond the limit set, has disturbed this arrangement and has let in a multitude, so that there is hardly any difference between the number of clerks and the number of principal assistants."

officials.<sup>17</sup>

Whether Proclus was brought in as quaestor at the very beginning of the reign cannot be determined. Croke and Greatrex have each examined how Justin moved decisively to place his own candidates in key positions. As a rule his appointees were experienced figures, many of whom were former military colleagues who had run afoul of Anastasius and were recalled from exile.<sup>18</sup> There is every reason to believe that Proclus, in contrast, fell outside this milieu.

Proclus was a successful lawyer from an established family in the capital; his inscription implies that his father was well known in his own right, but if he preceded his son in the quaestorship or another palatine office, that office remains unidentified. In any event, Proclus offered polish and sophistication to an arriviste regime that was liable to be stigmatized as lowborn and uncouth. His principal qualifications for the quaestorship, accordingly, were those recommended for the position by Cassiodorus (*Var.* 6.5.4):

*adesse debet scientia iuris, cautela sermonis, ut nemo debeat reprehendere quod principem constiterit censuisse. opus erit praeterea firmitas animi, ut a iustitiae tramite nullis muneribus, nullis terroribus auferatur.*

Legal skill and cautious speech must accompany [the quaestor], so that no one shall criticize what the prince may happen to decide. Moreover, he will need a resolute spirit, so that no bribes and no threats may carry him from the path of justice.

There is testimony to Proclus' probity and circumspection in both Procopius and John Lydus. At *Wars* 1.11.11–12, a passage to which we will return, Procopius calls Proclus “a just man

<sup>17</sup> Honoré, *Tribonian* 223–226. Lydus *Mag.* 3.51: Ἰουστίνου δὲ τὴν βασιλείαν παραλαβόντος (ἀνὴρ δὲ ἦν ἀπράγμων καὶ μηδὲν ἀπλῶς παρὰ τὴν τῶν ὀπλῶν πείραν ἐπιστάμενος), Μαρῖνος μὲν καὶ ὅσοι Ἀναστασίου τῆς αὐξήσεως <ἐτυχον ἀπηλλάττοντο>, “However, after Justin had assumed the imperial office (he was an inactive man and had no knowledge at all except experience in warfare), Marinus [*PLRE* II Marinus 7] and as many as had obtained advancement from Anastasius were discharged” (transl. Bandy).

<sup>18</sup> Croke 22–26; Greatrex, *Byzantion* 66 (1996), esp. 139–140.

and one whom it was manifestly impossible to bribe; for this reason he neither readily proposed any law, nor was he willing to disturb in any way the settled order of things.” The only policy matter that can be definitely ascribed to Proclus’ initiative involves his efforts to rein in the excesses of his predecessor Iohannes, by reducing the number of *adiutores* assigned to the quaestorship back to its statutory limit through a process of attrition.<sup>19</sup>

As an efficiency measure that could be presented as a remedy for prior abuses and a return to the sound practices of the past, the proposal displays judiciousness and tact while at the same time balancing the interests of individual assistants themselves. We can understand therefore the enthusiasm with which John Lydus lauds Proclus as “the most just” and remembers him fondly for his appreciation of the rank and file in the imperial administration.<sup>20</sup>

<sup>19</sup> Documents pertaining to Proclus’ proposal for regulating the appointment of the quaestor’s *adiutores*: *Cod.Iust.* 12.19.13 (n.16 above); 12.19.15 (n.15); *Nov.* 35 (n.16). See further A. H. M. Jones, *The Later Roman Empire* (Oxford 1964) 575–577; Christopher Kelly, *Ruling the Later Roman Empire* (Cambridge [Mass.] 2004) 94. Ernst Stein, *Histoire du Bas-Empire II* (Paris 1949) 246, suggests that Proclus’ influence is reflected in *Cod.Iust.* 7.62.34 (520–524 CE) and 35 (= *Basilica* 9.1.125, synopsis in Greek), affirming or reaffirming the role assigned to the quaestor in responding to *suggestiones* and *relationes* forwarded by other courts and in reviewing the previous judgments of urban or praetorian prefects who have been reappointed to their posts (see further n.24 below). A. A. Vasiliev, *Justin the First* (Cambridge [Mass.] 1950) 391–392 and n.6, identifies twelve constitutions of Justin I relating to the administration of law courts and to the appeal process, noting that, *inter alia*, “they lay stress upon speedy and unbiased trial.”

<sup>20</sup> *Mag.* 3.20: καὶ τίς οὐκ ἂν ἐπιδακρύσει τῶν ἐγκωμίων εἰς μνήμην ἐρχόμενος, οἷς ὑπὲρ τῆς τάξεως καὶ τῶν τοιούτων τῆς ἀρετῆς γνωρισμάτων ἐχρήσατο Σέργιος τε ὁ πολὺς καὶ Πρόκλος ὁ δικαιοτάτος Τριβουνιανός τε ὁ πολυμαθέστατος, ὧν ὁ μὲν ὑπαρχος οἷος οὐκ ἄλλος, οἱ δὲ ἄμφω κυαίστωρες γενόμενοι τὴν πολιτείαν ἐκόσμησαν; “Who, pray, would not weep when calling to mind the compliments paid on behalf of the staff and such tokens of excellence [in keeping judicial archives] by the renowned Sergius [*PLRE* II Sergius 7] and the most just Proclus and also the most learned Tribonian,

2. *The Atticus Finch of the later Roman empire?*

On the basis of the dossier thus far assembled, we would seem to be justified in describing Proclus as the Atticus Finch of the later Roman empire.<sup>21</sup> Indeed, in the *Secret History* Procopius tells us that Proclus stood alone in opposing Justinian's efforts to trump up charges against the urban prefect Theodotus 'the Pumpkin' in retaliation for his efforts in suppressing the factional violence of the Blues (*Arc.* 9.41):

πάντων δέ οἱ ἐκποδῶν ἰσταμένων καὶ σιωπῇ τὴν ἐς τὸν Θεόδοτον ὀδυρομένων ἐπιβουλήν, μόνος ὁ Πρόκλος τὴν τοῦ καλουμένου κοιαίστωρος ἔχων ἀρχὴν καθαρὸν ἀπέφαινε τοῦ ἐγκλήματος εἶναι τὸν ἄνθρωπον καὶ θανάτου οὐδαμῆ ἄξιον.

