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IN THE LATER ROMAN EMPIRE.

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CONSISTORIUM DOMINI: IMPERIAL COUNCILS  
OF STATE IN THE LATER ROMAN EMPIRE

by

DAVID A. GRAVES

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## INTRODUCTION

Modern study of the consistory begins with Gothofredus' commentary to the Theodosian Code.<sup>1</sup> By the late nineteenth century, Cuq, Mommsen and Seeck had added considerably to scholarship on the subject without deviating much from Gothofredus' views.<sup>2</sup> In the present century, scholars such as Boak, Stein, Crook and A.H.M. Jones have commented on the consistory, but mainly incidentally.<sup>3</sup> Despite this attention given to the consistory, no modern monograph has appeared to collate the ancient evidence and evaluate the scholarship to date in a broad manner.<sup>4</sup> For the most part, moreover, study of the consistory has been confined to administrative and legal, to the exclusion of its ceremonial, aspects. Recently H. Stern has attempted to reverse this trend, giving fresh perspective to a subject long treated mostly as an administrative agency.<sup>5</sup>

This study will attempt to trace both the ceremonial and administrative character of the consistory. As the title suggests, it is complementary to J. Crook's *Consilium Principis*,

although differing radically in many respects. His approach to early Roman imperial councils of state is prosopographical, his contention being that there never really was a fixed institution called *consilium principis*.<sup>6</sup> Instead, councils were composed of individual *amici principis*, whose informal relationship to each emperor defied "official" designation.<sup>7</sup> In contrast, according to Crook, only the consistory that replaced the *consilium* in the mid-fourth century was truly an institution, since permanent ex officio membership developed only at that time.<sup>8</sup> This view will be dealt with more extensively in the opening chapters of this study.

Since Crook ended his study of imperial councils of state with Diocletian, this study begins at that point. It ends with Justinian in the East and Theodoric in the West. The reign of Justinian, so often called the last classical Roman emperor, provides much comparative evidence of the consistory's development at Constantinople before the Byzantine period really begins. Theodoric's rule, on the other hand, offers the unique opportunity of studying the Gothic influence on the consistory against a background of century-long military predominance in western civil affairs. Beginning with the fifth century, it is important to realize that two distinctly different consistories take shape, reflecting the particular historical conditions of each half of the Roman Empire.

The title of this study, *consistorium domini*, distinguishes

the political atmosphere of the later Roman Empire from that of the Principate. Beginning with Diocletian, panegyric poetry began to portray the emperor as holding semi-divine authority,<sup>9</sup> poorly concealing the real roots of power, increasing militarization of imperial politics. In this respect, the evidence of court poetry must be seriously considered, particularly since imperial patronage often was its inspiration. A basic contention underlying this study is that the presentation at court of a semi-divine emperor was a responsibility shared by court officials. Imperial propaganda became historically important once it altered public behavior ceremonially *in consistorio*. As such, ceremony was no less important than administrative policy in eliciting popular support for emperors.

Recent scholarship largely has tended to emphasize the conciliar aspects of the consistory at the expense of its ceremonial life. This study attempts to restore some balance of regard for both ceremony and administration *in consistorio*. In so doing, it will evaluate the major ancient sources from a perspective that appreciates the ceremonial and administrative importance of the consistory. At the same time, however, the realization exists that often one or the other of these two activities took precedence according to the individual temperament of each emperor. It must be remembered that ancient political institutions, like those of the later Roman Empire, often

depended for their development more on powerful rulers than an inherently self-perpetuating bureaucratic structure.

## NOTES TO INTRODUCTION

Full citations to abbreviated ancient authors or collections may be found in the bibliographical section below; those to modern authors appear in the first footnote given.

1. J. Gothofredus, ed., *Codex Theodosianus* (6 vols; Lyon, 1665), II, 84, *passim*.
2. É. Cug, "Mémoire sur le *consilium principis* d'Auguste à Dioclétien", *Mémoires présentés par divers savants à l'Académie des inscriptions et belles lettres*, serie I, IX (1884), 311-504; Th. Mommsen, *Römisches Staatsrecht* (3 vols., 3d ed.; Leipzig, 1887-88), II, 989-92;  
O. Seeck, *Geschichte des Untergangs der antiken Welt* (6 vols.; Stuttgart: J.B. Metzlersche Verlangsbuchhandlung, 1913-23), II, 77-81.
3. A.E.R. Boak, *Master of the Offices in the Later Roman and Byzantine Empires*, University of Michigan Studies, Humanistic Series XIV, I (1924), 21-23, 91-100; E. Stein, *Histoire du bas-empire*, trans. par J.R. Palanque (2 vols.; Paris: Desclée de Brouwer, 1949-59), I, 111-13,  
J. Crook, *Consilium Principis: Imperial Councils and Counsellors from Augustus to Diocletian* (Cambridge:

- University Press, 1955), 143, 101-03, 139-40; A.H.M. Jones, *The Later Roman Empire, 284-602: A Social, Economic and Administrative Survey* (3 vols.; Oxford: Blackwell, 1964), I, 333-41.
4. For the most extensive article on the consistory, see C. Zakrewski, "Le consistoire impérial du bas-empire romain," *Eos*, XXXI (1928), 405-417; for the most complete collation of ancient sources and modern scholarship, see O. Seeck, "Comites consistoriani," "Consistorium," *Realencyklopädie der Classischen Altertumswissenschaft*, ed. Pauly-Wissowa-Kroll-Mittelhaus-Ziegler et al. (1894- ), IV, 1 (1900), 645, 930-31.
  5. H. Stern, "Remarks on the 'Adoratio' under Diocletian", *Journal of Warburg and Courtauld Institutes*, XVII (1954), 184-89; the standard work on late Roman imperial ceremony remains A. Alföldi, "Die Ausgestaltung des monarchischen Zeremoniells am römischen Kaiserhofe" *Mitteilungen des Deutschen Archäologischen Instituts, Römische Abteilung*, Bd. XLIX, 1-118.
  6. Crook, 104.
  7. For the *amici principis*, see *ibid.*, 21-30.
  8. *ibid.*, 101-03.

9. *Panégyriques latins*, ed. by É. Galletier (3 vols.; Paris: Les Belles Lettres, 1949-55), I, 12.

## CHAPTER I

### DIOCLETIAN

The ancient sources suggest that the consistory originated sometime in the mid-fourth century at the latest. Ammianus first mentions a consistory in 354, that of Caesar Gallus, while an inscription of 353 is the earliest epigraphical evidence for the term.<sup>1</sup> The authenticity of the legal evidence for its use in Diocletian's time has been rejected by most modern authorities, the earliest secure reference to it being an edict of 362.<sup>2</sup> Accordingly, writers like Lactantius and Aurelius Victor repeatedly use *consilium* instead of *consistorium* in the tradition of the Principate in referring to councils of state held by Diocletian.<sup>3</sup> Nevertheless, no less than four late imperial sources, including Victor, characterize Diocletian's reign in other respects as a major break in tradition from the Roman past.<sup>4</sup>

Ammianus Marcellinus, one of these sources, in a unique passage, not only compares the functions of the *consilium* and the consistory at the time of Constantius II, but also apparently relates the consistory to one of Diocletian's innovations:

Primates, consilio secunda vigilia convocato, properarunt omnes in regiam. Cumque nulli ad eligendum quid agi deberet, mens suppetere posset aut lingua, submissis verbis perstringebatur Ursicini mentio, ut consiliis rei bellicae praestantissimi, frustraue gravi iniura lacessite, et per admissionum magistrum--qui mos est honoratior--accito eodem, ingresso consistorium offertur purpura multo quam placidius. Diocletianus enim Augustus omnium primus, externo et regio more instituit adorari, cum semper antea ad similitudinem iudicum salutatos principes legerimus . . . et qui [Ursicinus] . . . tunc dux prudentissimus, et Constantini magnus erat commilito . . . .<sup>5</sup>

This account of Constantius' response to the alleged treason of Silvanus, his *magister peditum* in Gaul, clearly distinguishes two separate functions of the *consilium* and *consistorium*. The former was an advisory meeting of top-level officers (*primates*), hastily called and involving consensus, since judgment was made on Ursicinus' military competency (*consiliis rei bellicae praestantissimus*), and is evidence of the continued informal tradition of the *consilium principis*. It is strikingly similar to Lactantius' account of Diocletian's meeting convened on the problem of the Christians; *placuit ergo amicorum sententiam experiri . . . . Admissi ergo iudices pauci et pauci militares, ut dignitate antecederant, interrogabantur.*<sup>6</sup>

Constantius' consistory, on the other hand, was an occasion for protocol, regulated by an officer of admissions, and in this instance the scene of a highly ceremonial *adoratio purpurae*.<sup>7</sup> The consistory might have been, as here, comple-

mentary to a *consilium*; but the former was distinctly ceremonial in nature, the latter administrative. In fact, what Ammianus emphasizes is a sequence of events, not a shifting development in one institution. It might be said that the *consilium* was a seeking of consensus, the consistory a ceremony of autocracy to make that consensus official policy.

Perhaps the key to Diocletian's contribution to this ceremonial *adoratio purpurae in consistorio* lies in Lactantius' phrase *ut dignitate antecederant*, indicating protocol, although probably less elaborate than under Constantius II. In this regard, Ammianus in the passage on Ursicinus seems to allude subtly to his gaining added honorary status, if not actual rank, following the ceremony: *tunc dux prudentissimus . . . Constantini magnus erat commilito*. Similarly, later at the court of the usurper Silvanus, Ursicinus was honored as *spectabilis* after he adored the purple again, perhaps a satirical reference of Ammianus to his attaining consistorial rank, however illegitimate.<sup>8</sup> By the mid-fourth century, moreover, the title *comes intra consistorium* became current in inscriptions, indicating the new prestige of the consistory as a significant step in attaining high rank in the bureaucratic hierarchy.<sup>9</sup> Clearly then, a relationship between the *adoratio purpurae* and a simultaneous advancement in rank on that occasion existed. According to Ammianus, while Diocletian

increasingly emphasized imperial court protocol (*adoratio purpurae*), by Constantius' time the consistory had become the ceremonial institution par excellence for bureaucratic advancement in office.

The reception at Milan in 291, as vividly described by the panegyrist Mamertinus, is a good example of imperial ceremony under Diocletian:

Quale pietas vestra spectaculum dedit, cum in Mediolanensi palatio admissis qui sacros vultus adoraturi erant conspecti ambo . . . . Atque haec, quidem velut interioribus sacrariis operta, veneratio eorum modo animos obstupefecerat, quibus aditum dabant vestri ordines dignitatis.<sup>10</sup>

Both the *palatium* and more specifically the so-called "interior of the sanctuary" might indicate an audience-chamber, like that of Constantius II's consistory, since both *palatium* and *sacrarium* were sometimes synonymous in late Latin usage with *consistorium*.<sup>11</sup> Furthermore, the terminology *vestri ordines dignitatis* underscores the importance of rank in relation to those who stood closest to imperial favor and trust under Diocletian. It is comparable to the later reference to *consistoriani*, who formed the pinnacle of a then more formally structured imperial entourage.<sup>12</sup>

It is perhaps significant that in most cases where Ammianus uses the term consistory, the emperor did not seek out advice. More often the consistory was the scene of petitioning or addressing the emperor by a variety of persons, some of whom

were high-ranking Roman officials.<sup>13</sup> These occasions seem to have been initiated by *salutationes* or forms of *adoratio*, which, perhaps because of Diocletian's emphasis on an *ordo dignitatis* or protocol, had by the reign of Constantius II been formally incorporated into the ceremonial institution called the consistory. This development was part of the increased attention given to imperial court ceremony following the reorganization of the palatine administration by Diocletian and Constantine I. Under Constantius II, court ceremony finally crystallized once the consistory had become the primary institution for such activity, part of which, according to Ammianus, originated under Diocletian.

The relative importance of Diocletian as imperial innovator or reformer is difficult to determine due both to the scarcity of contemporary information and the perhaps exaggerated claims of later ancient sources.<sup>14</sup> In one important respect, however, Stern seems correct in modifying Alföldi's view that Diocletian was not responsible for drastically altering the traditional practice of imperial receptions. According to Stern, Diocletian substituted the *adoratio* for the *salutatio* as an official "ceremonial of the imperial audiences".<sup>15</sup>

Like Alföldi, Crook is also cautious in estimating Diocletian's role as innovator and hesitant in ascribing to that emperor alterations of the traditional *consilium principis*. To quote Lactantius:

Placuit ergo amicorum sententiam experiri. Nam erat huius malitiae: cum bonum quid facere decrevisset, sine consilio faciebat, ut ipse laudaretur; cum autem malum, quoniam id reprehendendum sciebat, in consilium multos advocabat, ut aliorum culpa adscriberetur quicquid ipse deliquerat. Admissi ergo iudices pauci et pauci militares, ut dignitate antecederent, interrogabantur.<sup>16</sup>

As Crook writes, "this is unmistakably the traditional process still in being. A question arises and a meeting is called, of a few jurists and a few generals".<sup>17</sup> What Crook fails to mention, however, is the fact that this "traditional process" was the last resort of Diocletian against an intransigent Galerius. Previously, in his bid to soften Galerius' attitude against the Christians, he had acted quite autocratically, as Lactantius recounts in the lines immediately preceding the ones above: *ergo habito inter se [Diocletian and Galerius] per totam hyemem consilio, cum nemo admitteretur, et omnes de summo statu rei publicae tractari arbitrarentur.*<sup>18</sup>

No matter what rationale Lactantius, the Christian apologist, uses to explain away Diocletian's ambivalence, the fact remains that Diocletian gave the official impression *initially* of holding what seemed a *consilium*--"although no one was admitted and everyone knew that the highest matters of state were being discussed". In other words, this initial *consilium* was a sham in the traditional meaning of the term and blatantly autocratic. Only when Diocletian failed to have his way did he use the last resort of seeking a traditional con-

sensus to back up his moderate position. Constantius was to act quite similarly in the Silvanus affair half-a-century later.<sup>19</sup>

Autocracy, a characteristic feature of imperial politics in the later Roman Empire, thus was plainly evident as early as Diocletian's reign. With autocracy, the ceremonial importance of the *adoratio purpurae* increased, eventually reaching full expression in Constantius' reception of Ursicinus. For, as Ammianus seems to indicate, the consistory did not replace the *consilium*, contrary to Crook's belief.<sup>20</sup> Both apparently co-existed, but as distinct institutions, since each fulfilled a different function. The *consilium*, ministerial and administrative in nature, was only as effective as each emperor chose to make it. The consistory, on the other hand, was imperial and ceremonial, at least at inception.

A general interpretation of Lactantius' passage suggests the origins of divergency between ceremony and administration under Diocletian: *admissi ergo iudices et pauci militares, ut dignitate antecederant, interrogabantur.*<sup>21</sup> Ceremony could precede (as here) or follow (as in Ursicinus' reception under Constantius II) the *consilium*, but it seems apparent that the two institutions developed separately and for different purposes. If the consistory was utilized more often, it was because it served to reinforce imperial supremacy by symbolically elevating the emperor above all.

Thus, inferior deities stood before Diocletian and Maximian, depicted iconographically as Jupiter and Hercules, just as the later *consistoriani* stood in attendance upon Constantius II and his successors. It was not primarily (or even essentially) advisory personnel who stood before the emperor, but ostensibly officers to be received ceremoniously, such as the *ordines dignitatis* at Milan to adore Diocletian or Ursicinus to receive his commission from Constantius.<sup>22</sup> Besides the *adoratio*, the re-emphasis of the emperor *uti deus*, the introduction of such imperial regalia as the *nimbus*, and the prominent display of the iconographic motif of the seated emperor before standing gods, all gave vivid ceremonial expression to what Stern has called Diocletian's "notion of the divine right of kings".<sup>23</sup>

It seems probable that only some elements of the institution later known as the consistory, and not its formal title, originated under Diocletian. For example, not only *iudices*, but *magistri in palatio*, perhaps even *comes* and *consiliarius*, were all titles prominent under Diocletian, which also had significance much later in connection with the consistory.<sup>24</sup> In creating offices, moreover, Diocletian energetically attempted to centralize control over a burgeoning provincial administration, which drew much of its personnel from the imperial palace.<sup>25</sup> The exaltation of the emperor and the elevation of his court led to increased ceremonial reward

of palatine service through recognition *in consistorio*.

Explicit evidence of the consistory as a place-name, as distinguished from a body of imperial attendants, is rare. In this regard, the questionable reference to Diocletian's "consistory" in the codes, although obviously anachronistic, might have stemmed from the tradition of both his extensive building activity and his orientalized court.<sup>26</sup> Ammianus only once unequivocally mentions the consistory topographically when Antioch felt the effects of an earthquake following the death of Julian: *cum horrendo stridore sonuerunt in consistorio trabes*.<sup>27</sup> At other times, the term consistory might be interpreted as signifying a place where either advisers or attendants met, or perhaps even notaries to record decisions made *in consistorio*, each of which meanings will be investigated more fully below.

In the last analysis, it must be admitted that there is no evidence that Diocletian himself instituted the consistory. No sources mention anywhere that he made his attendants stand (*consistere*) before him, a practice which surely would have been listed alongside the introduction of *adoratio*, since both would have accentuated Diocletian's break with the tradition of the Principate.<sup>28</sup> Nevertheless, there seems to be sufficient indication that Diocletian's emphasis on the imperial *ordo dignitatis* at official receptions (obviously standing, before

kneeling in adoration) paved the way for the later introduction of the consistory as the ceremonial setting for bureaucratic advancement or recognition.<sup>29</sup> Under Diocletian, however, the newly reorganized and still developing administrative hierarchy had not yet attained the permanency essential for the formation of a ceremonial institution such as the consistory under Constantius II.

NOTES TO CHAPTER I

1. Amm. 14.7.10 (pp. 49-50 below); *ILS*, 1243 (Jones, I, p. 64, n. 28);
2. *CJ* 9.47.12 (n.d.); for the arguments against acceptance, see Crook, 96-97; Stein, I, 470, nn. 80-81; Mom., *R-S*, II, 989; Cuq. 480; the law of 362 is *Cth* 11.39.5.
3. For examples, see Lact. *Mort. pers.* 11.1-6; Aur. Victor *Caes.* 40.8-9; Victor's general preference for institutions of the Principate probably explains why he continues to use *consilium*, instead of *consistorium*, after the mid-fourth century. (For Victor's classicism, see J. Straub, *Vom Herrscherideal in Der Spätantike* (Stuttgart: Kohlhammer, 1964), 1; C. G. Starr, "Aurelius Victor: Historian of Empire", *American Historical Review*, LXI (1956), 577.
4. Aur. Victor *Caes.* 39.4; Amm. 15.5.18; Jerome *Chron.* A2312; Eutrop. 9.26; for an evaluation of these sources, see Alf., "Ausc.", 4-8, but modified by Stern, "Remarks", 184 (see p. 12 above).
5. 15.5.18-19.
6. 11.4-6; cf. Amm. *ibid.*: *primates consilio secunda vigilia convocato, properarunt omnes in regiam*; Crook,

101-03; Jones, I, 333; for the military as imperial advisers, see Jones, III, 64-65, nn. 27-28; Seeck, *RE*, IV, 1 (1900), 645; Stein, I, 470, nn. 80-81.