And while everyone else got out of his way and quietly endured their distress at the plot against Theodotus, Proclus alone, who held the office that is called *quaestor*, declared that the man was innocent of the charge and so not deserving of death.

'The Pumpkin' was spared but was obliged to seek refuge in Jerusalem. The report of the incident in the Baroccianus manuscript of the Chronicle of John Malalas and the fuller version of the story in John of Nikiu indicate that Theodotus exceeded his authority in ordering the execution of a wealthy supporter of the Blues named Theodosius Zticcas, on account of which 'the Pumpkin' was dismissed from office, stripped of his rank, and exiled to the East, where he went into hiding in Jerusalem. As noted above, John of Nikiu underscores the precariousness of Justinian's own position at court at the time. Procopius

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all of whom adorned the state, the former as prefect such as no other and the latter both as quaestors?"

<sup>21</sup> "The sagacious and avuncular lawyer-hero of Harper Lee's 1960 novel, *To Kill a Mockingbird*, who earned the scorn of his segregated Southern town by defending a black man wrongly accused of rape": David Margolick, "At the Bar. To attack a lawyer in *To Kill a Mockingbird*: An iconoclast takes aim at a hero," *The New York Times* (28 February 1992) B7. Compare Vasiliev, *Justin the First*, 114, 121–122; J. B. Bury, *A History of the Later Roman Empire*<sup>2</sup> (London 1923) II 23: "an incorruptible man who had the reputation of an Aristides."

reports instead that Justinian recovered unexpectedly from the serious illness that had provided his opponents at court their opportunity to bring their concerns about the Blues before Justin in the first place. Lacking a credible pretext for retaliating against ‘the Pumpkin’, Justinian resorted to charging him as a poisoner and magician; to the *Secret History* alone we owe the account of Proclus’ intervention.<sup>22</sup>

Alan Cameron provided perhaps the most persuasive reconstruction of the episode and its aftermath in a 1976 article focusing upon monuments attributed to ‘the Pumpkin’s’ immediate successor as urban prefect, an equally colorfully-nicknamed fellow called Theodoros *Téganistês*, ‘the Fry-cook’. Whatever the original impulses and objectives of ‘the Pumpkin’ and his sponsors might have been, it seems clear that they

<sup>22</sup> *Arc.* 9.35–42: “It so happened that Justinian was ill for many days and in this illness came into such danger that it was even said that he had died. Meanwhile, the militants were causing their usual trouble, doing all the things that I explained above, and they killed a certain Hypatius, a man who was not undistinguished, in full daylight inside the church of Hagia Sophia. When this evil deed was committed, the disturbances it caused were reported to the emperor. Now each of his courtiers, taking advantage of Justinian’s absence, made a point of magnifying the outrage of what had been done, itemizing from the beginning everything that had taken place. The emperor then ordered the urban prefect to exact punishment for all that had been committed. This man was named Theodotus, the one whose nickname was the Pumpkin. He investigated everything thoroughly and arrested many of the wrongdoers, whom he executed as the law required. But many others slipped away and saved themselves ... Yet when Justinian recovered suddenly and against expectation, he made it his top priority to kill Theodotus as a poisoner and a magician. But as he lacked a pretext for moving against the man to destroy him, he cruelly tortured some of his friends and forced them to give preposterously false testimony against him. And while everyone else got out of his way and quietly endured their distress at the plot against Theodotus, Proclus alone, who held the office that is called quaestor, declared in his legal opinion that the man was innocent of the charge and so not deserving of death. Therefore the emperor decreed that Theodotus be conveyed to Jerusalem. When the latter realized that some men had arrived there to kill him, he hid in the sanctuary for the rest of his days, and died living in this way.”

overplayed their hand and exposed themselves to a backlash that would have led to convulsions and repercussions not only at court but also among the populace at large in Constantinople and elsewhere. ‘The Pumpkin’s’ replacement, Theodoros ‘the Fry-cook’, had served as urban prefect on three prior occasions and might have been Justin’s original appointee to the post. He was an experienced and, apparently, a well-respected and popular figure who had proven himself, in Cameron’s words, “a good man in this kind of situation”; indeed, as Cameron points out, Justinian would take a page from the same playbook by replacing controversial ministers with seasoned veterans in his initial efforts to mollify the Nika rioters in 532.<sup>23</sup>

Taken as a whole, the resolution of the Colocynthius incident looks like an effort to jettison a senior official who had proven himself maladroit, by building consensus around an establishment figure as his replacement. To the extent that we should credit Proclus as a proponent of this approach, as the initiative credited to him by Procopius in the *Secret History* might suggest, Justin’s quaestor looks somewhat less like a crusading champion in service of the truth and more like a consummate insider, a political fixer.<sup>24</sup> In other contexts Proclus could be

<sup>23</sup> Alan Cameron, “Theodoros τρισέπαρχος,” *GRBS* 17 (1976) 269–286, quotation at 281.

<sup>24</sup> *Cod. Just.* 7.62.35, preserved only in a Greek synopsis in the *Basilica* (9.1.125: n.19 above; see also *Cod. Just.* 1.19.5 [365 CE], 7.42.1 [439 CE]) and apparently a constitution of Justin, provides that the quaestor shall jointly review with any praetorian or urban prefect who has been reappointed to the post for a second or third time the reconsideration of any judgments rendered during a previous appointment: κελεύει ἡ διάταξις, ὥστε τὸν κοιαίστωρα συνακροᾶσθαι αὐτῷ δεύτερον ἢ τρίτον γενομένων ἐπάρχῳ τῆς πόλεως ἢ πραιτωρίων καὶ ἐξετάζοντι τὰς ἐπὶ τῆς προτέρας αὐτοῦ ἀρχῆς γενομένας ἀποφάσεις. The concern to avoid the appearance of partiality (a judge is not likely to reverse his own decision, as the synopsis points out) seems characteristic of Proclus, and the situation being contemplated accords well with the circumstances of the reappointment of Theodoros *Téganistés*.

economical with the facts: if, for example, Honoré is correct in detecting hallmarks of Proclus' prose style in Justin's correspondence with Rome in connection with the resolution of the Acacian schism, Proclus did not scruple to broadcast to Pope Hormisdas Justin's abundantly false claim that he had been elected emperor against his will.<sup>25</sup>

Even if we need to be cautious in relying upon the *Secret History* to infer that Proclus' fingerprints are detectable in the resolution of the Colocynthus incident, the fact that Proclus kept his job while 'the Pumpkin' did not suggests that the quaestor was part of the solution and not part of the problem. Certainly Justinian's rehabilitation at court seems to have been swift, and Proclus' hand is next apparent in the legislation that made it possible for Justinian to marry Theodora by erasing every stigma attaching to her disreputable past.