7. For the *magister admissionum*, see Boak *Master*, 14; Alf., "Augs.", 28; for the *adoratio purpurae* (a modern term), see W. T. Avery, "*Adoratio Purpurae and the Importance of the Imperial Purple in the Fourth Century of the Christian Era*, *Memoirs of the American Academy in Rome*, XVII (Roma: American Academy, 1940), 66-80; Stern, "Remarks", 184-85, who refutes Alföldi's evidence for *adorationes* before Diocletian ("Augs.", 5-8); for the consistory as a place, see p. 16 above.
8. 15.5.27: *susceptus tamen idem dux leniter adactusque, inclinate negotio ipso cervices, adorare sollemniter anhelantem celsius purpuratum, ut spectabilis colebatur et intimus*; immediately after attaining the rank of *spectabilis*, Ursicinus apparently became an official adviser to Silvanus (*ut iam secretius de rerum summa consultaretur*, *Amm. ibid.*); on "bending the necks" in *consistorio*, i.e. *adoratio*, cf. *Amm.* 30.6.2; until the end of the fourth century, consistorial personnel ranked both as *spectabiles* and *illustres*, often confusedly (see Ensslin, *RE*, III A, 2 (1929), 1552-68; Seeck, *RE*,

- IV, 1 (1900), 645-46; Boak, *Master*, 44-45).
9. For examples, see Jones, III, 64, n. 28,
  10. *Pan. lat.* 3.11.1-3 (*Gall.*, I, 60); for a discussion of this passage, see Stern, "Remarks", 187, whose translation is used here.
  11. For *palatium=consistorium*, see Jones, I, 105; for *sacrarium=consistorium*, Crook, 102; A. Piganiol, *L'empire chrétien (325-395)* vol. IV, 2 of *Histoire générale*, gen. ed., G. Glotz (Paris: Presses Universitaires, 1947), 312-13; by the end of the fourth century, cf. Auson. *Gratiarum actio* 14: *in illa vero sede, ut ex more loquimur, consistorii, ut ego sentio, sacrarii tui . . . .*
  12. Cf. *Pan. lat. ibid.*; Lact. *Mort. pers.* 11.6; Amm 15.5.19, 27 (n. 8 above).
  13. For reproving the emperor or caesar, see Amm. 14.7.11, where the Praefect Domitianus scolded Caesar Gallus; 16.7.3, where Marcellus, the *magister equitum*, did the same to Julian; for unsolicited praise of the emperor, see Amm. 20.4.22, 25.10.10, 28.1.25 and 30.6.2, where the emperor received Gallic troops, civil officials and

provincial envoys *in consistorio*.

14. Crook, 96; Alf., "Ausg.", 1-25; but cf. Stern, "Remarks", 184-85.
15. Stern, "Remarks", 187.
16. *Mort. pers.* 11.4-6.
17. Crook, 97.
18. *Mort. pers.* 11.1-3.
19. *Amm.* 15.5.5-12 (pp. 50-53 below).
20. cf. Crook, 102-03.
21. *Mort. pers.* 11.3.
22. As to seated, advisory consistorians, Ammianus (15.5.12) makes this point quite clear: *statuit imperator dispicientibus consistorianis et militaribus universis in negotium perspicaciter inquire. Cum iudices resedissent . . . .*; cf. O. Karlowa, <sup>"</sup>*Römische Rechtsgeschichte*, (2 vols; Leipzig, 1885), I, 850; Alf., "Ausg.", 44; R. MacMullen, "Roman Bureaucratise", *Traditio*, XVIII (1962), 376; Crook, 97; following Ammianus, however, see most recently W. Kunkel, "Die Funktion des Konsiliums in der magistratischen

- Strafjustiz und im Kaisergericht", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, LXXXV (1968), 295, n. 96.
23. "Remarks", 189; for Diocletian as *deus*, see Aur. Victor *Caes.* 39.4; for the *nimbus* and standing gods, see the lead medallion issued by Diocletian and Maximian (H. Stern, *Le Calendrier de 354* (Paris: P. Geuthner, 1953), Pl. 29.2; R. Brilliant, *Gesture and Rank in Roman Art*, *Memoirs of Connecticut Academy of Arts and Sciences*, XIV (Kobenhavn: Munksgaard, 1963), Fig. 4.78.
24. For *iudices* and *magistri in palatio*, see Lact. *Mort. pers.* 11.4-6, 14 (on *iudices* and the *magister officiorum* as consistorians, cf. Amm. 15.5.12); for the *comes* title under Diocletian, see Zonaras 12.31; Crook, 95-96 (on the *comes in consistorio*, cf. *CTH* 6.30.1; 11.16.15, *etal.*); for *consiliarius*, see *SHA Aur.* 43.3, 44.3, a title, according to Crook (98), comparable to Lactantius' *iudex* (on a *consiliarius* [probably in *consistorio*], cf. Amm. 21.9.8); in *Pan. Lat.* 10.3 (Gall., II, 98) there is an obvious contrast made between *iudices* and *duces*, comparable to Ammianus' later *consistoriani et militares* (15.5.12).
25. Jones, I, 51-52.

26. For Diocletian's building activity, see Lact. *Mort. pers.* 7.8-10; A. Alföldi, *Conversion of Constantine and Pagan Rome*, trans. by H. Mattingly (Oxford: Clarendon Press, 1948), 93-96; H. P. L'Orange, *Art Forms and Civic Life in the Late Roman Empire*, trans by Dr. and Mrs. Knut Berg (Princeton: Princeton University Press, 1965), 72-82, the latter of whom believes there are consistorial architectural features both at Spalato and Piazza Armerina.
27. 25.10.2.
28. Cf. Zonaras 12.31; O. Treitinger, *Die oströmische Kaisersund-Reichsidee* (Jena: Frommann, 1938), 94; Stern, "Remarks", 186.
29. Stern, *ibid.*, 188.

## CHAPTER II

### CONSTANTINE THE GREAT

According to a number of scholars, Constantine I created the consistory as an ex officio body of officials which capped the administrative hierarchy of the later Roman Empire.<sup>1</sup> Typical of this view is the remark of Crook:

This complete and radical change in the most influential body in the Empire was the work of Constantine, the revolutionary, who saw the Empire with new eyes. Diocletian, for all the change he introduced, was concerned to bolster the existing structure; Constantine built anew.<sup>2</sup>

There is no direct evidence, however, to warrant the view that Constantine was responsible for such a "complete and radical change" in governmental institutions, no matter how forward-looking he may seem as a religious innovator and founder of a new capital. The first mention of the consistory in inscriptions and literature occurs under Constantius II, while not until 362 does the title appear in the codes.<sup>3</sup> Constantine's alleged role in developing the consistory rests on the assumption that the consistory was primarily an advisory body to the emperor and that it acquired an ex officio nucleus of officers under Constantine. But as W. Blum suggests in his

recent study *Curiosi und Regendarii*, the creation of certain ministers by Constantine preceded the development of bureaus to implement their administrative authority.<sup>4</sup> Similarly, the emergence of the consistory, clearly functioning as a ministerial agency, seems to have grown out of the creation of individual ministers, but only gradually and at a later date.

Those who attribute the revival of the title *comes* to Constantine interpret it as a significant link between his allegedly general administrative reform and his specific creation of the consistory.<sup>5</sup> Although the title *comes intra consistorium* does not appear until much later, the titles *comes ordinis primi, secundi* and *tertii* certainly do occur under Constantine and were his creation, according to Eusebius.<sup>6</sup> The title *comes* alone, however, was by no means granted exclusively to officials functioning at court and in situations that might be construed as "consistorial".<sup>7</sup>

The title *comes*, granted lavishly as a court favor, survives abundantly from evidence datable under Constantine. This is seen especially in numerous statutes from the Theodosian Code, for example, 6.22 (321), a part of which states: *hos enim solos, qui intra palatium versati sunt vel administrationibus functi, ad honores excipi oportebit ceteris cunctis exemptis et curiis restitutis . . .* The edict seems to make a distinction between honorary (*qui intra*

*palatium versati*) and functional (*qui . . . administrationibus functi*) offices.

In this same regard, one might cite two inscriptions from Constans' reign regarding official careers that probably began under Constantine. The first inscription reads: *Fl. Eugenio v.c., ex praefecto praetorio, consuli ordinario designato, magistro officiorum omnium, comiti domestico ordinis primi omnibusque palatinis dignitatibus functo.*<sup>8</sup> This inscription, apparently listing offices in descending order of rank, has been cited by Jones and others for two reasons. It is the earliest epigraphic evidence for the title Master of Offices and illustrates the early use of the title *comes domesticus* as a synonym, according to Jones, for the later *comes intra consistorium*.<sup>9</sup> The latter case may be so, although not strictly in an administrative or advisory capacity of the consistory, for which function no direct evidence appears until after the mid-fourth century. It might have signified an *ordo dignitatis* held ceremonially between leaving lower functional offices (*palatinae dignitates*) and achieving the first full ministry, the Master of the Offices.

A similar situation might apply to the second inscription from the same period: *M. Nummio Albino v.c., quaestori candidato, praetori urbano, comiti domestico ordinis primi et consulari ordinario iterum, Nummius Secundus eius.*<sup>10</sup> Unlike

Flavius Eugenius' career, Nummius Albinus' posts included no palatine positions that normally were stepping-stones to the alleged rank of imperial adviser, i.e. *comes domesticus ordinis primi*. In relation to obtaining the honorary senatorial position of *consul ordinarius*, however, the rank might be significant ceremonially, linking Diocletian's *ordo dignitatis* with Constantius II's *adoratio in consistorio*. For considered ceremonially, *comes domesticus primi ordinis* is closer to the past tradition of the *cohors amicorum* or *consilium principis* than any new permanent advisory staff called the consistory.

Throughout the Roman Republic and the Principate, the right of admission to aristocratic and later imperial *salutationes* rested upon order of rank and political importance of the individual concerned.<sup>11</sup> Speaking of the *consilium principis*, Seneca emphasizes the importance of those who form the *cohors primae admissionis*.<sup>12</sup> Although it might consist of both *equites* and senators, the latter traditionally at least, were jealous of their prerogatives.<sup>13</sup> In this respect, the reign of Diocletian was significant: on the one hand, he transformed the primarily senatorial *salutatio* into an imperial *adoratio* of court protocol; on the other, his choice of *comites* for important posts relegated the senatorial class to secondary importance.

Under Constantine, however, senators gradually regained pre-eminence as he attempted to fuse senatorial prestige with

the palatine.<sup>14</sup> According to Eusebius, furthermore, Constantine's creation of the three orders of *comites* derived from his desire to give honorary status rather than functional duties.<sup>15</sup> The full title *comes domesticus ordinis primi* might be part of this new status, as in the example of M. Nummius Albinus, who received the senatorial rank of *consul ordinarius*, following a ceremonial designation of *comes*.<sup>16</sup>

The title *comes* alone was applied traditionally to a wide range of itinerant companions to the emperor, whether advisers or not.<sup>17</sup> Constantine's use of *domesticus* to modify *comes*, moreover, fails to define the term more explicitly. *Domesticus* does not necessarily imply an advisory capacity, since on at least one occasion Ammianus employs the term in clear apposition to "counsellor" (*consiliarius*).<sup>18</sup> For Jones to say that *comes domesticus* indicated "a member of the consistory without portfolio" under Constantine seems premature, particularly since no complementary evidence exists that the consistory even functioned at the time.<sup>19</sup>

Besides the title *comes*, the first mention of the Master of the Offices and the Quaestor of the Sacred Palace under Constantine has also been taken to imply the existence of the consistory, although both ministers were not demonstrably associated with that body until the mid-fourth century.<sup>20</sup> Aside from the codes, only Ammianus mentions both these ministers

*in consistorio*, although never together.<sup>21</sup> In view of the ambiguities, it is necessary to re-examine the evidence, most of it found in the Codes, usually cited to establish the consistory as a body of ministers serving *ex officio*, both during and after Constantine's reign.

Most recently Jones and Crook have tended to confirm and follow the views of Stein, Seeck and Cug.<sup>22</sup> These latter saw the consistory of the fourth century as an imperial advisory council of state which acquired a greater permanence by developing a nucleus of *ex officio* membership. This nucleus allegedly consisted of the Master of the Offices, the Quaestor of the Sacred Palace and the two Counts of the Sacred and Private Treasuries.<sup>23</sup> Whereas the *consilium* of imperial advisers through Diocletian's reign had been essentially an ad hoc collection of *amici* or *comites* whose membership was constantly changing, the consistory under Constantine or soon after allegedly developed into what Crook calls "a regular, acknowledged organ of the constitution, a privy council in the fullest sense . . . a fixed group of *comites intra palatium* (*comites intra consistorium, comites consistoriani*)".<sup>24</sup> The emphasis on permanence in the consistory of the fourth century is an important part of this view. Jones emphasized this basic change from *consilium* to *consistorium* as the body "acquired a more formal structure", although he is less emphatic than Crook

about its independence from the emperor in making policy.<sup>25</sup> This new aspect of a "fixed group" or "formal structure" centered on the ex officio, permanently collective association among the four ministers noted above, who supposedly would have been in attendance at every meeting.

In support of his claim that the Master, the Quaestor and the two financial Counts were ex officio, permanent members in the consistory of the fourth century, Jones cites *CTh* 7.8.3 (384).<sup>26</sup> This statute ordered the exemption of supplying quarters to, among others, *eos . . . ex comitibus consistorianis, qui participantes Augusti pectoris curas agendo claruerunt*; but nowhere are any of the four officers mentioned explicitly. In addition to *CTh* 7.8.3, Seeck also cited 6.30.1,4 (379) under the section *De Palatinis Sacrarum Largitionum et Rerum Privatarum* and 9.14.3 (397) under the section *Ad Legem Corneliam De Sicariis* in order to illustrate "die vornehmste Stelle" of the four offices in the consistory.<sup>27</sup> Nevertheless, *CTh* 6.30.1,4 only confirm the service of palatine officials (*palatini*) under the joint authority of the two Counts in question. Their texts refer only to *consistorii nostri comites* at whose joint decision, perhaps *in consistorio*, palatine officials might be directed to the provinces. *CTh* 9.14.3 similarly refers only to those *qui consiliis et consistorio nostro intersunt*, a rather vague and curious classification of consistorial officials of illustrious

rank against whom it was treasonous to plot.<sup>28</sup>

All these references in the Theodosian Code fail to provide any *prima facie* evidence that attendance by all four ministers formed a nucleus *in consistorio* of permanent ex officio membership. Without such evidence, it is reasonable to assume that the titles *comites consistoriani*, *consistorii nostri comites*, etc., continued to signify an ad hoc choice of imperial advisers in the tradition of the *consilium principis*. In the Theodosian Code there are only two possible references associating the four specifically with the consistory: 11.39.5 (362) and 6.9.1 (372).<sup>29</sup>

6.9.1: Post alia: eorum honores, qui sacrario nostro explorata sedulitate oboediunt, hac volumus observatione distingui, ut quaestor atque officiorum magister nec non duo largitionum comites proconsularium honoribus praeferantur, et cetera.

11.39.5: Pars actorum habitorum aput Imperatorem Iulianum Augustum Mamertino et Nevitta cons. X Kal. April. Constantino Poli in consistorio: adstante Iovio viro clarissimo quaestore, Anatolio magistro officiorum Felice comite sacrarum largitionum, et cetera.

This association of all four offices together with *nostrum sacrarium* in 6.9.1 is unique in the Code.<sup>30</sup> To use Pharr's translation, the passage might be rendered in part: "(After other matters). It is Our will that the honors of those persons who *serve* Our imperial Sanctuary . . . ." <sup>31</sup>

The verb *oboedire*, however, has the sense not only "to serve" but also "to obey".<sup>32</sup> If the former sense is taken with Pharr,

then the passage tends to give the impression that the four offices were singled out as exceptional "servants" of the consistory (*sacrarium*), i.e., perhaps *ex officio* members, so honored with the proconsulship for their status. If the latter sense is taken, however, the reference is only to certain officers (*honores*) "who obey Our imperial sacredness". In this interpretation, *sacrarium nostrum* signifies imperial majesty in general. Consequently, the four need not be considered so honored necessarily for their *ex officio* association with the consistory as for their place in Valentinian's government in general, even though that status was obviously pre-eminent. Valentinian's legislation on precedence of rank aimed essentially at promoting the military, with the effect that civil offices, including the palatine ministers, also rose in rank accordingly.<sup>33</sup>

In spite of Pharr's translation, it is not certain that the term *sacrarium nostrum* here meant *consistorium*. Ausonius was the earliest author to equate the two terms clearly, but his reference is much later (under Gratian) than its use here in the Code. Furthermore, another edict of the same time (*CTh* 9.40.11 of 367) refers to *sacrarium* in the sense of the imperial court in general: *neminem de numinis nostri sacrario prodeuntem harena suscipiat*.<sup>34</sup> Admittedly, there are other indications that by Valentinian's reign the

ministerial activity of these four officers had markedly increased, particularly in relation to the consistory. As will be seen below, however, such activity does not necessarily point to their collective action *in consistorio*.<sup>35</sup>

*CTh* 11.39.5, for its part, omits the fourth minister, the Count of the Private Treasury. In both this edict and 6.9.1 the ancient editors of the Code apparently abbreviated the text (*pars actorum . . . et cetera*), but this does not explain the officer's exclusion, especially if he was allegedly by this date a permanent member of the consistory.<sup>36</sup> In this case, as in others, inconclusive and ambiguous evidence has been used by modern commentators to bolster the arguments for a consistory of set permanent membership. Given the radically different temperaments of such rulers as Julian and Valentinian I, one emperor might well have found a consistory oriented toward *ex officio* membership a threat to his autonomy, while another might have desired it to ease the burden of decision-making. Any claim that the consistory acquired a permanent, *ex officio* nucleus of palatine ministers as early as the reign of Julian seems possible but unproved and unlikely in the absence of more corroborating evidence. Constantine I *might* have created the honorary title of *comes*, as well as the posts of the Master and Quaestor functioning as they did somewhat later, but such a title and such posts need not *necessarily*

have functioned administratively *in consistorio* since there are no pressing reasons to suppose they did. For example, it was probably not until the reign of Constantius II and Constans that the Master became prominent in connection with internal security.<sup>37</sup>

In defining titles like *comes domesticus*, *intra palatium* or *consistorium*, especially at their inception under Constantine, one should be careful not to attribute too much rigidity to the functions they imply.<sup>38</sup> For example, it is likely that specific duties were attached to the chief palatine ministers in piecemeal fashion. Their relationship to the consistory, as a council of state, probably developed in a similar fashion over a long period of time. Constantine certainly created titles that eventually became prominently associated with the later consistory, but to posit an immediate administrative character to that association denies the predominantly ceremonial tradition to which, at least to Ammianus, the consistory belonged. As either a reception chamber or entourage of court officers, the consistory should be considered foremost an imperial place or group where an emperor's trust might take the form of granting administrative duties, but usually only in conjunction with a court ceremony such as Ursicinus' *adoratio*. Although perhaps less formalized, Diocletian's emphasis on the proper *ordo dignitatis* for court functions played the same part as

Constantius' *adoratio purpurae* in regulating precedence of rank *in consistorio* for those closest to imperial trust, including, of course, administrative advisers.

Any comparison between the statecraft of Diocletian and Constantine must include the caveat that the social conflict between pagan and Christian certainly distorted the veracity of fourth century sources. Similar to Lactantius' work on the reign of the pagan emperor Diocletian, Eusebius' *Life of Constantine* is an essential source for the first Christian emperor. Although there is increasing agreement nowadays on the extent of general administrative reform by Constantine, his position in respect to the Church remains very debatable.<sup>39</sup> Nevertheless, as portrayed by Eusebius, Constantine's attitude toward his newly-found Christian advisers offers the most comprehensive material for his attitude toward court ceremony.

According to Eusebius, Constantine's succession to the throne was paralleled by the addition to the imperial entourage of "the priests of God when the young emperor made them his counsellors".<sup>40</sup> This distinction between Eusebius' term for counsellor (*πάρεδρος*) and the more commonly found *σύμβουλος* is perhaps instructive.<sup>41</sup> This is particularly so, considering the growing emphasis given to the seated posture of the emperor, from which undoubtedly the Latin *consistorianus*, i.e., "one who stands beside", took its

significance.<sup>42</sup> Constantine's Christian advisers, however, apparently were seated around the emperor, characterizing equal status among all concerned. This was quite in line with the earlier tradition of the *consilium amicorum*. Eusebius describes the court protocol involving equal status between Constantine and his advisers at the Council of Nicaea:

Everyone was present in the middle part of the palace  
 [Ἐν αὐτῷ δὴ τῷ μεσαιτάτῳ οἴκῳ τῶν βασιλείων] . . . .  
 Once the whole congregation was in its proper place  
 [ὅτε δὴ σὺν κόσμῳ τῷ πρέποντι ἢ πᾶσα καθῆστο σύνοδος],  
 a silence [σιγή] seemed to hold everyone in expectation  
 of the emperor . . . . As soon as he had reached the  
 upper end of the seats, at first he remained standing  
 [ἕστη], and when a low chair of wrought gold had been  
 brought before him, he waited until the bishops had beckoned  
 to him before he sat down [οὐ πρότερον ἢ τοὺς ἐπισκόπους  
 ἐπινεύσαι ἐκάθιζε] and after him everyone did the same.<sup>43</sup>

Conspicuous similarities are apparent between the mood and setting of this account and that of the panegyrist Mamertinus on Diocletian's reception at Milan. First, in the interior part of the palace, the emperor received individuals in a fixed order (κόσμος πρεπόντος), as if in *ordine dignitatis*. Secondly, similar to Diocletian's semi-divine attributes of *pietas* and *veneratio*, a reverential silence (σιγή) surrounded Constantine's appearance. This fact is perhaps more significant when it is remembered that later the Greek σιλέντιυμ was a synonym for the consistory.<sup>44</sup> Lastly, on reaching his position at the end of the chamber, the emperor remained

standing with the bishops until he received their permission to be seated all together. Clearly, although in general terms, Eusebius was describing the equal subordination of both bishop and emperor. Both were, so to speak, *consistoriani* in the service of God.

More similarities between the reception ceremonies of Diocletian and Constantine are evident in a pagan panegyric in honor of Constantine, which also compares favorably in part with Eusebius' description above: *volui enim sacratissime imperator, cum in illo aditu palatii tui stratum ante pedes tuos ordinem indulgentiae tuae voce divina porrectaque hac invicta dextera sublevasti, numini tuo gratias agere.*<sup>45</sup> Both the title *sacratissimus imperator* and the attributes *vox divina* and *invicta dextera* draw attention to the semi-divine character of the emperor, so closely associated with the theme of *adoratio* emphasized earlier under Diocletian.<sup>46</sup> Secondly, a part of the palace was specifically mentioned once more for the imperial ceremony, obviously complete with proskynesis (*ante pedes tuos*) and the familiar order of rank (*status ordo*). The reference to the entrance of the palace might be compared to one of Eusebius' own observations on witnessing a foreign embassy received at Constantine's court: "I myself have sometimes stood near the entrance of the imperial palace . . . ." <sup>47</sup> Was Eusebius one of the forerunners of the consistorians who stood

in attendance to the seated emperor? Eusebius' description of the emperor's funeral procession offers more material for comparison between Diocletian and Constantine:

First came the counts of every order leading the way, and then the host of magistrates, who had been accustomed to doing homage to the emperor before . . . saluting their sovereign on bended knee, as though he were still alive. After them, the senators came, and those of every rank, and they rendered the same homage . . . .<sup>48</sup>

As evidence of the continued tradition of a rather rigid ceremonial *ordo dignitatis*, this passage contrasts sharply with Eusebius' customary treatment of the ecclesiastical imperial entourage as all equal in rank. Perhaps more importantly however, this description contains notable elements of past as well as future court ceremony. The custom of proskynesis was obviously a continuation of Diocletian's *adoratio*; yet the curious distinction made between "counts" and "magistrates" possibly indicates a growing detachment of honorary from functional personnel in matters of ceremony. Following the sense of Eusebius' passage, one might distinguish between "the counts of every order" whose honorary status gave them "standing rank", i.e., *consistoriani*, before the emperor, and "the host of magistrates" whose functional relationship to the emperor was expressed by proskynesis. As in the case of Ursicinus later, these latter officers were too important functionally not to perform symbolic acts of submission as indications of loyalty.

Undoubtedly, to judge by Ammianus, the administrative tradition of the *consilium* lasted well into the fourth century, at least until the reign of Constantius II; only slowly did the term *consistorianus* seem to supplant the more amorphous *amicus* or *iudex* to indicate an official imperial adviser, although not necessarily *ex officio*. Similarly, the past ceremonial tradition of the *adoratio purpurae* also remained; under Constantius it became more elaborate and complex with its occurrence *in consistorio*.<sup>49</sup> Just as the title *consistorianus* developed after *comes intra palatium* or *intra consistorium*, so did counsel probably follow the flag of ceremony, as a distinguished honor granted to those fortunate enough to have been accepted into imperial trust.<sup>50</sup> This is clear as late as Julian's reign, when the newly enthroned emperor, probably *in consistorio*, answered the unsolicited advice of one admitted to adore the purple: *maiestatis enim insigne non ut consiliario tibi, sed ut desinas pavere porrexisti*.<sup>51</sup> Consequently, it was in the degree of imperial power, made unequivocally clear by imperial ceremony, that the earliest significance of the *consistorium domini* seems to lie.

## NOTES TO CHAPTER II

1. Seeck, II, 78; Stein, I, 111; Crook, 102' most recently, cf. Jones, I, 105; R. MacMullen, *Constantine*, (New York: Dial Press, 1969), 199.
2. Crook, 102.
3. Amm. 14.7.10; *CTh* 11.39.5; *ILS* 1243.
4. W. Blum, *Curiosi und Regendarii: Untersuchungen zur geheimen Staatspolizei der Spätantike* (Munich: Unidruck, 1969), 1.
5. Against the common view that Constantine revived the title, see Crook, 95-96; for the title *comes consistoriansus*, see Seeck, *RE*, IV, 1 (1900) 645; Crook, 21-30.
6. Eus. v. *Const.* 411; Jones, I, 104-05.
7. There is much disagreement and confusion over the title *comes*: see most recently, for example, Jones, I, 104-05: "The position of *comes* at first, in principle at any rate, involved some form of service . . . . The title (*comes*), however, seems from an early date to have been given as a mere honour . . . ."; cf. also Crook, 24-26; W. G. Sinnigen, "Comites Consistoriani in Ostrogothic Italy", *Classica et*

- Mediaevalia*, XXIV (1963), 158-59; and particularly J. S. Reid, "Reorganisation of the Empire", *Cambridge Medieval History* (8 vols.; Cambridge; Engl.: University Press, 1924-66), I, 48.
8. *ILS*, 1244 (Jones, III, 65, n.28).
  9. Jones, I, 334; for *comes domesticus=intra consistorium*, see Jones, I, 105, 333; for the accumulated evidence for the establishment of the Master of the Offices by Constantine, see Boak, *Master*, 24-29.
  10. *ILS*, 1238.
  11. Crook, 22-23.
  12. Sen. *De clem.* 1.10.1.
  13. For the mixed senatorial and equestrian *cohors amicorum*, see Crook, 23.
  14. Jones, I, 106.
  15. In *v. Const.* 4.1, the counts seem to fall into an honorary rather than functional category.
  16. *ILS*, 1238 (p. 26 above).
  17. Crook, 24-25.

18. Amm. 28.6.21: *Romanus [comes Africae in 365] domesticum suum illuc volucriter misit, et Caecilium consiliarium . . . .*; cf. Amm. 15.6.11 and 30.2.11, where *domesticus* seems to mean attendant to the *magister militum* and the Master of the Offices (on the title *consiliarium*, cf. p. 15 above); for *domesticus* in general, see Seeck, *RE*, V, 1 (1903), 1296.
19. Jones, I, 105.
20. Jones, I, 103-04.
21. In Amm. 15.5.21, Florentius, son of Nigrinianus, acts on behalf of the Master of the Offices; for the Quaestor of the Sacred Palace *in consistorio*, see Amm. 28.1.25.
22. For the consistory in the fourth century, see Jones, I, 333-41; Crook, 1-3, 101-03, 139-40; Stein, I, 111; Seeck, II, 77; Seeck, *RE*, IV, 1 (1900), 645; 930-31; Cuq, 481.
23. Hereafter these four ministers will be referred to as the Master, the Quaestor, and the two financial Counts; Boak's study on the Master is the only standard monograph devoted to any one of the offices (for its relationship to the consistory, see *Master*, 21-25); there are two recent Ph.D. theses devoted to the Count of the Sacred

Largesses: A. M. Minitier, "Count of the Sacred Largesses in the Late Roman Empire" (unpublished Ph.D. dissertation, University of Michigan, 1958); J. P. C. Kent, "The Office of Comes Sacrarum Largitionum" (unpublished Ph.D. dissertation, University of London, 1951), an excursus of which may be found in E. C. Dodd, *Byzantine Silver Stamps* (Washington: Dumbarton Oaks Research Library and Collection, 1961); in general, for the Quaestor, see M. E. Cosenza, *Official Positions After the Time of Constantine* (Lancaster, Pa: New Era Printing Co., 1905), 65-70; for the *sacrae largitiones*, see Jones, I, 427-37; for the *res privata*, *ibid.*, 411-27.

24. 101-03.

25. I, 333.

26. Jones, III, 64, n. 27 (cf. Karlowa, I, 849, n. 1); in Gothofredus' commentary (II, 95) on *CTh* 6.12.1 of 399 a similar distinction is made between the four alleged *ex officio* and the *ad hoc* consistorians, i.e. *qui comites ordinis primi . . . nun quidem participantes Augusti Pectoris curas agendo*; cf. *CTh* 11.18.1 of 409, where the four are mentioned in addition to other *comites consistoriani* (hereafter the date of each law will appear immediately after each citation).

27. RE, IV, 1 (1900), 645.
28. The significance of *consilium* appearing with *consistorium* is debatable: cf. Zak., 413-14, where he believes that personnel who *consiliis . . . intersunt* were *ad hoc* participants, a view which follows that of Gothofredus, (III, 110-11); for another interpretation, cf. p. 118 below.
29. Jones, III, 64, n. 27; Zak., 407; Goth., IV, 325.
30. On *palatium=sacrarium*, cf. p. 11 above.
31. C. Pharr, ed., *The Theodosian Code and Novels and the Sirmondian Constitutions* (Princeton: University Press, 1952), 28 (italics mine).
32. As a synonym for *inservire*, *oboedire* invariably takes the dative, as in Cic. *Brut.* 69; in the more general sense of "obey", one finds the accusative more often (under *obedio*, see *Lexicon totius Latinatis*, IV (4th ed. 1926), 422.
33. Jones, I, 142-43.
34. In the Code, cf. 9.40.11 and Pharr's ambiguous note to his translation; this legislation was probably part of the laws prohibiting soldiers and officers from participat-

- ing in gladiatorial combat (M. Grant, *Gladiators* (London: Weidenfeld and Nicolson, 1968), 123); for the reference to *sacrarium* from Ausonius, see p. 101 below.
35. See pp. 84-89 below.
36. Gothofredus, in his commentary (IV, 325) on 11.39.5, did not question the absence of the second financial Count; neither does Jones (III, 64, n.27); Zakrewski (407), on the other hand, equates *et cetera* with *et ceteris*(?), which, to the author, denote *spectabiles* of lesser rank than the specified *illustres*, including the absent fourth minister.
37. Blum, 9.
38. For a similar view on the title of *comes* in general, see Reid, 46-48.
39. For Constantine's administration, for example, see most recently John L. Teall, *Age of Constantine; Change and Continuity in Administration and Economy*, *Dumbarton Oaks Papers*, XXI (Cambridge: Harvard University Press, 1967), 23-24; for his relationship with the Church, see J. Straub, *Constantine as κοινὸς ἑπίσκοπος*, *ibid.*, 39-55.
40. *v. Const.* 1.32.1.

41. Cf. Crook, 105-06, where lack of uniformity seems the rule in employing Greek terms for imperial advisers (cf. c. 3, n. 60, below).
42. For the seated emperor, see Alf., "Ausc.", 44-45; the term *consistorianus*, of course, becomes known to us only under Constantius II (see pp. 52-53 below):
43. v. *Const.* 3.10.1 (italics mine).
44. For the fourth century use of the term, see MacMul., "Roman", 375-76; for the fifth century use, Jones, I, 338; S. I. Oost, *Galla Placidia Augusta* (Chicago: University Press, 1968), 164; Alföldi, ("Ausc.", 38) traced the earlier use of the term; comparable to later scenes *in consistorio*, some priests used the Council of Nicaea to present their own private grievances (Soz. 1.17; Theod. *HE* 1.6).
45. *Pan. lat.* 8.13 (Gall., II, 89); all the later church historians, except Philostorgius (2.17), seem basically to follow Eusebius' account (cf. Soc. 1.8-9; Soz. 1.19; Theod. *HE* 1.6).
46. Also on Constantine, cf. *Pan. lat.* 10.5.1 (Gall., II, 170); *in vestibulo suo requirentem repellit obiecta*

*veneratio*, for the address of the emperor as sacer, see Alf., "Ausc.", 45-46.

47. *v. Const.* 4.7.1; cf. *ibid.* 1.44.
48. *v. Const.* 4.67.1; Socrates (1.40) omits specific mention of any proskynesis; Sozomen (2.34) is also less specific in regard to ceremony, mentioning only τιμὴ and τάξις "observed as if alive".
49. Although Amm. 15.5.18 is the only explicit reference to the *adoratio purpurae in consistorio* (see Avery, 68), it is probable that Ursicinus' becoming *spectabilis* at Silvanus' court (Amm. 15.5.27) and Julian's own reference to the title *consiliarius* (Amm. 21.9.8) also took place in *consistorio*, although the term *adoratio* alone is referred to in both cases (cf. pp. 9-12 above).
50. In the Codes, *consistorium* appears earliest in *CTh* 11.39.6 (362), discounting *CJ* 9.47.12 under Diocletian (see c. 1, n. 2 above); Ammianus uses *consistorium* ten times (14.7.11; 15.5.5,18; 16.5.11, 7.2, 8.7; 20.4.22; 25.10.10; 28.1.25; 30.6.2), *consistoriani* only three times (15.5.12, 6.1; 31.12.10); in the inscriptions (collected in Jones, III, 64-65, n. 28), *comes consistorii* or *comes intra consistorium* is the rule, never *consistorianus*.

51. Amm. 21.9.8.

### CHAPTER III

#### CONSTANTIUS II AND JULIAN THE APOSTATE

With the reign of Constantius II the documented history of the consistory begins. Without the first thirteen books of Ammianus Marcellinus, the student of the period is suddenly made aware of the consistory as if a fully developed institution. Ammianus first mentions it in 353 when Constantius sent his Prefect Domitianus to the court of Caesar Gallus to urge Gallus to come to Italy for a meeting.<sup>1</sup> In the course of their encounter, Domitianus seemed hesitant to accord the Caesar the customary *salutatio in consistorio*, and some time later Montius, Gallus' Quaestor, averted the arrest of Domitianus (undoubtedly partly due to his rudeness *in consistorio*) by the palatine guards. From this brief introduction to the consistory, three observations seem clear: (1) by the mid-fourth century, the Caesar's *comitatus* also included a consistory; (2) the phrase *rogatus . . . admissusque in consistorium* seems to emphasize the continued ceremony of imperial audiences, now regulated by the consistory as a place, body of attendants, or both; and (3) the Quaestor Montius apparently played no

part in the reception of Constantius' Prefect, since he acted subsequently as if unaware of what originally transpired in the consistory.<sup>2</sup> There is no indication here either that Montius was an *ex officio* member of Gallus' consistory, or that the consistory was anything more than a ceremonial setting to receive Domitianus as a high ranking officer of state.

Under Constantius' rule at least, inconclusive evidence supports the view held by Jones and others that the consistory had become "an active and effective council of state which debated matters of moment and advised the emperor upon them".<sup>3</sup> In the case of Silvanus particularly, there is no indication that the consistory took the initiative in dealing with his being charged with high treason. In two rather lengthy accounts, Ammianus first mentions the consistory only in connection with the emperor's Praetorian Prefect, who first brought the matter of Silvanus' conduct to the emperor's attention in private: *hunc fasces . . . prefectus imperatori . . . secrete obtulit soli, ingressus intimum conclave . . . lectaque in consistorio . . . materia, tribuni iussi custodiri . . .*<sup>4</sup> Ammianus nowhere implied that an advisory council of state was convoked when *lectaque . . . consistorio . . . materia*, since he regularly employs *consistoriani* or *consilium* when debate occurs.<sup>5</sup> On the other

hand, his use of *consistorium* usually implies a place, here perhaps the imperial chancellery to record the evidence against Silvanus. As such, the consistory involved the notaries, consistorial secretaries with police powers under Constantius.<sup>6</sup>

In the absence of reference to debate, Ammianus implies that orders to arrest immediately followed the reading of the evidence to the consistory, a logical sequence of events, in view of Constantius' suspicious and rash character. Ammianus' account seems to suggest the mood of a "kangaroo-court," which under the guise of a hearing *in consistorio* autocratically condemned Silvanus sight unseen. The immediate reaction of Malarichus, both the *gentilium rector* at Constantius' court and fellow-countryman of Silvanus, seems to bear out this interpretation: *confestimque iniquitate rei percitus Malarichus . . . circumveniri homines dictatos imperio per factiones et minime debere proclamans.*<sup>7</sup> The "inequity of the procedure" was apparently, in Malarichus' view, the lack of a proper council of state (*consilium*) to debate the matter fully and openly. There had been numerous occasions before when clandestine activity characterized Constantius' policy-making and, at least to Malarichus, the emperor's initial response to this matter seemed no exception.<sup>8</sup>

Malarichus' objection was useless, however, since Arbetio, Constantius' trusted *magister equitum* and chief adviser, continued Constantius' autocratic policy, by interceding against Malarichus: *quamquam utilia moneret necessaria . . . Arbetione auctore, Apodemius . . . mittitur.*<sup>9</sup> There is not the slightest indication from the text that this action took place, "evidently at a second meeting of the consistory," as Jones believes, let alone that it represented a "motion" (whatever that means in Roman parliamentary procedure) of Arbetio.<sup>10</sup> It is reasonable to suppose that Arbetio's action was *ad hoc* (as on previous occasions and similar to Malarichus'), hardly consistorial in the sense of advice offered through the medium of a council of state.

Finally, but only under the threat of a possible palace revolt led by Malarichus, Constantius decided to hold a full council of state open to debate:

Malarichus . . . adhibitis francis, quorum ea tempestate in palatio multitudo florebat, erectius iam loquebatur . . . hisque cognitis statuit imperator dispicientibus consistorianis et militaribus universis, in negotium perspicaciter inquire. Cum iudices resedissent, Florentius Nigriniani filius agens tunc pro magistro officiorum . . . animadvertit . . . .<sup>11</sup>

This description is strikingly similar to Lactantius' account of Diocletian's meeting with Galerius concerning the Christians.<sup>12</sup> Diocletian sought out some kind of support

through consensus, but only after he had failed to make policy on his own. In both cases, consensus-seeking was less preferred than simple autocratic action. Even the terminology is comparable: Lactantius' *iudices pauci et pauci militares* became under Constantius' reign *consistoriani et militares*.<sup>13</sup> While *consistorianus* replaced the earlier *iudex* to indicate a civil officer of state, Ammianus' use of *iudex* was applied more exactly to indicate those high ranking civil and military officials who had the honor of sitting (i.e. *resedissent*) at council.<sup>14</sup> Their *seated* instead of *standing* posture indicates their administrative instead of ceremonial function.