David Daube's landmark 1967 article shows conclusively how the measure was presented as a philanthropic gesture of general applicability but in fact narrowly framed in order to forestall any recriminations or controversy about Theodora's origins and status or, crucially, about the legitimacy of any of Justinian's future offspring, while at the same time sparing the couple the embarrassment of having to petition Justin expressly for the benefit (*Cod.Iust.* 5.4.23.4):

*similes vero tale merentibus ab imperatore beneficium mulieribus illas etiam esse volumus, quae dignitatem aliquam, etsi non serenissimo principi supplicaverunt, ultronea tamen donatione ante matrimonium meruerint, ex qua dignitate aliam etiam omnem maculam, per quam certis hominibus legitime coniungi mulieres prohibentur, aboleri penitus oportet.*

We want those women who possess a social rank which they received from the serene emperor as a voluntary gift before marriage, although they did not ask it, to be similar to these women who so receive the indulgence of the emperor, by reason of which high rank every stain, on account of which women are forbidden to legally marry certain persons, is entirely removed.

<sup>25</sup> *Collectio Avellana*, ep. 141 (1 Aug. 518): *ad imperium nos licet nolentes ac recusantes electos fuisse atque firmatos*. See Honoré, *Tribonian* 7, 231–232.

The critical clause, in Daube's words, is carefully "camouflaged" in order to address Justinian and Theodora's unique circumstances without calling attention to itself. Daube credits this paragraph as "an admirable specimen of legislative craft";<sup>26</sup> in the passage cited as the first epigraph of this paper, Daube speaks with something approaching admiration about the way in which this kind of special-interest provision, as we might call it today, relies upon a privileged understanding within a select group of insiders, whom he calls "the knowing ones."

While Daube does not discuss the authorship of this constitution, Honoré assigns it to Proclus, observing that "the drafting technique is highly expert, and speaks for a working understanding between Justinian and Proclus."<sup>27</sup> Perhaps we should be thinking, then, about Proclus not so much as the Atticus Finch of the later Roman empire but rather as its Robert Moses.<sup>28</sup> The second epigraph of this paper is taken from Robert Caro's evocative portrait of Moses' early career as Governor Al Smith's assistant in New York state politics in the 1920s. What Caro calls "bill-drafting"—that is, the exercise of power through the artful construction and manipulation of authoritative texts—is encompassed within Daube's definition of legislative camouflage, in which the vitally important detail is

<sup>26</sup> Daube, *Catholic University Law Review* 16 (1966/7) 393: "the task before the lawgiver was, while not conceding the reproach [attaching to Theodora's disreputable past], to see to it that it would do no harm even if accepted as true; and again, while seeing that it would do no harm in this particular case, not to blunt its consequences in other cases ... and again, to achieve all this without openly singling out the people concerned."

<sup>27</sup> Honoré, *Tribonian* 9–10.

<sup>28</sup> "Throughout his career he pointed with pride to his ability to 'get things done'. It was an ability no one questioned; nonetheless Mr. Moses was a controversial figure, especially in the later years of his public career. He was far more agile at behind-the-scenes maneuvering than he was at public politicking"; Paul Goldberger, "Robert Moses, Master Builder, is Dead at 92," *The New York Times* (30 July 1981) B18.

precisely the one that is designed to be overlooked by everyone other than those who have been primed to seek it out.

3. “*The black art of politics*” in late antiquity

These are perspectives that inform the only appearance of Proclus in Procopius’ *Wars*, in the historian’s account of the abortive negotiations between Justin and Kavadh over Kavadh’s proposal that Justin adopt Khusro. It is significant in this connection that Daube counts Procopius as the only observer (other than Daube himself, of course) to have detected Proclus’ sleight of hand in the passage authorizing Justinian’s marriage to Theodora.<sup>29</sup> Procopius alleges in the *Secret History* that Justin legalized marriages between senators and prostitutes;<sup>30</sup> Daube concedes that this claim is “a perversion of the truth,” insofar as the relevant clause is narrowly tailored to Theodora’s unique circumstances. The key point, however, is that Daube counts Procopius among “the knowing ones” or insiders who are equipped to see through legislative camouflage, for Procopius grasps and then polemically exaggerates the agenda that the drafter of the legislation has attempted artfully to conceal.

We can see a comparable gesture toward “the knowing ones” in Procopius’ *Wars*. In Book 1 Proclus persuades Justin and Justinian to resist Kavadh’s proposal that Justin adopt Khusro in order to protect Khusro’s interests against those of Kavadh’s

<sup>29</sup> Daube, *Catholic University Law Review* 16 (1966/7) 393–394.

<sup>30</sup> *Ar.* 9.51: ἀδύνατον δὲ ὄν ἄνδρα ἐς ἀξίωμα βουλῆς ἤκοντα ἐταίρα γυναικὶ ξυνοικίεσθαι, νόμοις ἄνωθεν τοῖς παλαιοτάτοις ἀπορρηθέν, λῦσαί τε τοὺς νόμους τὸν βασιλέα νόμῳ ἐτέρῳ ἠνάγκασε καὶ τὸ ἐνθένδε ἅτε γαμετῆ τῇ Θεοδώρα ξυνώκησε, καὶ τοῖς ἄλλοις ἅπασιν βάσιμον κατεστήσατο τὴν πρὸς τὰς ἐταίρας ἐγγύην, “As it was impossible for anyone who had reached the rank of senator to marry a prostitute, this being prohibited from the earliest times by the most ancient of laws, [Justinian] forced the emperor to annul those laws with another law, and so afterward he lived with Theodora as his lawful wife, effectively making it feasible for anyone else to marry a prostitute.”

elder sons.<sup>31</sup> The framing of this episode bears close scrutiny because it serves as Procopius' introduction to Justin's reign and foregrounds dynastic instability as its organizing theme (*Wars* 1.11.1–2):

Ἀναστασίου δὲ ὀλίγω ὕστερον τελευτήσαντος Ἰουστίνου τὴν βασιλείαν παρέλαβεν, ἀπεληλαμένων αὐτῆς τῶν Ἀναστασίου ξυγγενῶν ἀπάντων, καίπερ πολλῶν τε καὶ λίαν ἐπιφανῶν ὄντων. τότε δὴ μέριμνά τις Καβάδῃ ἐγένετο μὴ τι Πέρσαι νεωτερίσωσιν ἐς τὸν αὐτοῦ οἶκον, ἐπειδὴν τάχιστα αὐτὸς τελευτήσει τὸν βίον, ἐπεὶ οὐδὲ ἀντιλογίας χωρὶς ἐς τῶν παίδων τινὰ παραπέμψαι τὴν ἀρχὴν ἔμελλε.

And when a little later Anastasius died, Justin received the empire, forcing aside all the kinsmen of Anastasius, although they were numerous and also very distinguished.<sup>32</sup> Then indeed a sort of anxiety came over Kavadh, lest the Persians should make some attempt to overthrow his house as soon as he should end his life; for it was certain that he would not pass on the kingdom to any of his sons without opposition.

<sup>31</sup> On Kavadh's proposal and its aftermath see Greatrex, *Rome and Persia at War* 134–138. Evagr. Schol. *HE* 4.12, following Procopius, reports only that the proposal failed “at the instigation of Proclus who attended on Justinian [*sic*] in the capacity of quaestor” (εἰσηγήσει Πρόκλου, ὃς παρεδρεύων Ἰουστινιανῷ κυαίστωρ καθιεστήκει, transl. Whitby). Theophanes A.M. 6013 does not identify a source: “The emperor summoned the senate to consider this [the Persian initiative] but did not accept the proposal, since the senators, led by the good counsel of Proclus the quaestor, an intelligent and shrewd man, described this as a trick and a betrayal of the Romans” (δόλον καὶ προδοσίαν Ῥωμαίων τοῦτο καλοῦντες, Πρόκλου κυαίστορος, ἀνδρὸς συνετοῦ καὶ ἀγχίνου, τοῦτο καλῶς βουλευσαμένου, transl. Mango and Scott).

<sup>32</sup> Compare Evagr. *HE* 4.1: Justin “acquired the monarchical rule contrary to all expectation, since there were many prominent members of Anastasius' family who had achieved great prosperity and wielded all the power needed to invest themselves with such a great office.” Const. Porph. *De caer.* 1.93 preserves the fullest account. As F. K. Haarer, *Anastasius I: Politics and Empire in the Late Roman World* (Leeds 2006) 247, points out, “at this time the throne was not automatically in the gift of the current emperor.”

Procopius presents the succession to the Persian throne as settled in principle but in fact riven by irreconcilable impulses: as a matter of law, Kavadh's eldest son was heir apparent, but "he was by no means pleasing to Kavadh, and the father's judgment did violence to nature and custom as well."<sup>33</sup> The law likewise disqualified the second-eldest son on account of a physical disability, as he had lost an eye; he was nonetheless almost universally admired by the Persians, who Kavadh feared might rise up on his behalf (1.11.4–5). Lacking both a legal basis and popular support, Khusro's position is made to seem precarious. Procopius is consequently at pains to insist that maintaining political stability, and not simply ensuring the succession of Khusro, is uppermost in Kavadh's mind.<sup>34</sup>

<sup>33</sup> *Wars* 1.11.3: τῶν γάρ οἱ παίδων τὸν πρεσβύτατον Καόσην τῆς μὲν ἡλικίας ἔνεκα ἐς τὴν βασιλείαν ὁ νόμος ἐκάλει, ἀλλὰ Καβάδην οὐδαμῆ ἤρεσκεν. ἐβιάζετο δὲ τὴν τε φύσιν καὶ τὰ νόμιμα ἢ τοῦ πατρὸς γνώμη. A. Christensen, *L'Iran sous les Sassanides*<sup>2</sup> (Copenhagen 1944) 353–355, conjectures that this son, Kaoses [*PLRE* II Kaoses], would have been raised as a Mazdakite (for an overview see E. Yarshater, *Cambridge History of Iran* III.2 [1983] 991–1024, esp. 1021) and objectionable to Kavadh on those grounds; see also Cyril Mango and Roger Scott, *The Chronicle of Theophanes Confessor* (Oxford 1997) 255 n.6.

<sup>34</sup> *Wars* 1.11.6: ἔδοξεν οὖν αὐτῷ ἄριστον εἶναι τὸν τε πόλεμον καὶ τὰς τοῦ πολέμου αἰτίας διαλύσαι Ῥωμαίοις, ἐφ' ᾧ Χοσρόης παῖς ἐσποιητὸς Ἰουστίνῳ βασιλεῖ γένοιτο· οὕτω γάρ οἱ μόνως τὸ ὄχυρόν ἐπὶ τῇ ἀρχῇ διασώσασθαι, "Therefore it seemed best to him [Kavahd] to arrange with the Romans to put an end both to the war and the causes of war, on condition that Khusro be made an adopted son of the emperor Justin; for only in this way could he preserve stability in the government." According to Christensen, *L'Iran* 353 (see also 263), Kavadh was free to nominate his successor; he nevertheless had to take any opposition into account, as Greatrex, *Rome and Persia at War* 134, points out. Procopius reports that, in the event, the succession was orchestrated in accordance with Kavadh's written directives by a close confidant named Mebodes, who outmaneuvered the heir apparent, Kaoses (1.21.17–22), but was later capriciously slain on Khusro's orders (1.23.25–29). Kavadh's concerns about a conspiracy against Khusro on behalf of his one-eyed son, Zames, proved in the meantime to be well-founded (1.23.1–24). Procopius explicitly draws a parallel between this episode and the Nika revolt against Justinian (1.23.1); on this and other

Unpredictability in the context of political instability and legal irregularity in both the Roman and Persian realms, accordingly, informs Procopius' reconstruction not only of Kavadh's motives in seizing the diplomatic initiative but also of the atmosphere in which his proposal is received at Constantinople. Procopius compresses the narrative in order to juxtapose the circumstances of Justin's accession in 518 with Justinian's ambivalent position in 524–525, after his rehabilitation in the aftermath of the Colocynthus incident and his marriage to Theodora, but evidently before his elevation as Caesar and heir apparent.<sup>35</sup> Justinian was at that time “expected to receive the empire”; like Justin himself, he was initially “overjoyed” at the prospect of concluding the adoption of Khusro, and the two of them were eager to give the arrangement legal effect up until the moment Proclus intervened.<sup>36</sup>