Although this meeting of consistorians eventually determined that the accusations against Silvanus were false, it was too late to prevent Silvanus from proclaiming himself emperor in Gaul. Constant reports of Constantius' growing suspicion had forced him to act. Consequently, a final gathering (*consilium*) of *primates* was hastily called, after which Ursicinus adored the purple, accepting the charge of bringing Silvanus back to court.<sup>15</sup>

Crook has cited this last action to illustrate his point that "there is no more striking symbol of the essential difference between *principate* and *dominate* than the change from the *consilium*, an informal vehicle for the exercise of *auctoritas*, to the *consistorium*, a formal mouthpiece for the undisguised

autocracy". He goes on to stress the increased formality and permanence of the new advisory body: "In the *consistorium* it is the heads of the civil service who are the permanent policy-makers".<sup>16</sup>

Ammianus described autocratic procedure perhaps, but the tradition of the *consilium*, stemming from the Principate, had not died. In this series of events, Ammianus mentions only once the Master of the Offices in terms that make him deserve consideration as a possible *ex officio* consistorian. On the other hand, Arbeticus was equally important, but certainly not in any consistorial role; the same must be said of the Praetorian Prefect and the *rector gentilium*. All attempted to make imperial policy, but neither one ostensibly acted through the official body of a council of state.<sup>17</sup> As officers meeting together as a group, *militares*, *iudices* and *primates* were classified vaguely as advisory personnel. The latter group, moreover, formed the *consilium*, which Crook considers quite distinct from the consistory. Thus, Ammianus nowhere even hints at an *ex officio* body of permanent members called a consistory. His term *consistorianus* seems comparable to the earlier *comes*, apparently a rather loose designation of palatine officers closest to the emperor regardless of rank.

In fact, Ammianus apparently regards the *consilium* and the consistory as separate and distinct institutions.<sup>18</sup>

First, Constantius hastily called a *consilium* of *primates* in the old tradition of the Principate. He mentions Ursicinus, who recently had suffered unjust criticism. Finally, the *dux* was summoned to the consistory, where Constantius received Ursicinus with more than usual ceremony, the latter vindicating himself finally by becoming, as it were, the emperor's "equal" (*Constantini magnus . . . commilito*).<sup>19</sup> At most, the consistory here designated an imperial chamber where a *consilium* might advise Constantius. Its essential characteristic, however, in cases both of Domitianus and Ursicinus at least, remained more ceremonial than advisory, since the consistory traditionally involved primarily matters of protocol such as the *salutatio* or *adoratio purpurae*.

Under Constantius, consistorial personnel also acted as judges in cases of high treason, such as the one which followed Silvanus' fall from power: *iamque post securitatem quaestiones agitabantur ex more . . . inquirentibus in negotium consistorianis atque militaribus (ut praeceptum est)*.<sup>20</sup> Ammianus again fails to mention specific officers and leaves the general impression that the meeting consisted of military and civil personnel selected on an ad hoc basis. Consequently, this consistory seems quite similar in composition to the group of advisers who met over the Silvanus affair. Without clearly identifying consistorians by office, Ammianus

stresses the imperial rather than ministerial, i.e. *ex officio*, significance of the consistory. Meetings *in consistorio* repeatedly emphasized the power of the emperor to choose his advisers, administrators, or confidants apparently on an *ad hoc* basis, as had been the case in the *consilium principis*.

Perhaps as a consequence of his imperial rather than ministerial emphasis, Ammianus uses the term *consistorium* much more frequently than *consistoriani*, leaving the impression that individual ministers influenced the consistory little. He mentions the Quaestor only once as a consistorian; once he mentions a *comes largitionum*, who, however, contrary to Jones' estimation, did not act as part of Constantius' regular court.<sup>21</sup> Of all the instances where Ammianus uses the term *consistorium*, the two occasions when, in Jones' estimation, "the consistory was summoned" over the Silvanus affair have already been seen as something less than a meeting of a "council of state".<sup>22</sup> The consistory could serve as a reception body of officers, or perhaps simply as an imperial chamber, much as it does in most of Ammianus' references to the institution.<sup>23</sup> Any consistorians in attendance might offer advice if called upon, but advising was not essential to a consistory. Neither was individual ministerial leadership.

Understandably, Constantius II gave little opportunity for the development of an *ex officio* body of permanent

advisers. According to Ammianus, Constantius was constantly under the influence of *potentes in regia*, whose power only made him more suspicious of those in his court.<sup>24</sup> Informers and eunuchs (called *περιστάτες* by Zosimus) swarmed about the emperor as his closest confidants.<sup>25</sup> Constantius' actions in the Silvanus affair clearly showed how imperial suspicion might impede a systematic and objective investigation of possible treason. Constantius continually fell under the influence of various individuals: first his Praetorian Prefect, then Malarichus, and finally, Arbatio. Under such conditions, it was difficult for an independent body of palatine ministers to function effectively, free from imperial suspicion and the capricious interference of powerful courtiers.

Constantius continued his father's tradition of granting offices on a lavish scale, apparently to appease ambitious individuals.<sup>26</sup> Consequently, the titles *comes consistorii* and *comes intra consistorium* gradually replaced the earlier *comes domesticus* or *intra palatium* on inscriptions.<sup>27</sup> The increase in *dignitates* awarded in *consistorio*, many of which were purely honorary, inevitably affected the prestige of holding honorary or titular offices, as the following constitution of 338 shows:

Cunctos ex comitibus cuiuslibet ordinis et ex praesidibus et rationalibus et magistris studiorum, denique ex perfectissimis honorarios vel affectus eorum ad civica

onera constringes, si quidem rectius patriae vel honoribus vel magistratibus expendere debuissent, quaecumque ab his foedantibus honores consumpta sunt.<sup>28</sup>

Here of course, the phrase *ex-comes cuiuslibet ordinis* indicates the burgeoning number of "honorary" officers, whose distinction in rank became more prestigious with the parallel development of the consistory as a ceremonial setting (for advancement in rank).<sup>29</sup> This same constitution, moreover, makes a clear distinction between *honores* and *magistrates*, the former term underscoring the power of the emperor to hand out his "prizes" to select (if not always worthy) individuals by *largitio*.<sup>30</sup>

Besides indicating the growth of an honorary corps, the title *comes* also became prominent functionally as an increasingly larger number of minor officials performed tasks outside the normal jurisdiction of court ministries.<sup>31</sup> Perhaps to limit the power of the palatine ministers, including the alleged *ex officio* four, Constantius used *comites*, particularly on missions of surveillance, since he frequently mistrusted the normal chain of command. His frequent use of *agentes in rebus* and notaries (normally under jurisdiction of the Master of the Offices and the Quaestor) gave unprecedented importance to these heretofore inconspicuous *officiales*.<sup>32</sup> Although at the cost of unwarranted notoriety, the success of both these bureaucratic offices in managing internal security

markedly increased the prestige of the Master and the Quaestor, although neither was directly responsible.

If Constantius had been more willing to trust his palatine hierarchy, bureaucratic control by ministers over their own *officiales* might have formed a basis of consistorial power more independent of the emperor. As it was, however, the prestige of two ministers increased, but only because their *officia* were made unduly influential by catering to Constantius' suspicious temperament. In regard to the Arian question, moreover, Constantius' use of his most trusted *comites* to enforce unity tended only to harden church resistance to imperial interference. Jealous of its newly won prerogatives, the clergy clashed often with representatives of the emperor, to whom Christianity had to turn so often to settle internal disputes.

The two regional church synods of 359/60, one at Ariminum in the West, the other at Seleucia in the East, held simultaneously to work out some kind of Catholic unity on the Arian question, were respectively under the supervision of two of Constantius' most trusted ministers, Taurus the Praetorian Prefect of Italy and Leonas the Quaestor of the Sacred Palace.<sup>33</sup> Taurus was well known as one of Constantius' more important *comites*, while Quaestors' ministerial connection with the consistory was still tenuous.<sup>34</sup> Constantius

dispatched another one of his top officers, Eusebius, ranking as a palatine decurion in charge of the corps of ushers to the consistory, to the East to inform himself about the Arian controversy.<sup>35</sup> Beside the *schola agentium in rebus*, moreover, the notaries were just then becoming secret service agents and, as consistorial secretaries knowledgeable of many state secrets, they very often rose to ministerial posts.<sup>36</sup>

Constant imperial interference in church affairs apparently contributed to a growing distrust of the consistory by Christian writers of the period. Although either reticent to cite the consistory openly or perhaps disinterested in referring to it precisely, they nevertheless make clear their full understanding of its administrative capacity to infringe upon "matters of the spirit". Ambrose, for example, cites the consistory as frequently as Ammianus, probably because he was just as personally involved with it.<sup>37</sup> Before the period of Ambrose, however, Athanasius most adamantly criticized imperial activity in church affairs. This was no less so because Constantius was pro-Arian than because he persistently and autocratically enforced his own idea of Catholic unity.<sup>38</sup> And the consistory, moreover, especially under Constantius, was an ideal tool to serve autocracy.

In two passages from his *History of the Arians*, Athanasius describes the emperor's repeated attempts to

influence church affairs through his court:

Eusebius and his followers heard that the trial was to be ecclesiastical, where no count [κόμης] would be present, nor soldiers stationed before the doors, and that the synodal proceedings would not be regulated by royal order [οὐ βασιλικῶ προστάγματι τὰ τῆς συνόδου τελειοῦται]<sup>39</sup>

And against the final condemnation of Athanasius by imperial decree, there was the objection lodged: Let an ecclesiastical synod be called at a distance from the court [μακρὰν τοῦ παλατίου], where the emperor is not present, nor any count [κόμης] admitted, nor any judge [δικαστής] threaten us.<sup>40</sup>

Unlike Constantine I, who attempted to accommodate imperial court ceremony to the synodal pattern in settling ecclesiastical affairs, Constantius' use of the consistory to enforce imperial will aggravated delicate church-state relationships.<sup>41</sup> While Constantine stressed the equality between himself and his bishops as imperial advisers to God, Constantius' emphasis on imperial protocol and ceremony served to elevate himself and his entourage of lay confidants above clerics. Contrasting with their convocation with Constantine, the bishops had to meet with Constantius flanked by his personal body guard.<sup>42</sup> An audience with the emperor followed prescribed rules of protocol (*rogatus . . . admissusque*, as Ammianus described it), and the increased emphasis given to *adoratio in consistorio* only elevated the emperor more above the citizen petitioner. Furthermore, the

added prestige and power of the imperial entourage, as a result of this exalted ceremony, was reflected in the enlarged jurisdiction of the count who now sat as δικάστης, i.e. *iudex in consistorio*.<sup>43</sup>

Not all the initiative, however, came from the emperor and his consistory. As long as the consistory still functioned as a court of appeals or petitions, individuals, even Christians, inevitably tried to use it to their own advantage. Athanasius himself once had to seek out an audience with Constantine in the presence of the Master of the Offices, an event later proving troublesome to the priest when the emperor attempted to malign his purpose for the audience.<sup>44</sup> On another occasion, Philostorgius records that Athanasius even went so far as to bribe some of the leading courtiers, particularly Eustathius, the Count of the Private Treasury. Although Philostorgius might have been biased in his attitude toward the orthodox priest, it is quite evident that tipping courtiers was common practice.<sup>45</sup>

Perhaps the severest criticism levelled at Constantine involved the charge that the emperor personally invested individuals with the office of bishop: "Preparing the court [παλάτιον] instead of the congregation, he had three of his eunuchs in attendance instead of the people . . . and in the court [ἐν αὐτῷ παλατίῳ], he made one of his officers, Felix, a priest".<sup>46</sup> Although the consistory is not mentioned

specifically, Constantius' reliance on civil personnel to attend the promotion of a civil officer characterizes a consistorial function. This follows from the tradition of the consistory as a place where *dignitates* were bestowed.<sup>47</sup> It was only one more charge, although certainly the most damaging, against the emperor, "who claims for himself the right of making decisions in palaces instead of before congregations and who presided in person".<sup>48</sup> While Constantine had ostensibly tried to subordinate himself to the whole congregation of bishops, Constantius, on the other hand, as a model of late imperial autocracy, could only have acted as a prince surrounded by pomp and pageantry.<sup>49</sup>

Unfortunately for Constantius' historical reputation, the Arian side of the church heresy succumbed ultimately to orthodoxy. Unlike Theodosius I, Constantius fought on the losing side of the battle and consequently his name has gone down in history as a heretic.<sup>50</sup> If he had been pagan, like Julian his successor, perhaps history would have been less vindictive and more understanding. In one respect, however, the two emperors were alike, since under each reign the consistory was censured by the church. Only much later, aided by rising orthodoxy, the piety of Theodosius I, and the persistence of Ambrose, did the consistory finally become disentangled from ecclesiastical affairs. Before that point

was reached, however, the reign of Julian had hardened Christian attitudes against the consistory almost beyond repair.

*Julian the Apostate*

The consistory under Julian is significant for the essential role it played in his rise to imperial power:

Nec diadema gestavit, nec procedere ausus est umquam nec agere seria quae nimis urgebant . . . sed cum ad latebras secessisset occultas . . . hocque comperto, milites . . . occupavere volucriter regiam . . . Non antea discesserunt, quam adsciti in consistorium, fulgentem eum Augustu habitu conspexissent.<sup>51</sup>

This is the earliest reference to the consistory as a setting for an imperial "coronation".<sup>52</sup> True, Julian had some time before been proclaimed emperor *by his troops* and had acceded to their demand; but his reception of soldiers *in consistorio* clearly initiated his civil functions as new chief-of-state. Reacting to Julian's continued reticence (whether feigned or not is immaterial), the *milites* apparently demanded the right to a *salutatio* or *adoratio in consistorio* as a more official indication of his acceptance of their choice than simply acceding to their acclamation.<sup>53</sup> Unlike Constantius' reception of Ursicinus, however, Julian apparently prevented an *adoratio* from taking place, probably since he preferred the more traditional setting of an *adlocutio* to hail his

comrades-in-arms as *magni commilitones*.<sup>54</sup>

The different attitudes of Constantius and Julian toward the consistory became more evident through Julian's actions immediately following the death of his predecessor. His general purge of Constantius' court probably stemmed, partially at least, from his preference for the much earlier tradition of the Principate.<sup>55</sup> Once when asked where he had his "treasures", Julian was quoted as saying "among my friends" (*apud amicos*); this emphasis on *amicitia*, of course, characterized the traditional *consilium principis*, hints of which appear so often in panegyric literature devoted to Julian.<sup>56</sup> In relation specifically to consistorial *officia*, the *agentes in rebus* and notaries felt the effects of Julian's purge most severely.<sup>57</sup> These two palatine corps had undoubtedly grown very powerful due to imperial catering, to such an extent that even Constantius had been forced to purge his *agentes* once before.<sup>58</sup>

Although inefficiency and corruption in Constantius' court undoubtedly partially motivated his reform, Julian the philosopher's political idealism must have also prompted his actions. Such idealism often took the form of satire, as in Julian's early orations lauding Constantius' lavish display of imperial power: "He is desired and loved by his friends [ $\phi\acute{\iota}\lambdaοι$ ] since he grants to many of them honor [ $\tau\acute{\iota}\mu\eta$ ], power

and freedom of speech [παρρησία]<sup>59</sup> In the fashion of the Principate, Julian apparently preferred the term φίλος or *amicus*, perhaps underscoring his concern for a return to trust between subordinate and ruler, so conspicuously absent from his predecessor's reign.<sup>60</sup> Furthermore, his criticism of Constantius' excessive grant of "honors" might have been prompted by Julian's preference for the tradition of the *consilium principis*, stressing less formality of court protocol.<sup>61</sup> And lastly, "freedom of speech", so long traditionally associated with the *consilium principis*, eventually disappeared under Constantius, as the Silvanus affair amply showed.<sup>62</sup>

Julian's reform also concerned itself with making the imperial court a more effective high court of justice. As Libanius states: After abolishing both proskynesis and the reverential "silence" (σιγή), "as high judge [δικάζων], the emperor sat before both lawyer and client, the former of whom he addressed as imperial companion [ἑταῖρος]<sup>63</sup> Clearly, Julian's reform specifically aimed at abolishing the elaborate ceremony followed in *consistorio*. The lawyer, like the unadorned *amicus* of the old *consilium*, was now called "companion" by the emperor in recognition of their mutual quest for justice.<sup>64</sup> The abolition of proskynesis and "silence" stripped the consistory of much of its ceremonial importance,

contrasting with the earlier tradition beginning with Diocletian.<sup>65</sup>

Try as he might, however, Julian naturally was unable to rid himself completely of all the imperial activity connected with the consistory, by then so widely accepted as a normal part of being emperor. Thus, he admitted his soldiers into the consistory to view him in the customary imperial regalia, although he stopped short of allowing an *adoratio*.<sup>66</sup> In another account, however, (probably also in *consistorio*) Ammianus records how Julian majestically exercised the *adoratio purpurae* in order to overawe a subordinate.<sup>67</sup> Julian also had to submit, although grudgingly, to wearing the customary robe and diadem, as his position historically dictated.<sup>68</sup> He partially succeeded at limiting exorbitant tribute collected in *consistorio* and his criticism of accepting bribes in the provinces was probably aimed at the *agentes in rebus*, part of the consistorial bureaucracy against whom he was often outspoken.<sup>69</sup>

Julian's most pointed criticism of the *agentes in rebus* came about in the midst of a grant of largesse in *consistorio*:

Cum inducti essent in eius quadam sollemnitate *agentes in rebus* in consistorium ut aurum acciperent, inter alios quidam ex eorum consortio, non ut moris est pansa chlamyde sed utraque manu cavata suscepit, et imperator "rapere" inquit "non accipere sciunt *agentes in rebus*".<sup>70</sup>

As a matter of philosophic principle, Julian reduced imperial

pomp and pageantry, but he always exercised (as in the case of the *agentes*), a practical concern for administrative honesty.<sup>71</sup> This concern apparently also affected his relationship to subordinates, as he attempted to restore personal trust to imperial government by modelling the consistory after the *consilium principis*. Perhaps to emphasize this new trust built upon informal equality between emperor and adviser, Julian took the occasion once "to stand" with his chief ministers *in consistorio* (*CTh.* 11.39.5 of 362), one of the earliest mentions of the consistory in the Codes.<sup>72</sup>

Ironically, as much as Julian desired to lessen the ceremonial importance of the consistory, under his rule it suffered even greater condemnation by the Church than it had under Constantius. The consistory to the Christians became a possible tool of Julian's pagan revival. As such, it was an even greater threat to Christianity than it had been when attacking orthodoxy. Gregory of Nazianzen furnishes ample evidence of what a conscientious Church father found abhorrent in the traditional imperial ceremony of Julian's time:

Not only do emperors surround themselves with crown and diadem, purple dress, numerous attendants, and a host of subjects, but they also resort to adoration, [προσκυνήσις] in order to make themselves more revered [σεμνότεροι].

The typical emperor, continued Gregory, also glorified himself

by artistic representations of great cities offering tribute, "adoring magistrates rewarded with ranks of office" (τοὺς ἐν τέλει προσκυνούοντας, καὶ τοῖς τῶν ἀρχῶν τιμωμένους συνθήμασιν) and defeated barbarians prostrate before the emperor.<sup>73</sup>

Julian's specific reforms apparently had not affected Gregory's attitude toward imperial ceremony in general.