Procopius introduces Proclus as the very model of old-school rectitude, as we have seen, and credits the quaestor with a speech in which he declares his innate opposition to innovation in principle (*Wars* 1.11.11–13):

άνηρ δίκαιός τε καὶ χρημάτων διαφανῶς ἀδωρότατος. διὸ δὴ οὔτε νόμον τινὰ εὐπετῶς ἔγραφεν οὔτε τι τῶν καθεστώτων κινεῖν ἤθελεν,<sup>37</sup> ὃς καὶ τότε ἀνταίρων ἔλεξε τοιάδε· “νεωτέροις μὲν ἐγχειρεῖν πράγμασιν οὔτε εἴωθα καὶ ἄλλως δέδοικα πάντων μάλιστα, εὖ εἰδὼς ὅτι ἐν τῷ νεωτεροποιῶ τό γε ἀσφαλές οὐδαμῶς

parallels between the two rulers see Averil Cameron, *Procopius and the Sixth Century* (London/New York 1985) 162–163.

<sup>35</sup> On the date see Greatrex, *Rome and Persia at War* 137. Croke 44–47, relying upon Vict. Tunn. *Chron.* a. 525 (*MGH.AA XI* 197), suggests that opposition to the Persian proposal crystallized concern about the succession and placed pressure on Justin to promote Justinian.

<sup>36</sup> *Wars* 1.11.10–11: ταῦτα ἐπεὶ ἀπενεχθέντα Ἰουστίνος βασιλεὺς εἶδεν, αὐτὸς τε περιχαρῆς ἐγένετο καὶ Ἰουστινιανὸς ὁ βασιλέως ἀδελφιδοῦς, ὃς δὴ αὐτῷ καὶ τὴν βασιλείαν ἐκδέξασθαι ἐπίδοξος ἦν. καὶ κατὰ τάχος ἐς τὴν πρᾶξιν ἠπειγέσθην [note the dual] τὴν ἐσποίησιν ἐν γράμμασι θέσθαι, ἢ νόμος Ῥωμαίοις, εἰ μὴ Πρόκλος ἐκόλυσεν.

<sup>37</sup> Quoted in the *Suda* π2474 s.v. Πρόκλος.

σώζεται.”

a just man and one whom it was manifestly impossible to bribe; for this reason he neither readily proposed any law, nor was he willing to disturb in any way the settled order of things; and he at that time also opposed the proposition, speaking as follows: “To venture on novel projects is not my custom, and indeed I dread them more than any others; for where there is innovation security is by no means preserved.”

This stance aligns Proclus with the idealized image of the quaestorship detectable in Cassiodorus’ *Variarum* and makes him a foil for Procopius’ much more equivocal assessment of Tribonian in his account of the Nika revolt.<sup>38</sup> We should bear in mind, however, the theatricality and artificiality of Proclus’ performance as this relates both to Procopius’ literary representation of the events in question and to the available evidence for Proclus’ career.

Procopius’ depiction of the deliberations culminating in the Vandal War, for example, casts John the Cappadocian,<sup>39</sup> a figure Procopius despises, improbably as a Proclus-like “wise advisor” who succeeds temporarily in restraining Justinian’s enthusiasm for invading North Africa (*Wars* 3.10.7–8):

βασιλεῖ μέντοι εἰπεῖν τι ἐπὶ κωλύμῃ τῆς στρατιᾶς οὐδεὶς, ὅτι μὴ ὁ Καππαδόκης Ἰωάννης, ἐτόλμησεν, ὁ τῆς αὐλῆς ἑπαρχος, θρα-

<sup>38</sup> *Wars* 1.24.16: Τριβουνιανὸς δὲ φύσεως μὲν δυνάμει ἐχρῆτο καὶ παιδείας ἐς ἄκρον ἀφίκετο τῶν κατ’ αὐτὸν οὐδενὸς ἦσσαν, ἐς δὲ φιλοχρηματίαν δαιμονίως ἐσπουδακῶς οἷός τε ἦν κέρδους ἀεὶ τὸ δίκαιον ἀποδίδοσθαι, τῶν τε νόμων ἡμέρα ἐκ τοῦ ἐπὶ πλείστον ἐκάστη τοὺς μὲν ἀνήρει, τοὺς δὲ ἔγραφεν, ἀπεμπολῶν τοῖς δεομένοις κατὰ τὴν χρεῖαν ἐκάτερον, “Tribonian both possessed natural ability and in educational attainments was inferior to none of his contemporaries; but he was extraordinarily fond of the pursuit of money and always ready to sell justice for gain; therefore every day, as a rule, he was repealing some laws and proposing others, selling off to those who requested it either favor according to their need.” Compare criticism of Justinian as an innovator, which is placed in the mouths of his enemies in *Wars* 2.2.6 and voiced by Procopius himself in the *Secret History* (esp. 11.1–2).

<sup>39</sup> See *PLRE* III Ioannes 11, for references; on this incident cf. Theoph. A.M. 6026.

σύτατός τε ὢν καὶ δεινότατος τῶν κατ' αὐτὸν ἀπάντων. οὗτος γὰρ Ἰωάννης, τῶν ἄλλων σιωπῇ τὰς παρούσας ὀδυρομένων τύχας, παρελθὼν ἐς βασιλέα ἔλεξε τοιάδε·

But as for saying anything to the emperor to prevent the expedition, no one dared to do this except John the Cappadocian, the praetorian prefect, a man of the greatest daring and the cleverest of all men of his time. For this John, while all the others were bewailing in silence the fortune which was upon them, came before the emperor and spoke as follows...

Procopius employs exactly the same motif, “grieving in silence,” in order to set the stage for both the intervention here of John the Cappadocian and that of Proclus on behalf of Theodotus ‘the Pumpkin’ in the *Secret History*, as has been noted.<sup>40</sup> While Proclus’ unwavering stance against patent injustice is presented without irony, the Cappadocian’s opposition to the Vandal expedition is compromised by more narrowly self-serving ends.<sup>41</sup> Collocation of the two episodes underscores how fungible and ripe for (mis-)appropriation the courtly persona of such a “wise advisor” might be. Proclus’ apparent complicity in effecting legislative innovation on behalf of the marriage of Justinian and Theodora, moreover, cuts against the grain of the conservatism which Procopius attributes to him in the *Wars*.