It is obvious from other sources as well that these features of imperial court ceremony, presumably *in consistorio*, did not vanish with Julian's reforms.<sup>74</sup> Barbarian supplication, for example, was a common scene described in Julian's reign: *legatis paulo postea missis precaturum consultumque rebus suis, hūmi prostratis sub obtulibus eius . . .*<sup>75</sup> Later when Julian was sole Augustus, Ammianus described a similar scene: *Saracenarum reguli gentium, genibus supplices nixi, oblata ex auro corona, tamquam mundi nationumque suarum dominum adorarunt.*<sup>76</sup> Mention of a foreign legation, the ceremonial attitudes of tribute-bearing, prostration and adoration together seem to place these events *in consistorio*.<sup>77</sup>

In another encounter with the barbarians, Julian seemed to possess uncanny powers when he was able to outwit a plan by the enemy to withhold certain captives from him. The barbarians, of course, did not realize that the emperor had stationed notaries behind his throne, who whispered that the barbarian tally was incorrect according to their own figures.<sup>78</sup>

Since the primary concern of every Christian was Julian's paganism, the question of proselytism in *consistorio* inevitably arose. Both administering oaths and granting *largitiones*, customarily done in the consistory, could easily be confused with conversion and bribery, granted the religious climate.<sup>79</sup>

If Julian had the power to grant largesse in *consistorio*, it was conceivable to fervent Christians that he also had the power to extract oaths of loyalty to paganism as a price for his favors. This was apparently the view of Gregory of Nazianzen:

It is the day of the imperial largesse-giving . . . and it is fitting that the military be present in order to be rewarded, according to rank [ὡς ἕκαστος ἀξίας εἶχεν ἢ τάξεως] . . . . The emperor sits before them, splendidly making a festival [πανηγυρίζων], although impious and presumptuous in his deceits . . . . He brings out the gold and frankincense, next to the fire which he calls the soldiers close; how credible this scene, which seems so much like a customary imperial largesse-giving [βασιλικῆς δωρεᾶς τοῦτου . . . τον νόμον], how ancient and honored an event! But what is this? The fire must be burnt, the wages of ruin accepted from the emperor . . . . They adore [προσκύβει] his right hand and do proskynesis [προσκυνῶν οὐκ ἠπίστατο] to their emperor.<sup>80</sup>

Gregory's account describes a typical consistorial setting: the emperor granted an audience to his "soldiers" (perhaps the same *agentes in rebus* as in Ammianus' account), who formed an *ordo dignitatis*, i.e. "according to rank", to receive their largesse of gold.<sup>81</sup> At the end of the ceremony, a typical

*adoratio* took place, again a common feature of the consistory.

The only features which are clearly not consistorial are the frankincense and fire, both of which Gregory criticizes from a purely religious point of view. According to Gregory, Julian actually turned a traditional *largesse* into a religious ceremony, i.e. "making a festival". This confusion over the imperial roles of public benefactor and high priest is quite understandable, if one recalls Libanius' attitude toward Julian: he was "no less a priest than emperor and made the imperial palace into a temple".<sup>82</sup>

The likelihood that Julian did indeed turn the consistory into a place for religious conversion is perhaps less important than the fact that the Christians could believe it to be so. Whatever the truth, the effectiveness of the consistory in matters of state dealing with religion continued to decline as long as Christians considered the institution an instrument of heretic or pagan autocracy. It was not until the Pannonian reign that it began to recover its prestige and effectiveness, but under ministerial rather than traditionally imperial leadership.

## NOTES TO CHAPTER III

1. 14.7.10-12; an inscription of 353 corroborates Ammianus' authenticity of the term *consistorium* under Constantius II (c. 1, n. 1 above).
2. In regard to these observations, (1) this is the first evidence of a consistory at a Caesar's court (on Julian's later grant of *largitio* as Caesar, cf. Amm. 16.5.11; for Diocletian's alleged consistory and the tetrarchic reform, see Crook, 100); (2) on Ammianus' phrase indicating a ceremonial introduction into the consistory, cf. Amm. 15.5.18: *Ursicini . . . accito eodem, ingresso consistorium*; 16.7.3: *Eutherius (ut postulavit) inductus iussusque loqui quod vellet (probably in consistorio)*; cf. also Amm. 25.10.10, where invitation is implied; this phrase is lacking, however, when no official invitation is made, as in Amm. 16.7.2 or 16.8.7: *perrupit intrepidus, ingressusque consistorium* (on *rogatus* as a specific invitation to advise, cf. Jones, III, 64, n. 27; Sinn., "Comites", 164); (3) that Montius was unaware of the circumstances behind the intended arrest of Domitianus is evident from Amm. 14.7.12: *quo conperto, Montius tunc quaestor . . . .*; cf. Philostorgius 3.28 for the

same impression.

3. Jones, I, 334; cf. Crook, 102-03.
4. 15.5.5; the older Gardthausen edition retains *in consistorio* found in one ms., a construction characterizing the consistory possibly as a place instead of a body of officials (Loeb edition, p. 136); Silvanus was Constantius' *magister peditum* in Gaul.
5. For Ammianus' use of these terms, see 15.5.11-12, 18-19.
6. For the notaries as secretaries, see Jones, I, 128; for a description of their police activities, see Amm. 14.5.6; 20.4.2; W. G. Sinnigen, "Two Branches of the Late Roman Secret Service", *American Journal of Philology*, LXXX (1959), 244; their relationship to the consistory appears quite early in the codes (*CTh* 6.35.7 of 369).
7. Amm. 15.5.6.
8. Cf. Amm. 14.11.1-2; 15.2.4-5.
9. Amm. 15.5.8.
10. Jones, I, 128.
11. Amm. 15.5.11-12.
12. Cf. pp. 13-14 above.

13. *Lact. Mort. pers.* 11.6; in *Pan. lat.* 2.3.3 (*Gall.*, I, 27), *duces* are contrasted with *iudices* (cf. c. 1, n. 4 above).
14. In *Amm.* 14.9.3, *iudex* is also applied to military officers in the role of judge; cf. Crook, 97, n. 4, where Ammianus' terminology is applied too systematically; although Ammianus (21.16.3) stresses Constantius' separation of civil from military personnel, the historian clearly often applies the term *iudex* loosely.
15. *Amm.* 15.5.18-19.
16. Crook, 103.
17. For the Praetorian Prefect's role *in consistorio*, see Jones, I, 333; the *gentilium rector* was an office associated primarily with the *scholae palatinae*, a quasi-military organization (R. I. Frank, *Scholae Palatinae. The Palace Guards of the Later Roman Empire*, Papers and Monographs of the American Academy in Rome, XXIII (Roma: American Academy, 1969), 54-55.
18. cf. pp. 9-10 above.
19. *Amm.* 15.5.19.

20. Amm. 15.6.1.
21. On the use of *consistoriani* vs. *consistorium*, cf. c. 2, n. 50 above; for the Quaestor *in consistorio* (under ~~com~~ Valentinian I), see Amm. 28.1.25; for the *comes largitionum*, 16.8.5-7 (Jones, III, 64, n. 27).
22. I, 334 (cf. pp. 50-53 above).
23. Cf. C. 2, nn. 49-50 above.
24. Amm. 16.8.11; cf. Amm. 21.16.16 (Jones, I, 116, 129) on the excessive influence of *palatini* over Constantius.
25. Zos. 2.55: the use of περισταύντες to describe courtiers is quite close etymologically to the Latin *consistoriani*.
26. Amm. 16.8.12 (cf. Jones, I, 105-06, 109; pp. 25-28 above).
27. For examples, see Jones, III, 64-65, n. 28.
28. *CTh* 12.1.26.
29. Cf. pp. 34-35 above.
30. Jones, I, 383.
31. For examples, see Ath. *Hist. Ar.* 22 (Jones, I, 334); cf. Sinn., "Comites", 158-59.
32. Jones, I, 128-29; Blum, 41-42.

33. Jones, I, 118.
34. For Taurus, see Ath. *ibid.*; for the Quaestor see *Cth.* 11.39.5 (under Julian); Amm. 28.1.25 (under Valentinian I).
35. Ath. *Apol. c.Ar.* 56; for the ushers or silentiaries, see Boak, *Master*, 220; Jones, II, 571.
36. Libanius often criticized the notaries (*Or.* 18.131-34; 62.10); for the many activities of the notaries, see Jones, I, 127-28; for the notaries as spies and their activity in church matters, see Sinn., "Two", 244-45, 249-50.
37. Ammianus was probably a *protector* on Ursicinus' staff in the arrest of Silvanus (H. T. Rowell, *Ammianus Marcellinus, Soldier-Historian of the Late Roman Empire* (Cincinnati: University of Cincinnati Press, 1964), 22; Jones, I, 335); for a synopsis of Ambrose's dealings with the consistory, see Jones, I, 335-36; the fourth century was a period remarkable for imprecise technical terminology (MacMull., "Roman", 377; E. Demougeot, *De l'unité à la division de l'empire romain. 395-410* (Paris: Adrien-Maisonneuve, 1951), xii-xiv).
38. For Constantius' Church involvement, see Amm. 21.16.18;

- Jones, I, 118; W. Ensslin, "Die Religionspolitik des Kaisers Theodosius d. Gr.", *Sitzungsberichte der Bayerischen Akademie der Wissenschaften. Philo.-Hist. Klasse*, Heft II, 1953, 25-26, 49.
39. *Hist. Ar.* 11; for Constantius' inquisitions, see *Amm.* 21.16.8-9.
40. *Hist. Ar.* 36.
41. Cf. *Eus. v. Const.* 1.22.25; Constantine also guaranteed the right of a bishop to clerical trial (Jones, I, 90-91; but cf. *ibid.*, 362); by Constantius' time the consistory had become important to the Church for making ecclesiastical doctrine public (*Ens.*, "Relig.", 32-33).
42. For the imperial bodyguard, see Frank, 99; on Constantine's disregard for the same, cf. *Eus. v. Const.* 1.44; 3.10.
43. Cf. *Amm.* 15.5.12 (p. 52 above); for *iudex*=δικαστής, see A. F. Norman, ed., *Libanius: Autobiography (Oration I)* (Oxford: University Press, 1965), 165.
44. *Ath. Apol. Const.* 3; cf. *Soz.* 4.23; 6,7; *Theod. HE* 2.15.
45. Cf. *v. Porph.* 54 (Jones, II, 568).
46. *Ath. Hist. Ar.* 75.

47. Cf. pp. 10 ff. above; Jones, I, 357.
48. *Ath. Hist. Ar.* 8.76.
49. For Constantius' pomp and pageantry, see *Amm.* 21.16.1; in contrast, on Constantine, cf. *Socr.* 1.34; *Amb. Ep.* 21.15; for Constantius as the fourth century model of imperial majesty, see L. W. Bonfante, "Emperor, God and Man in the IV Century: Julian the Apostate and Ammianus Marcellinus", *La parola del passato*, XCIX (1964), 409.
50. Jones, I, 118; cf. *Ens.*, "Relig.", 25.
51. *Amm.* 20.4.19-22.
52. On comparable material from the late fifth century, cf. pp. 183-87 below.
53. For Julian's own attitude toward their demand, see *Ep. ad Ath.* 284d, where he explicitly rejected accepting a *salutatio* (προσρησις).
54. For the scene of *adlocutio*, see *Amm.* 21.5.2; on Ursicinus as *magnus commilito*, cf. *Amm.* 15.5.18 ( p. 9 above); on the other hand, Julian apparently preferred the battlefield for delivering imperial oratory (*Or.* 1.32); characteristic of his conservative attitude toward court ceremony.

55. For the purge, see Amm. 22.4; Lib. Or. 18.130; Socr. 3.1; Greg. Naz. Or. 4.64 (J. Bidez, *La vie de l'empereur Julien* (Paris: Les Belles Lettres, 1930), 213-18; W. Ensslin, "Kaiser Julians Gesetzgebungswerk und Reichsverwaltung", *Klio*, XVIII [1922], 118-22); for comparison between Julian and the Flavians and Antonines, see Amm. 16.1.4 (F. Dvornik, "The Emperor Julian's 'Reactionary' Ideas on Kingship", *Late Classical and Medieval Studies in Honor of Albert Mathias Friend Jr.* (Princeton: University Press, 1955), 76); in comparison to Constantine, of course, Julian considered himself a conservative (Amm. 21.10.8; cf. Jul. Symp. 329-335).
56. For *apud amicos*, see Amm. 25.4.15; on the panegyric literature, cf. Pan. lat. 11.1; 21.2; 25.1; 26.1 (Gall., III, 16ff.); cf. also Greg. Naz. Or. 5.20; Lib. Or. 12.58; Jul. Or. 2.86.
57. Ens., "Jul.", 119.
58. For the *agentes* under the Master, see Boak, *Master*, 68 (but cf. Blum, 6, 55); for Constantius' purge, see Jones, I, 129; for the notaries, n. 36 above.
59. Or. 2.97; cf. 1.46.
60. See n. 56 above; in Or. 2.86 Julian links φιλι<sup>ι</sup>α with

θεραπεία; Philostorgius (3.27) mentions a φίλος in Gallus' court (for the greater variety of Greek terms for adviser, see Crook, 105-06).

61. Cf. Crook, 22-23; senatorial sessions under Julian also were less formal, particularly in comparison to Diocletian's reign (*Lib. Or.* 18.154); *Socr.* 3.1-2); on Diocletian and the senate, cf. Zonaras 12.31.
62. For the significance of the term, see Crook, 142-47 above; on the Silvanus affair, cf. pp. 50-53 above; for Julian's criticism of Constantius' lack of a fair trial for Gallus, see *Ep. ad Ath.* 272 (cf. *Or.* 15.12).
63. *Or.* 18.189-94; on other aspects of Julian's reform of court procedure, cf. *Jul. Or.* 2.89; *Amm.* 22.6.5.
64. On the correlation between ἐταῖρος and φίλος, cf. *Jul.*, *Ep. ad Ath.* 277c; cf. also *Lib.*, *Or.* 16.16 and *Soz.* 1.6, where the two terms are related to συμβουλεύειν and σύμβουλος.
65. For the roots of the *adoratio purpurae* under Diocletian, see pp. 9-15 above; Julian's official conduct, of course, was notoriously informal (cf. *Pan. lat.* 11.28.3 [Gall., III, 40]; *Amm.* 22.7.2-3); for more of Julian's abolition of court ceremony, see also *Amm.* 22.4.5,9.
66. *Amm.* 20.4.22 (p. 64 above).

67. 21.9.8 (p. 37 above).
68. Lib. Or. 18.191-2; cf. Amm. 20.4.17-19; Pan. lat. 11.29.5, 11.30.2 (Gall., III, 42ff.).
69. For the limitation in weight of the *stephanos* gift, see Lib. Or. 18.193 (cf. Or. 16.46); for his criticism of the *agentes*, see Lib. Or. 18.194.
70. Amm. 16.5.11 (while Julian was still Caesar under Constantius).
71. For the full effect of his court reform, see Ens., "Jul.", 118.
72. See. p. 31 above.
73. Or. 4.80; for a different interpretation of Gregory's remarks, see A. Cameron, *Claudian Poetry and Propaganda at the Court of Honorius* (Oxford: University Press, 1970), 387.
74. In Amm. 20.4.22 (p. 64 above), Julian's imperial attire was a conspicuous and necessary part of his reception of his soldiers *in consistorio*; the *adoratio* also apparently still persisted during his reign (Amm. 21.6.2; 23.3.8; Lib. Or. 1.97, 121); for examples of tribute bearing and barbarian supplication, see Lib. Or. 16.46; 18.193; Amm.

17.8.5, 10.9-10.

75. Amm. 17.8.5.

76. Amm. 23.3.8.

77. Cf. pp. 9, 37, 49 above.

78. Zos. 3.4.

79. In Zos. 3.4, the barbarian legation took an oath of allegiance to Julian, probably *in consistorio* because of the notaries' presence; on a similar scene of oath-taking, under Valentinian I, cf. Amm. 30.6.2; (for Julian's grant of *largitiones in consistorio*, see Amm. 16.5.11 [p. 67 above]).

80. Or. 4.82-83; cf. Theod. HE 3.12.

81. For the quasi-military background of the *agentes*, see Sinn., "Two", 239, 246; for the relationship of the *ordo dignitatis* to the consistory, see pp. 10-12 above; in Amm. 16.5.11 the *agentes* receive gold *inter alios* (Gregory's "soldiers"?).

82. Or. 12.80-81 (cf. Or. 18.127; Amm. 22.14.3); in regard to Gregory's religious interpretation of the consistorial setting, it is perhaps significant that Julian's grant

apparently took place on a religious holiday (Amm.  
16.5.11: *quadam solemnitate . . . .*); for Julian as  
Pontifex Maximus, see Ens., "Jul.", 190.

## CHAPTER IV

### MINISTERIAL LEADERSHIP AND CONSISTORIAL PRESTIGE

#### FROM THE PANNONIAN EMPERORS TO THEODOSIUS I

With the death of the last pagan emperor, the consistory entered a new period of development which culminated in greater independence of that body from imperial control. Beginning in the West with Valentinian I, Valentinian II, and Gratian, powerful statesmen created a political atmosphere in which the consistory demonstrably began to take shape as a truly ministerial and bureaucratic agency of the central government. There is still insufficient evidence, however, to call the consistory of that time an *ex officio* body of three or four permanent advisers to the emperor. The evidence, mostly from the Theodosian Code, suggests rather that the consistory first fell under the influence of one or two high ranking ministers. These ministers, each exploiting the consistory for his own ends, later were dominated by men approaching the status of imperial "prime ministers," such as Stilicho in the West and Rufinus

and Eutropius in the East. These later "prime ministers" eliminated lower ministerial threats to their positions of power by tightly controlling the consistory. Under Stilicho in the West, a possibility exists that the consistory became *ex officio* as the general's best means of insuring himself against a civil ministerial threat.

At the sudden death of Julian on campaign, it was natural that the military chose his successor.<sup>1</sup> The military customarily had the greatest voice in electing emperors, although only infrequently do we know much about the preliminary deliberation that preceded acclamation by the troops, as we do with Jovian. The new emperor died after a few months, but not before he had met at least once *in consistorio* to grant donatives to some barbarian chieftains in return for certain information they supplied.<sup>2</sup> The selection of his successor, Valentinian I, however, is noteworthy because the decision was made by both high ranking military and civil officers.<sup>3</sup>

Valentinian's excessive trust in his ministers and avid dislike of court ceremony favored increased administrative activity *in consistorio*.<sup>4</sup> The disinterest of his brother Valens in personally hearing legal cases presumably increased the independent power of the *iudices* and *advocati* who had formally stood as *comites* at Julian's side.<sup>5</sup> Certain high-ranking officers along with their *officia* had greater opportunity

to take advantage of imperial indifference to affairs normally brought before the consistory, and to increase their own powers accordingly. This situation contrasted sharply with recent tradition when both Constantius and Julian had actively involved themselves in administrative affairs to the detriment of ministerial leadership.

Two such ministers who apparently assumed a much more active part in affairs of the consistory during the reigns of Valentinian I and Valens were the Quaestor of the Sacred Palace and the Master of the Offices. The Quaestor, for example--a legal adviser with greater administrative competence than his namesake of the Principate--was present at Valentinian's consistory hearing a senatorial delegation. The delegation complained that punishments inflicted on their order were too severe. When the emperor impatiently denied that he had ever issued a law concerning the amount of punishment to be inflicted, his Quaestor Eupraxius quickly stepped in to moderate the dispute: *qui cum intromissi in consistorium haec referrent, negantem Valentinianum se id statuisse et calumnias perpeti calamitantem moderate redarguit quaestor Eupraxius.*<sup>6</sup>

The tone and substance of the Quaestor's activity *in consistorio* under Valentinian I were quite new to his office. His action was bold, spontaneous and self-assured,

as if a normal function of his position *in consistorio*.<sup>7</sup>

Under Julian, in contrast, *CTh.* 11.39.5 of 362 includes the Quaestor Jovius among those ministers witnessing the emperor's interpretation of law, but there is no indication that Jovius took active part in deciding a legal issue.<sup>8</sup>

By 368, however, the Quaestor's position had changed dramatically. Under Valentinian, Eupraxius was obviously present to offer serious legal advice on the substance of a petition that directly concerned his competence *in consistorio*.