<sup>40</sup> *Arc.* 9.41 (232 above). The expression σιωπῇ ... ὀδύρεσθαι is otherwise attested in the TLG database only at *Wars* 3.25.19 (σιωπῇ ... ὀδύροντο).

<sup>41</sup> *Wars* 3.10.1–6, esp. 3: μάλιστα δὲ ἤλγουν τε καὶ περιώδυνον τῇ μερίμνῃ ἐγίνοντο ὅ τε τῆς αὐλῆς ἑπαρχος ... καὶ ὁ τοῦ ταμείου ἡγούμενος καὶ ὅτε ἄλλω φόρου ξυλλογῇ δημοσίου ἢ βασιλικοῦ ἐπετέτακτο, λογιζόμενοι ὅτι αὐτοῖς <εἰς> τὴν τοῦ πολέμου χρεῖαν δεήσει ἄμετρα φέρουσιν οὔτε συγγνώμης τινὸς οὔτε ἀναβολῆς ἀξίους εἶναι, “But the men who were the most sorrowful of all, and who, by reason of their anxiety, felt the keenest regret, were the praetorian prefect ... and the administrator of the treasury, and all to whom had been assigned the collection of either public or imperial taxes, for they reasoned that while it would be necessary for them to produce countless sums for the needs of the war, they would be granted neither pardon [in case of failure] nor extension of time [in which to raise these sums].”

Proclus argues that were Justin to adopt Khusro he would make the Persian his heir and give him an opening to claim the whole of the Roman empire as his inheritance. The apparent simplicity of the Persian proposal, Proclus insists, masks its brazenness and deceit (*Wars* 1.11.14–15):

“δοκῶ δέ μοι, εἰ καὶ λίαν τις ἦν περὶ ταῦτα θρασύς, ἀποκνήσαι ἂν ἐς τήνδε τὴν πρῶξιν καὶ κατορρωδῆσαι τὸν ἐξ αὐτῆς σάλον· οὐ γὰρ ἄλλο οὐδὲν οἶμαι ἔν γε τῷ παρόντι ἡμῖν ἐν βουλῇ εἶναι ἢ ὅπως ἂν τὰ Ῥωμαίων πράγματα Πέρσαις εὐπρεπεῖ παραδοίημεν λόγῳ, οἳ γε οὐκ ἐγκρυφιάζοντες οὐδὲ παραπετάσμασί τισι χρώμενοι, ἀλλὰ διαρρήδην ὁμολογοῦντες τὸ βούλευμα, οὕτως ἀνέδην ἀφαιρεῖσθαι τὴν βασιλείαν ἡμᾶς ἀξιοῦσι, τῷ μὲν τῆς ἀπάτης φανερῶ τὴν ἀφέλειαν προῖσχόμενοι, λόγῳ δὲ ἀναιδεῖ τὴν ἀπραγμοσύνην προβεβλημένοι.”

“And it seems to me that, even if one should be especially bold in this matter, he would feel reluctance to do the thing and would tremble at the storm which would arise from it; for I believe that nothing else is before our consideration at the present time than the question how we may hand over the Roman empire to the Persians on a seemly pretext. For they make no concealment nor do they employ any blind, but explicitly acknowledging their purpose they claim without more ado to rob us of our empire, seeking to veil the manifestness of their deceit under a show of simplicity, and using disinterestedness as a pretext for a brazen scheme.”

Proclus charges the Persians, and by implication anyone who might be inclined to support their proposal, with the audaciousness and capacity for duplicity that Procopius attributes to John the Cappadocian. Procopius’ description of John as “a man of the greatest daring and the cleverest of all men of his time” seems to signal that John’s speech is a piece of sophistry,<sup>42</sup> while Proclus preempts any endorsement of the Persian proposal by stigmatizing, as excessively bold, anyone who

<sup>42</sup> Cf. e.g. Dem. 22.66, θρασὺς καὶ λέγειν δεινός (“bold and clever at speaking”), with a pejorative connotation. Cf. Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton 1989) 106 with n.5.

might speak in favor of it. To speak straightforwardly for an unprecedented idea is to render oneself suspect; Proclus scrupulously characterizes himself as shrinking from (“I dread,” δέδοικα, 1.11.13) such a possibility. The threat to Roman interests and to Justinian’s dynastic ambitions is so bald, he concludes, as to obviate any need for closer analysis or elaboration (16–17):

“καίτοι χρῆν ἐκάτερον ὑμῶν ταύτην τῶν βαρβάρων τὴν πεῖραν παντὶ ἀποκρούεσθαι σθένει· σὲ μὲν, ὦ βασιλεῦ, ὅπως δὴ μὴ Ῥωμαίων εἴης βασιλεὺς ὕστατος, σὲ δὲ, ὦ στρατηγέ, ὅπως ἂν μὴ σαυτῷ ἐς τὴν βασιλείαν ἐμποδῶν γένοιο. τὰ μὲν γὰρ ἄλλα σοφίσματα λόγου ὡς ἐπὶ πλείστον σεμνότητι καλυπτόμενα ἴσως ἂν που καὶ ἐρμηνέως τοῖς πολλοῖς δέοιτο, αὕτη δὲ ἄντικρυς ἐκ προοιμίων εὐθὺς ἢ πρεσβεία τῷ Ῥωμαίων βασιλεῖ Χοσρόην τοῦτον, ὅστις ποτὲ ἐστὶ, κληρονόμον εἰσποιεῖν βούλεται.”

“And yet both of you ought to repel this attempt of the barbarians with all your power; you, O Emperor, in order that you may not be the last emperor of the Romans, and you, O General [Justinian], that you may not prove a stumbling-block to yourself as regards coming to the throne. For other crafty devices which are commonly concealed by a pretentious show of words might perhaps need an interpreter for the many, but this embassy openly and straight from the very first words means to make this Khruso, whoever he is, the adopted heir of the Roman emperor.”

Readers who take Proclus’ intervention at face value have difficulty reconciling the plausibility of his hardline stance against Persia with the implausibility of the legal rationale he offers in support of that stance.<sup>43</sup> The quaestor makes a strong

<sup>43</sup> The historicity of the incident itself is accepted by, inter alios, Vasiliev, *Justin I* 266–268; Berthold Rubin, *Das Zeitalter Justinians* (Berlin 1960) 259–261; P. E. Pieler, “L’aspect politique et juridique de l’adoption de Chosroès proposée par les Perses à Justin,” *RIDA SER. III* 19 (1972) 399–433; Greatrex, *Rome and Persia at War* 137; Hennig Börm, *Prokop und die Perser* (Stuttgart 2007) 311–317; Beate Dignas and Englebert Winter, *Rome and Persia in Late Antiquity: Neighbours and Rivals* (Cambridge 2007) 37–44, 104–106. Pieler (422), for one, dismisses Procopius’ account of Proclus’ inter-

claim for the hereditability of the imperial office by a sitting emperor's civil law successor analogously to a son's "natural" expectation to inherit the property of his father (1.11.18):<sup>44</sup> "by nature," claims Proclus, "the possessions of fathers are due to their sons" (φύσει τοῖς παισὶ τὰ τῶν πατέρων ὀφείλεται), something about which Romans and barbarians agree. Yet in framing Kavadh's dilemma, as we have seen, Procopius has already problematized such a claim by asserting that the Persian's judgment ran counter to both nature and custom.<sup>45</sup> The situation in Persia exposes the tension, moreover, between monarchy and the partibility of a *hereditas* in Roman private law: the entire episode is premised upon the fact that Kavadh has three sons, only one of whom he wishes to succeed him; in proposing to make Khusro Justin's adoptive son together with Justinian, Kavadh is, on Proclus' construction of the proposal, recapitulating that very dilemma.

The difficulty then is that Procopius has framed the episode in a manner that vitiates Proclus' premise by emphasizing the precariousness of dynastic claims upon both the Roman and the Persian thrones. If one approaches the Proclus of Procopius' *Wars* as a straight-talker who says what he means and means what he says, regardless of the consequences—if one takes him at face value as the Atticus Finch Procopius portrays in the *Secret History*—then one must concede that he is arguing a bad brief.

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vention: "cette présentation, et en particulier le discours imputé à Proclus, devront cependant être considérés comme des exercices rhétoriques de Procope dont l'authenticité apparaît douteuse." See now also Peter Heather, *The Restoration of Rome: Barbarian Popes and Imperial Pretenders* (Oxford 2013) 123–126: "as soon as you stop to think about it, the whole [story] is total nonsense" (125).

<sup>44</sup> Compare J. A. S. Evans, *The Age of Justinian: The Circumstances of Imperial Power* (London/New York, 1996) 115: "Proclus was an upright legalist ... He argued that adoption under Roman law would give the adopted son a claim on the imperial throne. Whatever modern historians may think about the matter, Proclus evidently believed that the succession was hereditary."

<sup>45</sup> *Wars* 1.11.3 (n.34 above).

Proclus' larger point, however, is political: Khusro's prospective civil law adoption by Justin is threatening to Justinian, he insinuates, precisely because Justinian's claim upon the succession remains precarious, his own adoption by Justin notwithstanding. Adoption ipso facto settles nothing; to the contrary, the multiplication of Justin's civil law heirs would not only be damaging to Justinian's prospects, inasmuch as this would debase his presumptive claim upon the throne, but also potentially destabilizing geopolitically, by offering Khusro a pretext for interfering with the succession.<sup>46</sup> Proclus' aversion to risk in either of these scenarios is comprehensible and is foregrounded by Procopius' introductory remarks about his conservatism. He faces as well the delicate problem of damping Justin and Justinian's credulous over-enthusiasm. He prevails by accentuating, on the Roman side, exactly the same anxiety about unpredictability in the context of political instability and legal irregularity that, according to Procopius, motivated Kavadh to seize the diplomatic initiative in the first place. Pinpointing this vulnerability proves to be instrumental in derailing the plan.

Once we recognize that Proclus is preying upon the precariousness of Justinian's own claim upon the succession, not to mention his and Justin's lack of sophistication and their exploitable uncertainty about Persian motives, we can see that the quaestor's means are no more transparent than his ends. Consequently, Procopius' narrative constructs two very different

<sup>46</sup> Whether Khusro's adoption would have given him a claim actionable at law is beside the point, because the Romans did not in any event litigate the imperial succession, as Procopius' own narrative bears out; compare Pieler, *RIDA SER. III* 19 (1972) 399–433. However, the possibility that such an arrangement could have provided a *casus belli* is not at all far-fetched: as Geoffrey Greatrex and Samuel N. C. Lieu point out, *The Roman Eastern Frontier and the Persian Wars II* (London/New York 2002) 81 and 266 n.55, Khusro II invaded the Roman Empire on the pretext of avenging his "father," the emperor Maurice, after his execution by Phocas in 602. See also Dignas and Winter, *Rome and Persia* 44–49.

audiences for the quaestor's performance. Far from sustaining Honoré's claim that the episode exposes Proclus' limitations as "a conservative lawyer in politics,"<sup>47</sup> it illustrates instead Justin and Justinian's credulity and correspondingly their susceptibility to manipulation by sophisticated courtiers,<sup>48</sup> substantiating Procopius' charge in the *Secret History* that Justin was incapable of understanding official business and that Proclus used his own judgment in arranging everything. Accordingly, the episode portrays something akin to what Robert Caro calls "the black art of politics": Proclus succeeds by contrasting what he stigmatizes as the brazenness of the Persian proposal, which speaks for itself and about which nothing more needs to be said, with unspecified sophistries (*sophismata*) concealed behind a screen of self-important verbiage, which the indiscriminating require an interpreter to understand.

Denying that the Persian proposal requires interpretation enables Proclus to elide the role he has claimed as its interpreter: the speech enacts precisely the asymmetrical relationship between those "in the know" and those on the outside that it pretends to be disclaiming. Proclus' impenetrably elaborate phrasing functions, in Daube's terms, as a kind of camouflage, signaling to the knowing ones in Procopius' audience how power is exercised effectively behind the scenes through the manipulation of language.

<sup>47</sup> Honoré, *Tribonian* 230–231 (quotation at 230), makes Proclus responsible for antagonizing Khusro, whereas Procopius assigns blame for the souring of relations to others: see further n.54 below.

<sup>48</sup> See Charles F. Pazdernik, "How then is it not better to prefer quiet, than the dangers of conflict?": The Imperial Court as the Site of Shifting Cultural Frontiers," in D. Brakke et al. (eds.), *Shifting Cultural Frontiers in Late Antiquity* (Farnham/Burlington 2012) 99–111, esp. 107–111. Procopius (*Wars* 1.2.6–10) likewise attributes Arcadius' decision to name Yazdgard I as guardian (*epitropos*) of Theodosius II either to the influence of certain learned men (*logioi lines*), "such as are usually found in numbers among the advisers of a sovereign" (οἱοὶ πολλοὶ βασιλεῖ παρεδρεύειν εἰώθασιν), or to some divine inspiration (*theia tis epinoia*). See further Pieler, *RIDA* SER. III 19 (1972) 411–433.