In three other cases from the reign of Valentinian I, the Master of the Offices amply demonstrated the relatively new power of high-ranking palatine ministers to influence events *in consistorio*:

Venerunt in comitatum legati, aditoque principe, verbis, quae perpassi sunt, ostenderunt: obtulerant decreta . . . quibus lectis cum neque relationi officiorum magistri faventis Romani flagitiis, nec contraria referentibus crederetur promissa disceptatio plena dilata est eo more.<sup>9</sup>

In this account, although the legates from Tripoli apparently produced sufficient evidence to back up their charges of misconduct by the *comes Africae*, Remigius was influential enough to make a real debate out of the issue. Consequently, Valentinian's immediate decision on the matter

was put off. The combination of imperial vacillation and ministerial aggressiveness turned the occasion into a victory for ministerial self-interest.

On another occasion, at a thanksgiving address (probably made *in consistorio*) by some legates from Epirus, another one of Valentinian's Masters, Leo, used the meeting to further his own ambition of becoming Praetorian Prefect.<sup>10</sup> His voice in support of charges made against Probus, the Prefect of *Illyricum*, was spontaneous, unsolicited, and outspoken, another sign of the growing independence of his office to act *in consistorio*. Even more powerful perhaps was the position of Aequitius, yet another Master under Valentinian, who, as minister most concerned with foreign policy, arranged for the envoys from the Quadi to have an imperial audience.<sup>11</sup> The ceremony resembled earlier occasions when emperors received *adoratio*, undoubtedly much to Valentinian's impatience with such proceedings, who died shortly afterwards of a fit brought on by the persistent self-justification of the Quadi.<sup>12</sup>

This new prestige of the consistory is perhaps also indirectly reflected in Ammianus' rather casual reference to the make-up of Valen's headquarters' detachment shortly before the battle of Adrianapolis in 378: *thesauri enim et principalis fortunae insignia cetera, cum praefecto et consistorianis ambitu moenium tenebantur.*<sup>13</sup> This juxtaposition

of the office of the Praetorian Prefect and the *consistoriani* might be significant if considered in the light of the master's recently gained leadership in the consistory and his growing rivalry with the Praetorian Prefect.<sup>14</sup> As one possible example of conflict, for instance, the *agentes in rebus*, under the administrative control of the Master, quite often served as imperial agents to check the authority of the Praetorian Prefect.<sup>15</sup> Such imperial favoritism probably improved the capacity of the Master to influence routine affairs brought before the consistory.

Evidence for the new effectiveness of the consistory, as a body of administrators rather than merely a place for imperial ceremony, is not confined to Ammianus. The Theodosian Code attests to this evolutionary development in the late fourth century. Ample comment has already been made on the earliest mention of the consistory in a statute of 362 (which seems to have maintained the earliest tradition of the consistory as a ceremonial institution).<sup>16</sup> Its next putative appearance in law (*CTh.* 6.9.1 of 372) is ambiguous, the meaning of *sacrarium* used in the edict being imprecise.<sup>17</sup> If *sacrarium* in fact is synonymous with consistory, however, the term would emphasize its imperial, autocratic or "sacred" significance rather than the ministerial or bureaucratic, which latter was emerging under the early Pannonian emperors.

In any case, both statutes failed to indicate clearly any specific administrative activity conceivably consistorial.

The first indications of a major change of development in the ministerial significance of the consistory seem apparent in a statute of 379 originating in the West:

Palatini omnes, quos consistorii nostri comites propter diversas necessitates ad provincias dirigendos putaverint, sine ullo metu iudiciariae commotionis propter quae diriguntur impleant; conveniendis iudicibus more sollemni.<sup>18</sup>

Although the *palatini* in question might be *agentes in rebus*, who quite frequently clashed with provincial governors (*iudices*) on the matter of tax collection, more probably these consistorial officials were subordinate to one or both of the financial Counts.<sup>19</sup> The statute of 379 is important because it seems to be the earliest reference to a group of palatines specifically serving under the consistory or its *comites*. In other words, it was a directive to an imperial *officium* assuring its members that consistorial ministers alone had jurisdiction over them.

Another statute, issued about the same time in the West, also attests to imperial concern for the ceremony of *salutatio* between governors and palatines.<sup>20</sup> Both statutes exhorted the palatines to show the reverence normally due the governors in their respective province.<sup>21</sup> In both cases, the former were urged to observe proper ceremony in dealing with a superior. In a third statute of ten years later

(*CTH.* 6.26.5 of 389), however, the emphasis shifted, the governor being ordered as well to accord the palatines their own ceremonial due:

In sacris scriniis nostris militantes ordinarii iudices a salutatione non arceant, etiam inviti in consessum accipiant; ternas a libras auri . . . eruendas, si consistorium nostrum saepe ingredientibus secretarii iudicum non patuerit ingressus aut reverentia non fuerit in salutatione delata aut sedendi cum iudice societas denegata.<sup>22</sup>

Although the edict ordered the palatine, as usual, to perform the customary *salutatio* to the governor, the latter, in turn, had no right to deny the ceremonial act (*reverentia*) or even access to his person (*ingressus*). For the first time imperial law emphasized the ceremonial right of the palatine to sit (*sedendi societas*) alongside the governor. Although the change is quite subtle, clearly a new development emerges from these three statutes, assuring a consistorial subordinate his right to ceremonial respect.<sup>23</sup> They also provide important evidence of how influential consistorial ministers had become in controlling their *officia* in provincial affairs.

In the West, officials not normally connected with the consistory assumed more and more the business of hearing public petitions, indicating a further decline of imperial ceremony *in consistorio*. By 382, for example, the City Prefect of Rome had to "approve and publish" (*probata atque elimata*) petitions from provincial legates before they were

sent on to the consistory (*sacrarium nostrum*).<sup>24</sup> By 385, moreover, the Praetorian Prefect also apparently increased his jurisdiction, determining the validity of all provincial petitions before final resolution *in consistorio*:

Quotienscumque ex diversis provinciis ad sacrum mansuetudinis nostrae comitatum legationes, quas instruxere decreta, necesse erit commeare, in auditorio quidem celsitudinis tuae universa tractentur, sed ita, ut nullum finem capiat ordo gestorum inlibataque rerum decisio singularum nostro auditui sententiaeque servetur, ita ut deinceps excellentia tua, cum in consistorio mansuetudinis nostrae secundum consuetudinem ex decretis petitiones legatorum de nostris scriniis recitantur, motum proprii arbitrii ratione decursa sententiis, quas pandimus referat.<sup>25</sup>

Although the last line is somewhat imprecise, this statute uniquely clarifies some technical terminology and defines areas of jurisdiction between the consistory and the Prefect's office.<sup>26</sup> The term *comitatus* apparently designates the central palatine administration directly under the emperor. As to jurisdiction, although the Praetorian Prefect reviewed the initial plea or petition *in auditorio*, the ultimate decision was clearly made *in consistorio*.

While this new procedure no doubt saved time, there is no reason to believe with Jones that it "must have tended to reduce the hearing in the consistory to a mere formality".<sup>27</sup> Undoubtedly such time-consuming matters as rules of procedure and protocol (perhaps even recording of petitions) occupied the Praetorian Prefect's attention. This procedure, however,

had little bearing on his substantive arguments on the case (*motum proprii arbitrii*) raised before the emperor's final review (*quas pandimus*). Obviously, the statute suggests that the Praetorian Prefect might have won a "silent vote" in the consistory. Nevertheless, the emperor, perhaps spurred on by a jealous Master of the Offices, apparently assured the regular consistorians of their preponderant authority in determining imperial policy.

Another new development to concern emperors well into the next century was the recognition that the consistory rapidly gained as a privileged body exempt from certain imperial exactions. A statute of 382 singles out *consistoriani comites* in the West as officials free from certain imperial duties that normally fell upon the *maximarum culmina dignitatum*.<sup>28</sup> Furthermore, the same privileges in the future were not to be granted individually but only on the basis of *in commune dignitati vel corpori eiusmodi beneficia*.<sup>29</sup> The consistory apparently had achieved a certain semi-autonomous status, no longer merely an ad hoc group of officials called at the whim of an emperor. Clearly the consistory had developed far from its origins as an imperial ceremonial appendage to the court. Under increasingly effective ministerial guidance, particularly in the West under

Valentinian I, it became more and more an object of ministerial rivalry.

Ministerial rivalry became more intense in the West following the demise of Valentinian I. With the emergence of minority rule following his death in 375, powerful ministers continued to vie for control of the western consistory, unchecked by the mature imperial leadership that Theodosius provided in the East. The clearest example of this development might be seen in the Praetorian Prefect's challenge to the consistory in 385, when he won the right to review initially petitions sent to that body.<sup>30</sup> At that point, however, the consistory once more became the scene of intense religious controversy, this time between pagans and Ambrose, Bishop of Milan.

Ambrose's conflict with the consistory under Valentinian II had both theoretical and practical inspiration. As an imperial court of law, the consistory demanded submission by any defender of the Church, a situation which Ambrose's theoretical view of the inherent supremacy of Christ could not accept.<sup>31</sup> He stated this succinctly when he wrote: *sed in consistorio, non reus solet Christus esse, sed iudex.*<sup>32</sup> Historical tradition, however, dictated that the only *iudex in consistorio* was the emperor or his agent, the *comes*.<sup>33</sup> As early as Diocletian, the *consilium principis*

had set this precedent for dealing with religious matters. By Ambrose's time, the tradition certainly had been strengthened, especially by autocrats like Constantius II and Julian.

This precedent for consistorial involvement was revived once more when the western senate in 384 requested Valentinian II to restore the Altar of Victory. Although the movement apparently had strong consistorial support, Ambrose's quick opposition ultimately decided the issue in favor of Christianity:

Lecti sunt libelli mei in consistorio, aderat amplissimus honore magisterii militaris Bauto comes, et Rumoridus, et ipse eiusdem dignitatis gentium nationum cultui inserviens a primis pueritiae suae annis, Valentinianus tunc temporis audivit suggestionem meam nec fecit aliud, nisi quod fidei nostrae ratio poscebat. Acquiverunt etiam comites duo.<sup>34</sup>

While the presence of two military officers *in consistorio* might confirm the Pannonian bias in favor of the military, Ambrose singled out these two participants more probably because of their paganism. It was important to Ambrose who determined Church policy. Thus, in regard to consistorial judges, "there is a direct parallelism . . . between 'comites' and 'sacerdotes'", particularly since by Ambrose's time there had developed a strong tradition of ecclesiastical autonomy under God.<sup>35</sup> This conflict over the proper personnel to determine church doctrine finally came to a head when Ambrose

was invited to appear twice before Valentinian II's consistory. The matter concerned the establishment of an Arian basilica. The first time Ambrose accepted:

De imperatore vult [Auxentius] invidiam commovere, decens iudicare debere adolescentem catechumenum, sacrae lectionis ignarum, et in consistorio iudicare. Quasi vero superiore anno quando ad palatium sum petitus, cum praesentibus primatibus ante consistorium tractaretur, cum imperator basilicam vellet eripere; ego tunc aulae contemplatione regalis infractus sim, constantiam non tenuerim sacerdotis, aut imminuto iure discesserim?<sup>36</sup>

Points of the text reveal much of Ambrose's thinking on the problem of church and state. The heretical priest Auxentius urged Valentinian himself to adjudicate sacred matters *in consistorio*: Christ was to stand trial as *reus* before the emperor as *iudex*, supported of course by Auxentius, the heretical *comes*. Certainly in this case, Ambrose's concern for his status *in consistorio* involved more than the simple question whether or not the process allowed for fair debate. What troubled Ambrose above all was the possible infringement on his God-given authority by secular, supported by heretical, power. Here the consistory did not represent simply a "council of state", but stood for secular supremacy as a whole (*cum praesentibus primatibus ante consistorium*), where a servant of God had to stand trial before the state.<sup>37</sup>

Ambrose understandably refused the second invitation to appear before the consistory on the same matter: *Dignanter*

*igitur, imperator, accipe quod ad consistorium venire non potui. Ego in consistorio nisi pro te stare non didici; et intra palatium certare non possum, qui palatii secreta nec quaero, nec novi.*<sup>38</sup> With this bold rejection of imperial will, Ambrose's attitude toward religious self-determination moved from passive (his first acceptance) to active resistance as part of a radically new concept of church-state relations.<sup>39</sup> Only as a servant of the emperor in secular matters could Ambrose have possibly stood in the consistory (*ego in consistorio nisi pro te stare non didici*).<sup>40</sup> In a civil capacity, however, Ambrose wanted no more knowledge of "state secrets". As *sacerdos* in affairs of the church like the Arian controversy, his only allegiance was to Christ the *iudex*. While the authority of pagan *comites* to deal with religious matters was always questionable, Ambrose's highly theoretical concept of his office naturally took precedence.<sup>41</sup>

Besides illustrating the theoretical aspects of church and state relations, Ambrose is equally important as an eye-witness of consistories. His most lengthy and detailed description of a consistory concerned his mission to Maximus on behalf of Valentinian II, after the former had usurped the emperorship in the West:

Cum pervenissem Treviros, processi ad palatium. Egressus est ad me vir Gallicanus, praepositus cubuculi, eunuchus regius. Poposci adeundi copiam; quaesivit num rescriptum

haberem clementiae tuae, respondi habere. Retulit non posse me, nisi in consistorio videri, dixi non esse hunc morem sacerdotalem, certe esse aliqua de quibus serio deberem cum suo principe confabulari . . . Ubi sedit [Maximus] in consistorio, ingressus sum, assurrexit ut osculum daret. Ego inter consistorianos steti. Hortari coeperint alii, ut accenderem; vocare ille. Respondi ego: quid oscularis eum quem non agnoveris? Si enim me agnovisses, non hoc loco videres. Commotus is, inquit, episcopo. Non inquam, iniuria, sed verecundia, quod alieno consisto loco.<sup>42</sup>

The appearance of Maximus' Grand Chamberlain to speak for the emperor underscored the growing importance of high ranking palatine officers.<sup>43</sup> The eunuch informed Ambrose that he had to meet with Maximus *in consistorio* rather than privately, although the bishop objected on sacerdotal grounds.<sup>44</sup> Like his later attitude against appearing in the consistory over the matter of the Arian basilica, his initial grounds for objection in this case were primarily religious. The rest of his description stresses the symbolic importance of the ceremony: before the seated emperor, Ambrose stood *inter consistorianos*, until he was finally urged to ascend to receive a kiss, the sign of imperial recognition. But he resisted, since he felt "shame" (*verecundia*) at having to perform a ceremony unsuited to his position both as a priest and imperial legate of Valentinian II.

If Ambrose had not felt that the ceremonial aspect of the consistory was so important, his actions would have been unreasonable, since he ended up sacrificing an important

political mission for his own concern for proper protocol. Clearly he was unable to abandon his belief in sacerdotal supremacy, just as happened later over the controversy concerning the Arian basilica. In both cases, Ambrose denied participating in what was to him a ceremonial ritual emphasizing imperial authority over its subjects. Ambrose thought of himself above all as a priest of the Church; to Maximus, however, he was received as if a foreign legate owing an act of submission. It made little matter that he was also a priest of God. Although granted a kiss in recognition of this fact, Ambrose revolted against paying homage to a seated emperor, to whom one must ascend to receive such recognition.<sup>45</sup> Unlike Ursicinus, who had adored the purple of Constantine II, Ambrose chose not to ascend to greet the exalted emperor, thereby remaining *ante consistorium*. Ursicinus had passed *intra consistorium* to become, symbolically speaking, *commilito* of the emperor. If Ambrose had done the same, however, he would have denied his own spiritual ties of dependency to Christ, the supreme *iudex*.

Although Maximus' consistory stressed ceremony and Gratian later reintroduced ceremonial elements *in consistorio*, normally at this time administrative matters continued to dominate the consistory in the tradition of early Pannonian rule. The degree of ministerial debate, however, depended on

the emperor in question. The minor Valentinian II, for example, in the case of the Altar of Victory, allowed the consistory to become a forum for public debate; Theodosius I, however, particularly in his later years, often checked public opposition to his will.<sup>46</sup> This was particularly so whenever Ambrose clashed with Theodosius over matters of the Church. No doubt because of his outspokenness, Ambrose quite often found himself *persona non grata* in the consistory: *soli mihi in tuo comitatu ius naturae ereptum videbam audiendi, ut et loquendi privarer munere; motus enim frequenter es quod ad me pervenissent aliqua, quae in consistorio tuo statuta forent.*<sup>47</sup>

"The right to hear and speak" *intra consistorianos* is perhaps the most important characteristic of consistorial development from Julian's death to Theodosius I. Although either an ambitious minister such as Remigius under Valentinian I or an autocrat such as Theodosius often thwarted its full effectiveness, the consistory finally emerged as an administratively-oriented council of state under active ministerial, rather than imperial, leadership. Nevertheless, the consistory still lacked the essential characteristic of collective autonomy necessary to assure institutional integrity under limited imperial direction. Only when Theodosius I joined Ambrose in uniting the Church and turning Christianity

into a state religion did the consistory reach a point of equilibrium between ministerial activism and imperial guidance, tempered by a common, orthodox doctrine of church-state accord.

Before Theodosius became sole Augustus, Gratian's brief reign in the West fostered a return of the ceremonial consistory most eloquently described, as in the past, by panegyric literature. Under Gratian, the western imperial court was dominated not by Pannonian militarism but rather by Ausonius' Gallic literary circle.<sup>48</sup> Ausonius, if taken literally, notes the survival at court of Diocletianic ceremonial elements, which, however, by Gratian's time shared prominence with the newly established administrative character of the consistory. At one point Ausonius describes the consistory in ceremonial terms similar to those of earlier panegyrics: *ago tibi gratias atque non in sacrario loco imperialis oraculi, qui locus horrore tranquillo et pavore venerabili, raro eundum animum praestat et vultum tui.*<sup>49</sup> Once a low-ranking *comes* at Gratian's court, Ausonius eventually became Quaestor of the Sacred Palace, to which office he was probably referring when he called it the emperor's "oracle."<sup>50</sup> Elsewhere the poet explicitly uses *sacrarium* as a synonym for *consistorium*:

In illa vero sede, ut ex more loquimur, consistorii,

ut ego sentio sacrarii tui, nullus umquam superiorum aut dicenda pensius cogitabit aut consultius cogitata disposuit aut disposita maturius expedit. <sup>51</sup>

Ausonius' praise of the ceremonial "sacredness" of Gratian's seated posture *in consistorio* is perhaps less important for this period than his repeated emphasis on imperial administrative wisdom (*nullus umquam . . . dicenda pensius cogitavit aut consultius cogitata disposuit*). Unlike earlier panegyrists who described the emperor's presence at court as one of divine immobility, Ausonius stresses the active involvement of the emperor advising *in consistorio*. <sup>52</sup> This development under Gratian, however, was cut short by his death, leaving Theodosius to rule both halves of the empire from his capital at Constantinople.

Two statutes from the early years of Theodosius' reign contain evidence of his attempt to restore the prestige of the consistory from the point of view of the Church. The first is dated 381:

Pars actorum habitorum in consistorio aput imperatores Gratianum, Valentinianum et Theodosium . . . In consistorio Imp. Theodosius A. dixit: Episcopus nec honore nec legibus ad testimonium dicendum admitti non decet, nam et persona dehonouratur et dignitas sacerdotis excerpta confunditur. <sup>53</sup>

This evidence fits in with the past tradition of hostility felt by Church leaders to the consistory as a court of law since Constantius II's reign. <sup>54</sup> It possibly also attests to Ambrose's early influence over Theodosius, the *de facto* leader

of the imperial triumvirate.<sup>55</sup> Theodosius in effect decreed *in consistorio* that henceforth secular authority could no longer demand testimony from bishops, a principle which Ambrose himself had extolled in his many conflicts with the consistory before Theodosius' reign. This statute has come down in history as part of the proceedings in consistory probably because it was considered an important symbolic gesture made to the Church. By promulgating the law *in consistorio*, the emperor conceivably had the consistory itself share publicly in the repudiation of its past tradition as an imperial persecutory agency.

The second statute, from the year 388, discredited past pro-Arian laws that might have emanated from the consistory (*nostrum sacrarium*).<sup>56</sup> The use of *sacrarium* still emphasized the imperial, rather than ministerial, responsibility involved. And since by this time the consistory was becoming increasingly important in the dissemination of Christian doctrine, Theodosius' action underscored imperial support for orthodoxy.<sup>57</sup> This legislation must have been especially pleasing to Ambrose, since, in effect, both statutes signified an end to a long era of church-state antagonism *in consistorio*.<sup>58</sup> Given these factors, it seems highly improbable that Theodosius would have allowed his consistory

to hear Libanius' plea for pagan toleration.<sup>59</sup> Unlike in the West, where ministers more effectively exerted influence under indifferent or immature emperors, Theodosius often prevented ministerial activism from becoming as intense in the East.

Theodosius' ceremonial use of the consistory receives only indirect attention in the sources. Pactus' panegyric to Theodosius characterizes the emperor's general attitude toward his court as conservative, similar to Julian's: *tu [Theodosius] amicitiam, nomen ante privatum, non solum intra aulam vocasti.*<sup>60</sup> There are, however, at least two extant descriptions of embassies received at Theodosius' court, one involving a group of priests saluting (ἀσπᾶσθαι) the emperor and one of his sons, the other a legation from Persia seeking a treaty, again before Theodosius and son.<sup>61</sup> Both accounts describe reverential and submissive attitudes of the legates, normal for a ceremonial setting *in consistorio*.

If prior historical developments had been different, perhaps Theodosius could have made a reality out of his alleged dream of holy investiture by the priest Meletius.<sup>62</sup> The imperial institution best suited for the event was the consistory, but it had too many pagan characteristics offensive to Christianity. The priesthood normally called for a return to synods as proper vehicles for working out

the relationship with secular authority. Theodosius, on the other hand, far too singleminded in his desire of uniting the Church, never allowed himself to become subordinate to the will of the priesthood.<sup>63</sup> Conversely, his reluctance to allow Ambrose to be heard *in consistorio* often left that official body immune to church influence, which was strongest early in Theodosius' reign when he was more receptive to Ambrose.<sup>64</sup>

Nevertheless, regarding ministerial control over subordinates, substantial evidence indicates a new relationship emerging between chief consistorians and their *officiales*. Libanius, for example, complained of the increased number of *agentes in rebus* and notaries, conspicuous in the past for their catering to imperial favor.<sup>65</sup> This time, however, the emperor also advanced the highest ministers, including the Master of the Offices and the Quaestor of the Sacred Palaces, to the rank of *illustris*.<sup>66</sup> This new status reflects their new responsibilities of leadership in assuming greater control over consistorial affairs under nominal imperial surveillance.

Theodosius I's reign capped an unprecedented period of development in the consistory as it became a ministerially, rather than imperially, dominated institution. From its vague, "sacred" beginnings under Diocletian, it emerged under Constantius II as an important and distinctive ceremonial appendage to the

imperial court. Its membership and powers were at first rather amorphous, always subject to imperial autocracy. It suffered serious setbacks from a reform-minded Julian and from the attacks of a paranoid church forced underground. Under the first Pannonians, although finally beginning to achieve greater administrative distinction, its independent effectiveness continued to suffer from ministerial rivalry and the diatribes of a doctrinally split church. With the growing reconciliation of church and state during Theodosius' reign, however, the consistory no longer posed a real threat to church integrity. At the same time, there is some indication that ministerial activity increased *in consistorio*, but without exploiting the institution itself.

## NOTES TO CHAPTER IV

1. Amm. 25.5.1; for the power of the military to influence events, particularly in Ammianus' history, see Straub, 74-75, whose claim that up to 450 the army had sole right in electing emperors has met much criticism (see J. Karayannopoulos' review of A. Christophilopulu, *Εκλογή ἀναγόρευσις καὶ στέψις τοῦ βυζαντινοῦ αὐτοκράτορος*. Πραγματ. τῆς ακαδ. Ἀθηνῶν, XXII, 2 (1956) in *Byzantinische Zeitschrift*, L (1957), 467-75.
2. Amm. 25.10.10; cf. Zos. 3.33 on another legation before Jovian; during his short reign, Ammianus also recorded the only obvious reference to the consistory as a place-name (25.10.2).
3. Amm. 26.1.3; although neither the consistory nor consistorians are mentioned specifically here, Ammianus' *potestatum civilium . . . rectores* probably indicates officers of consistorial rank (cf. Amm. 15.5.18; *primates . . . in regiam*; Amb. c. Aux. 29; *primatibus ante consistorium*); that there was debate is clear from Amm. 26.1.5 (*nulla discordante sententia*), a process apparently followed by Valentinian in selecting Valens

as co-Augustus (Amm. 26.4.1: *convocatis primoribus, quasi tuta consilia, quam sibi placentia secuturus*; cf. Zos. 4.12); Philostorgius (8.8), Zosimus (3.36) and Theodotus (HE 4.1) all mention a βουλή called at Jovian's death, but only Philostorgius clearly indicates civil participation; for the precedent set here for a combined senate-army-palace decision on imperial successors, see Jones, I, 325.

4. For Valentinian's excessive devotion to Remigius, his Master of the Offices, see Amm. 30.8.12; for his preference for an austere court, see Amm. 30.9.1-2 (for both these characteristics of Valentinian's rule in general, see Jones, I, 142-43; A. Alföldi, *Conflict of Ideas in the Late Roman Empire*, trans. by H. Mattingly [Oxford: Clarendon Press, 1952] 21.)
5. For Valen's disinterest in legal matters, see Amm. 30.4.2 (on Julian's attitude, cf. p. 66 above); on Valens' indifference to his administrative corps, cf. Amm. 31.14.2.
6. Amm. 28.1.25; for the role of the Quaestor in general, see Jones, I, 504-07.
7. For Montius' action, see Amm. 14.7.10-12 (pp. 49-50 above).
8. *CTH* 11.39.5 (p. 31 above).

9. Amm. 28.6.9; although only the term *comitatus* appears, it is obvious that the business was consistorial, *comitatus* implying the palace in general, the phrase *aditusque princeps* the act of imperial reception, probably *in consistorio* (cf. p. 37 above); for the consistory's relationship to the *comitatus*, see Jones, I, 367.
10. Amm. 30.5.8-10; again, although the consistory is not mentioned specifically, the setting is consistorial, similar to the preceding scene (Jones, I, 336-37); for the excessive trust placed in Probus, Valentinian's Prefect of Illyricum, see Jones, I, 147-48.
11. Amm. 30.6.1-2: *in consistorium, Aequitio suadente, sunt intromissi*; with the consistory indicated here, the business is similar to that of the two preceding scenes.
12. Cf. Zos. 4.12; in Ammianus' account, the pose of supplication (*suppliciter obsecrantes*), combined with a possible *adoratio* (*membra incurvata*) and oath-taking (*iurandi fidem addens*), were all exceptional for Valentinian's austere court, although reminiscent of earlier consistorial scenes under both Constantius II and Julian; by this time, the Master was in complete charge of imperial protocol (Boak, *Master*, 358).

13. Amm. 31.12.10 (comparable to the modern army Headquarters' Company, the consistory was strategically important enough to be located far behind the front); in Amm. 31.15.2, this same headquarters' section is called *potestatum culmina maximarum* (cf. *CTh* 11.16.15); in Eunap. 42, a *σύλλογος* met just before the battle of Adrianopolis (called a "meeting of the consistory" by Jones, I, 335).
14. Control of the *cursus publicus* and the arms factory were only two areas of jurisdictional dispute between the two ministers (see Blum, 4, 59; Jones, I, 368); for the importance of the Master's position as a stepping-stone to the office of Prefect, see Dem., *L'unité*, 10-12; for the functions of the Praetorian Prefect, see Jones, II, 586.
15. Jones, I, 128; Sinn., "Two", 239-40.
16. For the statute (*CTh* 11.39.5) and commentary, see pp. 31, 33-34, 68, 87 above.
17. For the statute (*CTh* 6.9.1) and commentary, see pp. 31-33 above.
18. *CTh* 6.30.1: this statute has the same provenance and year as *CTh* 6.30.4, originating in the western part of the empire (M. A. De Dominicis, "Il problema dei rapporti

- burocratico-legislativi tra 'Occidente ed Oriente' nel basso imperio romano alla luce delle inscriptiones delle 'Costituzioni imperiali'", *Rendiconti dell' Istituto lombardo di Scienze e Lettere*, LXXXVII [1954], 354).
19. For the identification of the *agentes in rebus*, see Goth., II, 206, although the statute appears under the title referring to control by the two financial Counts; for the central government's constant problem with provincial governors, see Jones, I, 372, 399, 405-09.
  20. *CTh* 6.30.4 (for the western provenance of the statute, see n. 18 above); on dating the statute in February, instead of December, 379 to correspond with *CTh* 6.30.1, see Pharr, 148, n. 13.
  21. Salutation, even by a superior, was always due a governor in his province (Goth., II, 209).
  22. For the western provenance of the statute, see De Dom., 358; cf. *CTh* 6.26.16 (410).
  23. For the growing emulation of imperial ceremony by subordinate officials, see R. MacMullen, "Some Pictures in Ammianus Marcellinus", *Art Bulletin*, XVII (1964), 436.
  24. *CTh* 12.12.8 (for the western provenance of the statute,

- see De Dom., 382): it seems evident from receiving legates that the term *sacrarium* here means *consistorium*, particularly by this late date (cf. p. 103 above):
25. *CTh* 12.12.10; (for the western provenance of the statute, see De Dom., 356); cf. the earlier *CTh* 12.12.3 (364) on the same subject and addressed also to the Praetorian Prefect, although it makes no mention of the consistory.
  26. For the problem of translation, see Pharr, 381, n. 27, whose sense is followed here.
  27. Jones, I, 336-37; in contrast to the earlier statute (*CTh* 12.12.3 of 364), *CTh* 12.12.10 apparently insured the emperor the right to hear all petitions first hand, not only those cleared first by the Praetorian Prefect.
  28. *CTh* 11.16.15: this edict is addressed to the western Prefect at Carthage (see De Dom., 382); on the phrase *maximarum culmina dignitatum*, cf. Amm. 31.15.2.
  29. *CTh*. 11.16.15, l. 6.
  30. For the chaotic conditions attending western imperial rule at this time, see Jones, I, 158-59.
  31. For Ambrose's attitude toward church-state relations, see H. Diesner, *Kirche und Staat im spätromischen*

- Reich (Berlin: Evang. Verlagsanst., 1963), 33-35;  
 J. Gaudemet, *L'église dans l'empire romain* Vol. III of  
*Histoire du droit et des institutions de l'église in*  
*occident*, ed., G. LeBras (Paris: Sirey, 1958), 499.
32. c. Aux. 3 (c. 1050); cf. Ep. 17.7 (c. 1003).
33. For the term *iudex*, see p. 53 above; Ambrose continually  
 stressed the imperial power to judicate in *consistorio*  
 (see Ep. 21.1 [c. 1045]: *quod in consistorio esset*  
*futura certatio, arbitro pietatis iudicio tuae; ibid.*  
 2, 4, 5, 9.15).
34. Ep. 57.3 (c. 1225): Seeck's emendation of *comites duo*  
 for *comiti suo* makes the best sense (see F. H. Dudden,  
*The Life and Times of St. Ambrose* [2 Vols: London;  
 Clarendon Press, 1935], I, 266); for the unexpectedness  
 of the matter, leaving Ambrose unprepared to defend in  
 person, see Ep. 17.10; for the importance of Bauto, see  
 Dudden, I, 222; the military, of course, was always  
 prominent under the Pannonian rulers (Jones, I, 142;  
 Alföldi, *Confl.* 15).
35. The quote is from N. Q. King, *The Emperor Theodosius and*  
*the Establishment of Christianity* (London: Student  
 Christian Movement Press, 1961), 65; cf. Amb. Ep. 40.27

- (c. 1158); for the primacy of the *dignitas omnium sacerdotium* (Ep. 21.13), see Dies., 33; Gaud., 500.
36. c. Aux. 29 (c. 1058).
37. In this passage, note the emphasis once more on *iudicare* (cf. n. 33 above); on the term *primate*s for advisers, cf. Amm. 15.5.7 (p. 9 above).
38. Ep. 21.20 (c. 1049).
39. Dies., 28-30; cf. King, 65; in Ep. 21.17, the bishop must act with the support of fellow *episcopi* and *populus*, a clear renunciation of ultimate imperial secular authority (Dies., 33); cf. c.Aux. 36; *imperator enim intra ecclesiam, non supra ecclesia est*.
40. By this time, Ambrose had already led the abortive mission to Maximus on Valentinian's behalf (Dies., 27).
41. c. Aux. 26 (c. 1015): *et gentiles quosdam quatuor aut quinque ferme homines elegit cognitores sibi; ibid. 3* (c. 1050); cf. also SHA Aur. 43, although obviously anachronistic.
42. Ep. 24,2-3 (cc. 1079-80).
43. For the office, see J. E. Dunlap, *Office of the Grand*

*Chamberlain in the Later Roman & Byzantine Empires*,  
 University of Michigan Studies, Humanistic Series XIV,  
 II (1924); Jones, I, 126-27 distinguishes the sacred  
 bedchamber staff as more domestic than palatine.

44. For another more practical reason for Ambrose's request,  
 see Jones, I, 335-36, although the two reasons are not  
 mutually exclusive.
45. Ambrose was particularly fond of extolling the virtues  
 of Constantine I (*Ep.* 21.15), whose ceremonial setting  
 for the Council of Nicaea emphasized equality before God  
 (cf. pp. 36-37 above); cf. also Amb. *De trin.* 29, where  
 an obviously anachronistic reference to Domitian's  
 "consistory" probably reflected Ambrose's general  
 negative attitude toward imperial autocracy.
46. On the early laissez-faire religious attitude of  
 Theodosius, see King, 71; Dem., *L'unité*, 67 (cf., however,  
 Ens., "Relig.", 14-15).
47. *Ep.* 51,2 (c. 1210); cf. *Ep.* 54,7 (c. 1226): *postea*  
*etiam clementissimo imperatori Theodosio coram intimavi,*  
*atque in os dicere non dubitavi*; for his outspokenness,  
 however, it seems that Ambrose was excluded from some  
 consistorial meetings (Ens., "Relig.", 62-63; Dudden, II,  
 381), the latter of whom contradicts himself on whether

- or not meetings of the consistory were "secret" (cf. I, 91).
48. Jones, I, 160.
  49. Auson. *Gratiarum actio* 1 (Loeb ed., II, 218); for the ceremonial award of Ausonius' own *dignitas*, probably in *consistorio*, see *ibid.* (p. 220): *redigor ad silentium, non oneratus beneficiis, sed oppressus* (for *silentium*=*sacrarium* or *consistorium*, see C. 2, n. 44 above).
  50. For the Quaestor as imperial spokesman, see Zos. 5.32; for the office as "imperial oracle", see Pig., 313; for Ausonius' career, beginning as *comes* under Gratian (*Gratiarum actio* II [Loeb ed., II, 224]), see Jones, I, 160.
  51. *Gratiarum actio* XIV (Loeb ed., II, 256); on the now accepted equation *sacrarium*=*consistorium*, cf. *CTh* 6.9.1; 16.5.16; 12.12.8.
  52. In particular, cf. *Pan. lat.* 3.11.2 (Gall., I, 60); 8.1.3 (Gall., II, 89); 10.5.1 (Gall., II, 170); in one of his few statutes promulgated in *consistorio* (*CTh.* 1.22.4), Gratian's ruling against provincial governors reflects perhaps both his own high esteem for the consistory as a policy-making body and the continuous conflict between consistorial personnel and provincial governors (cf.

- pp. 88-89, 92-93 above); for the powerful influence of court ministers on Gratian, following the pattern set by Valentinian I, see Zos. 4.35.
53. *CTh* 11.39.8; cf. *Sirm.* 3 (384), although this statute concerned cleric petitions to the consistory.
54. Cf. pp. 60-63 above; for the failure of the Church ever to gain complete self-jurisdiction, see Jones, I, 362.
55. For the early influence of Ambrose over Theodosius, see Dies., 23; conversely, for Theodosius' influence over both Valentinian II and Gratian at this time, see Ens., "Relig.", 14-15.
56. *CTh* 16.5.16.
57. For the importance of the consistory in disseminating Christian doctrine, see Ens., "Theod.", 32-33.
58. Since these two laws fall in the period of Ambrose's influence over Theodosius (see n. 55 above), they might have been due to the bishop's urging.
59. For Libanius' Court setting as "a literary fiction", see R. Van Loy, "Le 'Pro Templis' de Libanius", *Byzantion*, VIII (1933), 10-11; P. Petit, "Sur la date du 'Pro Templis'

- de Libanius", *Byzantion*, XXI (1951), 297; Libanius himself never actually uses the term consistory, only the vague συμβουλευεῖν or σύμβουλος (Or. 24.2; 47.1; 30.1.12), to describe the setting of his plea before Theodosius.
60. *Pan. lat.* 12.16.2 (Gall., III, 82); cf. also *Pan. lat.* 12.16.4,5 (Gall., III, 83), and particularly 21.2,3 (Gall., III, 88), where Theodosius' accessibility to the public contrasts sharply with earlier imperial "sacred" seclusion (cf. c. 3, n. 49 above); on Julian's emphasis on *amicitia*, cf. pp. 65-66 above.
61. For the priestly legation, see Soz. 7.6; for the Persian, see Claudian *De VI cos. Hon.* 65-76 (cf. Socr. 5.12); the seated posture of Theodosius and son, of course, emphasized the dynastic concern of the time (Dem., *L'unité*, 5).
62. Socr. 5.6; for the growing mystique of Christian imperial kingship under Theodosius, see King, 29-30.
63. *Ens.*, "Relig.", 26-28, 60-61.
64. *Ibid.*, 62-63; Dudden, I, 381; Jones, I, 165-66.
65. Or. 2.58; for the influence of the Master and the Quaestor

over their *officia* at this time, see Dem., *L'unité*, 10-12; under Theodosius, the notaries and the *agentes* (as *principes*) were also granted the new honorary rank of senator (*CTh* 6.10.2,3; 6.27.5,6).