While Procopius undoubtedly appreciated Proclus as a figure whose culture and integrity contrasted favorably with the shortcomings of Justinian's protégés John the Cappadocian and Tribonian, we must acknowledge that the portraits of Proclus in the *Wars* and the *Secret History* are, in their way, no less tendentious and contingent than the anodyne description of Proclus as the emperor's "trustworthy mouthpiece" on his statue in Constantinople. If Procopius' Proclus is accordingly a more calculating and ambivalent figure than has generally been recognized—more Robert Moses than Atticus Finch<sup>49</sup>—and, correspondingly, Procopius' literary representation of the man matches up against the limited external evidence we have for his career more closely than initially meets the eye, the independent judgment (*autonomos gnómē*) with which the historian credits the quaestor (*Arc.* 6.13) operates much more upon the pragmatics of how power is exercised than upon the uses to which it is put. Elsewhere in the *Secret History*, Procopius complains that Justinian forbade anyone in the Roman Empire "to render verdicts based upon his own autonomous judgment" (γνώμη αὐτονόμῳ τὰς ψήφους διδόναι, 14.5); in contrast, "in the past, it was permitted for magistrates to exercise their own independent judgment in making decisions about what was just and lawful" (πάλαι μὲν ταῖς ἀρχαῖς τὰ τε δίκαια καὶ νόμιμα πράσσειν γνώμη αὐτονόμῳ ἐξῆν, 30.29).<sup>50</sup> Proclus is figured retrospectively as the paragon of this prelapsarian age.<sup>51</sup>

<sup>49</sup> "If Mr. Moses' politics were conservative, so were his tastes. He was a cultivated man—he could quote liberally from Shakespeare by memory—and he often filled his speeches with quotations from the English poets. Once Mr. Moses subtly insulted President Roosevelt with a reference to an obscure remark of Dr. Johnson's about how patrons frequently tried to steal credit from the real creators of works": Goldberger, *The New York Times* (30 July 1981) B19.

<sup>50</sup> In the *Wars*, the phrase can connote willful misreading (2.4.20), insubordination (2.18.6), uncoordinated initiative (6.12.39), the exercise of discretion (7.1.22), and preemptive action (7.34.38).

<sup>51</sup> A comparable nostalgia suffuses John Lydus' *De magistratibus*: an "in-

The bureaucratic virtues of predictability, stability, and legality that may plausibly be predicated of the historical Proclus function as a consequential check upon the capriciousness of those in power, as Christopher Kelly has emphasized.<sup>52</sup> At the same time, Procopius' Proclus remains very much a loyalist of the regime that elevated him. Far from resisting any rapprochement with Persia whatsoever, he sought a compromise position that would be reassuring to Kavadh without unsettling matters at home. His proposed solution for the Persian succession crisis, the not unprecedented expedient of a barbarian "adoption in arms," would have been acceptable to Khusro, or so Procopius implies, but was scuttled through the machinations of others.<sup>53</sup> Yet it succeeded in preserving the distinctiveness of Justinian's claim as Justin's successor and so to that extent enhanced the prospect of continuity of government, whatever the longer-term consequences might be.<sup>54</sup> In

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tensely personal account of the decline and fall of the eastern Praetorian Prefecture": Kelly, *Ruling the Later Roman Empire* 79. Similarly, the anonymous *Dialogue on Political Science* (*Menae patricii cum Thoma referendario de politica scientia dialogus*, ed. Mazzucchi) 5.58 posits a political order in which "the imperial role is ... restricted to generalities and 'high policy' while the senate and magistrates get on with the government": Peter N. Bell, *Three Political Voices from the Age of Justinian* (Liverpool 2009) 158 n.61.

<sup>52</sup> Kelly, *Ruling the Later Roman Empire*, esp. 186–231.

<sup>53</sup> *Wars* 1.11.19–39, esp. 21–22 (Proclus' proposal of adoption οὐ γράμμασιν ... ἀλλ' ὄπλων σκευῆ, "not by a written document ... but *per arma*"; for precedents see Andrew Gillett, *Envoys and Political Communication in the Late Antique West* [Cambridge 2003] 253–254 n.153), 27 (Khusro's willingness to participate), 28–29 (collapse of the negotiations at the frontier), 30 (Khusro offended and vows vengeance). Discussion in Greatrex, *Rome and Persia at War* 135–137, esp. n.48 on Khusro's receptiveness to the proposal.

<sup>54</sup> Heather, *Restoration* 126–131, recognizes the implausibility of Proclus' legal objections and acknowledges the precariousness of Justinian's claim upon the throne; he credits Proclus, however, with "rumbl[ing] Cavades' cunning plan to make Chosroes ruler of the Roman as well as the Persian Empire" (124). Describing Proclus' counterproposal as "deliberately insulting" (125) fails to account for the interest, evident in Procopius' account, of each of the principals—on the part of Khusro himself, as well as Justin and

all of this Proclus emerges less as a partisan or a kingmaker than as a seasoned hand and a speaker of decorous phrases and difficult truths: not then so much a master builder, a Robert Moses (who reportedly was in the habit of declaring, “if the ends don’t justify the means, what does?”), but perhaps instead “a lawyer and a moralist,” whose involvement in politics was tempered by a respect for process and a preference for steering the middle course.<sup>55</sup>

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Justinian—in finding a mutually agreeable formula for concluding an arrangement.

<sup>55</sup> Quotation attributed to Moses by Caro, *Power Broker* 218. “A lawyer and a moralist”: self-description by Theodore C. Sorensen (“a writer and counselor who did much to shape [President John F. Kennedy’s] narrative, image and legacy”), cited in Tim Weiner, “Theodore C. Sorensen, 82, Kennedy Counselor, Dies,” *The New York Times* (1 November 2010) A1, who adds: “Kennedy had plenty of yes-men. He needed a no-man from time to time. The president trusted Mr. Sorensen to play that role in crises foreign and domestic, and he played it well, in the judgment of Robert F. Kennedy, his brother’s attorney general. ‘If it was difficult’, Robert Kennedy said, ‘Ted Sorensen was brought in.’”

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