66. *CTh* 6.9.2 (380); for the elevation of the Master from *spectabilis* in 378 to *illustris* in 384, see *CTh* 8.5.35; *Symm. Rel.* 34, 38, 43; Valentinian II, Gratian and Theodosius were all concerned with precedence of rank (Jones, I, 142-43, 161), although consistorial rank in general did not finally become fixed until the end of Theodosius' reign (Jones, I, 143); *CTh* 7.8.3 (384) contains evidence of this new prestige attached to high-level ministerial activity *in consistorio: qui participantes Augusti pectoris curas agendo claruerunt* (for use of this statute to indicate alleged *ex officio* participation, see *Goth.*, II, 345, *Karl.*, I, 848).

## CHAPTER V

### THE EARLY FIFTH CENTURY IN THE EAST AND THE WEST

Even under the reign of Theodosius I, evidence is insufficient to establish the consistory as a body of advisers built around the nucleus of perhaps four or five *ex officio* members.<sup>1</sup> Although four ministers, the Master of the Offices, the Quaestor of the Sacred Palace, and the two Counts of the Public and Private Treasuries continued as previously to participate frequently in the consistory, their regular and continuous attendance is not attested, nor as a conspicuous group do they ever appear together in the sources. The most that can be said concerning collective activity, is that their respective *officia* gained increased administrative prominence. The *agentes in rebus*, the *notarii*, and the *palatini* all enjoyed increased rank and prestige notably during the latter part of the fourth century.<sup>2</sup> Nevertheless, historical conditions did not exist yet conducive to joint official activity on a so-called "cabinet level", to use the modern analogy. Such conditions apparently did evolve for a time in the West, but only after the rule of Theodosius I had passed.

The prestige attached to service *in consistorio* again became a legal issue early in the rule of Honorius and Arcadius. As under Gratian and Valentinian II, exemption from certain fiscal responsibilities continued to be granted to officers fortunate enough to serve in the consistory: *qui ducatum administrarunt, ad editionem vel nominationem praeturae pertineant, praetor eos . . . qui sacri consistorii nostri arcanis interesse meruerunt.*<sup>3</sup> In contrast to the earlier consistory of the mid-fourth century, at least two new developments are worthy of comment in this statute of 396. First, the edict makes clear that certain *duces* now frequently participated in top-level governmental affairs, indicating increased military activity in normally civil affairs.<sup>4</sup> Secondly, in contrast to Ursicinus' ceremonial role, the *dux* now had an administrative responsibility to fill consistorially. As such, he heard "secrets of state" that he presumably took part in formulating. His predecessor Ursicinus, on the other hand, had received orders as part of a prior decision made without his participation.

If the number of consistorians was, in fact, growing, then use of the term *arcana* would seem significant, particularly since increased debate *in consistorio* involved a greater number of persons.<sup>5</sup> The expansion of the consistory undoubtedly caused palatine security to become a serious concern for the

emperor. This increased with the widening split between both halves of the Empire and the ensuing mutual distrust that so often took the form of ministerial intrigue. Consequently, the death penalty for plotting against high officers of state shortly became law in 397, specifically aimed at protecting those involved in "councils and our consistory" (*consiliis et consistorio nostro*).<sup>6</sup>

The edict's terminology distinguishes between individuals serving on *consilia* and those meeting with *nostrum consistorium*. Scholars have seen this distinction as indicating either difference in rank between *spectabiles* and *illustres* who were advisers, or that ministers first met individually with the emperor (*consilia*) before collectively (*consistorium nostrum*).<sup>7</sup> But if the consistory, through Theodosius' reign, was essentially ad hoc and not permanent in membership, the individuals participating in *consilia* might well have been the traditional *amici* of the *consilium principis*. Although the official use of the term *consilium* in the Code to signify imperial councils at this time seems inexact, both Ammianus Marcellinus and Aurelius Victor still used it freely.<sup>8</sup> Nevertheless, the fact that both terms were still current underscores the ambiguous character of the consistory. It apparently still lacked an ex officio core to distinguish it completely from its predecessor, the *consilium principis*.

A dominant characteristic of the consistory at this period continued to be honorary rank and legal exemptions gained from association with the body. Two statutes confirm this development: in 398 *consistoriani comites* were granted the right of foregoing sureties in holding imperial tenancies, and in 399 their right to hold honorary proconsular rank was reconfirmed.<sup>9</sup> It is noteworthy that the proconsular rank, once reserved for the four most active ministers of the consistory, now passed to lower consistorial officers, grouped together generally as *spectabiles*.<sup>10</sup> The older ceremonial tradition of the consistory might also be evident, if *ordo* here implied ceremonial rank in receiving the proconsular *dignitas* (*ut eorum emenso ordine ante omnes alios ipsi vindicent dignitatem*).<sup>11</sup> Following Theodosius I's elevation of the leading palatine minister to the rank of *illustres*, the successive rise in rank and prestige of consistorial *duces*, *comites* and *spectabiles* undoubtedly led ministerial leadership to seek even greater status. Understandably, circumstances were ripe for the first clear separation *intra consistorianos* of ad hoc, personally chosen members of whatever rank from a smaller ex officio nucleus of select palatine ministers.

Up to this point, the joint association *in consistorio* of the Master of the Offices, the Quaestor of the Sacred Palace, and the two financial Counts as an ex officio group of permanent

advisers to the emperor cannot be verified.<sup>12</sup> Except for one very early and questionable reference in the Theodosian Code, the consistory never appears to be distinguished by their meeting together at once.<sup>13</sup> Although the individual competence of each of the four ministers certainly made their joint attendance ideally permanent, development of the consistory as a council of debate coincided with the exploitation of that body by at least two of the four ministers.<sup>14</sup> At the same time, however, each of the offices met at various times with the consistory.<sup>15</sup> The first clear evidence associating the four ministers together as a collective unit comes from a statute of 409. This law exempted the payment of horses and recruits to, among others, the *magister officiorum, quaestor vel comites sacri ac privati aerarii inlustres*.<sup>16</sup> After these four, *consistoriani comites* were also made exempt. Here, recorded for the first time, the Master, the Quaestor, and the two Counts are singled out as a special group of ex officio ministers, apparently from unspecified consistorial counts, whose association with the consistory in the past had been mainly ad hoc and always based on personal imperial selection. An ex officio distinction seems to be the only plausible explanation, since both functional status and past office-holding were factors accounted for later in the same law.<sup>17</sup>

It appears significant also that this statute emanated

from Ravenna, Honorius' capital, since there is additional evidence to suggest the formation of a consistorial ex officio nucleus in the West rather than in the East. Zosimus grouped these same four ministers together in his list of Honorius' important officers massacred at Ticinum in 408.<sup>18</sup> As in the law cited above, dated only a year later, the grouping of officers seems conspicuous, raising the question why the four ministers became important enough to be listed together at that particular time.<sup>19</sup>

Although this evidence nowhere explicitly identifies the four ministers as ex officio consistorians, historical conditions in the West favored such a development early in the fifth century. Under Valentinian I, individual ministers apparently took advantage of a consistory that lacked collective strength. In the absence of a possible coalition in *consistorio*, for example, both Remigius and Leo exploited the council of state without any apparent opposition from the other ministers in it. Comparatively in the East, however, Theodosius I repeatedly regulated precedence of rank, reducing ministerial rivalry to a minimum, and finally allowing Rufinus to establish himself as palatine minister par excellence.<sup>20</sup> If Theodosius had not died when he did, perhaps an ex officio membership of the consistory might have developed in the East under his guidance. Instead, Rufinus assumed pre-eminence

in the East, but at the cost of making himself vulnerable to attacks by his enemies. Such was the consequence, of course, of ruling under Arcadius as a civil minister, whose position was traditionally fair game for any ambitious rivals. Conversely, following the death of Theodosius I, the western part of the Empire fell under military authority of Stilicho, whose martial basis of power made him more safe from ministerial attacks than Rufinus.<sup>21</sup>

In fact, the combination of military authority made secure by military necessity, an immature emperor without strong ministerial support, and an apathetic Roman senate all gave Stilicho extraordinary power.<sup>22</sup> Consequently, unlike Rufinus or Eutropius in the East, Stilicho rarely became an object of attack simply because of ministerial jealousy.<sup>23</sup> Secure from interference, Stilicho proceeded slowly to undermine civil authority, including the consistory.

Under Honorius, a number of poets described the western imperial court in terms that demonstrate clearly the influence of Stilicho. Rutilius, for example, described his civil post within the imperial court as a *commilitio*; both Claudian and Prudentius also emphasized the traditional *militia* of the imperial service.<sup>24</sup> Rutilius, in the same poem, goes on to describe the *armigeraeque pii principis excubiae*, who not only protected the emperor at court but

also at this time were becoming ornamentally important as part of imperial ceremonies.<sup>25</sup> Rutilius, of course, was a bitter critic of Stilicho, who, in the poet's words, was no less than a *proditor arcani quod fuit imperii*.<sup>26</sup> Although paganism was apparently the source of Rutilius' general hostility, his Gallic aristocracy, like that of his predecessor Ausonius, probably also found much to criticize in the growing fusion at that time between military and civil jurisdiction.<sup>27</sup> If, as *CTh* 6.4.28 indicates, the once lowly *dux* now had the privilege of hearing imperial "secrets of state" *in consistorio* along with high ranking civil ministers, Stilicho's regency over Honorius represented the last step of putting military authority in control of the state.<sup>28</sup>

Claudian's preoccupation with Stilicho's martial feats quite often overshadowed the poet's other concerns with imperial rule. Consequently, his comparison of Theodosius I with his son Honorius emphasized the military aspects of imperial rule at the expense of more peaceful pursuits.<sup>29</sup> Only when dealing with Honorius alone did Claudian seem to concern himself with imperial ceremony, however insignificant the use of court personnel in Honorius' suing for marriage.<sup>30</sup> The decline of the fine arts of diplomacy in the West becomes apparent when this passage is compared to Claudian's describing Theodosius' reception of a Persian embassy.<sup>31</sup>

However general these references to increased military dominance in Honorius' government, Stilicho altered consistorial jurisdiction in at least two specific areas of civil administration. First, Stilicho himself apparently gained control over maintenance of the *laterculum minus* or list of lower officials, previously kept by the Quaestor of the Sacred Palace; secondly, the so-called *principes officii de schola ex agentibus in rebus*, formerly under the Master of the Offices' control, now fell under the jurisdiction of the provincial *duces*.<sup>32</sup> As a result, the powers of both consistorial ministers were diminished, along with that of the Praetorian Prefect, as Stilicho aimed at subordinating civil authority to military.<sup>33</sup>

If Stilicho was instrumental in replacing important ministerial jurisdiction over *officia* with military, why then is it likely that he would have allowed an *ex officio* nucleus of officers to exist *in consistorio*, a possible threat to his control over the civil bureaucracy? In the first place, in spite of Honorius' minority, the barbarian general still needed legitimate imperial support, especially to control his troops. Furthermore, in order to maintain imperial support, it was essential for Stilicho to have a neutral channel of contact open between himself and Honorius. For this purpose, the consistory was ideal. As a council of state, it advised the emperor periodically, keeping Stilicho indirectly in close

contact with Honorius; at the same time, it is reasonable to suppose that an ex officio nucleus would have posed less threat of insubordination to Stilicho's control. Since both the Master and the Quaestor were considerably weakened administratively, Stilicho removed, along with the Prefect's power, likely individual threats to his hegemony. Without their full power these ministers were relegated to more or less equal status, i.e. ex officio, no single one being able personally to dominate the consistory in opposition to Stilicho.

As for a second supposition for its existence, the formation of an ex officio nucleus of permanent consistorial members at this time followed logically from developments under Theodosius I. The relative strength of each of the four offices grew proportionately to the curbing influence Theodosius exerted, as, for example, in regulating precedence of rank. This influence accords with the conspicuous absence of ministerial conflict that had characterized the preceding Pannonian rule. Stilicho, in effect continuing the process, also lessened the extent of administrative conflict by not involving himself bureaucratically *as a minister himself*. In place of personal involvement, a policy of strict subordination of civil to military authority replaced Theodosius' imperial leadership at the same time as it enforced a highly

docile consistory.

Consequently, the maintenance of an inconspicuous *ex officio* corps of ministers *in consistorio*, whose administrative strength was minimal but whose proximity to the emperor was closest, would have certainly benefited Stilicho. Although the evidence is sketchy and inconclusive, it seems reasonable to suggest that historical significance lay behind the peculiar grouping of ministers indicated by the sources. It is ironic to think that military despotism was the chief factor in the consistory achieving its ultimate distinction of *ex officio* membership. Nevertheless, Honorius' consistory apparently existed only as a puppet-structure controlled by the hands of Stilicho, the *magister militum praesentalis*.

This period of relative peace among the higher ranks of Western consistorians ended with the death of Stilicho. First Olympius as Master of the Offices, then Theodorus, followed by Jovius, both Praetorian Prefects, regained ministerial initiative as effective leaders towards the end of Honorius' reign.<sup>34</sup> First as a minor palatine official, Olympius was instrumental in turning Honorius against Stilicho before he finally emerged as Master to purge Stilicho's men from the palatine ranks.<sup>35</sup>

It is perhaps significant that successful opposition to Stilicho came from the palatine bureaucracy rather than

from the imperial ministers. As a relatively insignificant civil servant, Olympius apparently escaped Stilicho's suspicion, which was probably fixed on controlling the strategically more important *ex officio* membership of the consistory.

With the fall of Olympius from power, the Praetorian Prefect Jovius became supreme. After he had dismissed other high ministers, Jovius restructured the prefecture, giving it greater power while at the same time leaving the *principes officiorum* under the authority of the military *duces*.<sup>36</sup> In his dealings with Alaric, there is also evidence that Jovius began subordinating consistorial officers to his will.<sup>37</sup> Once Alaric had taken Rome, however, members of the senatorial class became more outspoken against past tendencies of imperial government. Besides the rising tide of antibarbarian sentiment, the return to experienced civil administration became an important issue, reflecting growing public dissatisfaction with the extent of military intrusion into civil affairs.<sup>38</sup>

Capitalizing on the favor shown by Stilicho, the Roman senate slowly began to regain prestige.<sup>39</sup> Nevertheless, the opportunity for a complete return to stable, civil government never came, as Stilicho's death left the western Empire open to corroding forces, including ministerial intrigue *in consistorio*. During the fifth century, increasing

governmental instability at the highest levels of administrative control left the western consistory without corporate effectiveness. In its place, more and more generals and emperors relied on *ad hoc* personnel, whose relationship to the consistory was tenuous at most. The high point of consistorial group prestige, i.e. *ex officio*, apparently ended with Stilicho's death.

The consistory in Constantinople developed quite differently from its western counterpart. The proto-Byzantine Empire has been described as a "dictatorship derived from the bureaucracy of the palace or consistory".<sup>40</sup> Under this eastern "dictatorship", however, the consistory apparently did not develop its own nucleus of *ex officio*, permanent members, as seemingly did the consistory under the military dictator Stilicho. Undoubtedly this situation was in large part due to the different leadership that existed in each part of the Empire. First Rufinus, then Eutropius, as well as Aurelian later, all held positions of power inextricably bound up with the tradition of ministerial rivalry.<sup>41</sup> In this respect, Claudian's biting criticism of court dissensions under Rufinus and Eutropius, although satirically distorted, must have had a kernel of truth.<sup>42</sup> Unlike its counterpart in the West, Arcadius' consistory was apparently very often a setting for intense competition for imperial offices.

Claudian's fierce diatribes against eastern court life apparently stemmed from a bitter social prejudice against the new bureaucratic arriviste. The poet railed against Arcadius' counsellors, calling them *iuvenes . . . Romam contemnere sueti mirarique suas aedes*.<sup>43</sup> The eastern bureaucrats were pictured as crude upstarts, lacking upper class culture, as understood by West Roman senators. They were experienced only in creating disorder, a *plausus et ingens consilii clamor*.<sup>44</sup> As a group they were a *iners atque impia turba*, whose chief activity was involving themselves in *mediis dissensibus aulae*.<sup>45</sup> Besides a proper social background, to Claudius' mind, Arcadius' counsellors generally lacked the refinement of court etiquette to set them apart from commoners. Claudian branded both Rufinus and Eutropius, as ministerial representatives of this new bureaucracy, in even more derogatory terms. The former, for instance, once having gained power at court, proceeded to sell state secrets (*profert arcana*), to betray his own followers (*clientes fallit*), and to barter away official positions, properly an imperial prerogative (*et ambitos a principe vendit honores*).<sup>46</sup> According to Claudian, Rufinus usurped civil prerogatives of office traditionally belonging to the emperor, a charge similar to Rutilius' indictment of Stilicho. The civil rather than military position enjoyed by Rufinus,

however, presumably gave him more intimate and direct access to imperial power.<sup>47</sup>

Finally, Claudian accused Eutropius, Rufinus' successor, of assuming the imperial position *in consistorio*:

Spado Rumuleo succinctus amictu/sedit in augustis  
laribus. Vulgata patebat/ aula salutatum studiis; huc  
plebe senatus/permixta trepidique duces omnisque potestas/  
confluit. Advolvi genibus, contingere dextram/  
ambitus et votum deformibus oscula rugis/ figere.<sup>48</sup>

Although the phrase is lacking, all the ceremonial features of an *adoratio in consistorio* are evident, satirically vulgarized by Claudian. First, a eunuch sits enthroned in place of the emperor; second, the court, like the *impia turba* quoted elsewhere, lacks the traditional *ordo dignitatis* in offering *salutatio*, as plebs mix freely with senators, soldiers with magistrates; and finally, the supplicants fall to their knees before kissing the deformed usurper of imperial majesty.

Aside from Claudian's exaggerated particulars, the general pattern of court life in Constantinople emerges sharply differentiated from that in Ravenna. For one thing, the lack of social class distinction between senator, minister and bureaucrat in the East must have made it easier for their respective governmental agencies to function smoothly together.<sup>49</sup> In the case of the eastern consistory, however, ministerial jealousy apparently impeded the development of *ex officio* membership, since competition for office was

incompatible with cooperative activity *in consistorio*. In the West, on the other hand, Stilicho's policy of subordinating civil authority to the military, combined with the lack of a mature emperor, insured the existence of a docile, governmentally ineffective consistory.<sup>50</sup> Nevertheless, in its *ex officio* corps, Stilicho possessed a most effective pawn in controlling Honorius.

In the scramble for power in the East following Theodosius' death, substantial indication exists that both Rufinus and later Eutropius affected the functions and status of the consistory in their rise to power over Arcadius.<sup>51</sup> Rufinus' powerful hold on his personal *clientes*, to use Claudian's words, probably also included consistorial personnel closest to the emperor.<sup>52</sup> Rufinus' transference of duties from the Master to the Praetorian Prefect undoubtedly changed the balance of power at the highest executive levels of the state.<sup>53</sup> Rufinus' successor Eutropius, as Head Chamberlain, was also conspicuous on at least one occasion for usurping the duties traditionally belonging to another consistorial minister, the Quaestor.<sup>54</sup> It is a logical conclusion from these events that ministerial jurisdiction over their *officia* suffered serious disruptions, adding to the instability that made mutual cooperation *in consistorio* unlikely.

The political situation peculiar to the East denied the possibility of an ex officio ministerial membership in *consistorio*, but did not apparently inhibit consistorial bureaucrats from advancement in office. As in the past, whatever the status of individual ministers, *officiales* often advanced in prestige on their own.<sup>55</sup> This apparently was the case under Honorius and Arcadius. In the West, where a consistory having ex officio members apparently existed, certain palatine *officia* lagged behind their eastern counterparts in achieving honorary rank, where an ex officio consistory probably did not exist.<sup>56</sup> There are several reasons to explain the discrepancy in rank between eastern and western palatines, including consistorial personnel.

For example, the late rise in honorary rank of western *scriniarii* and *agentes*, when compared to their eastern counterparts, might be explained by the action of Olympius following the death of Stilicho.<sup>57</sup> As an imperial *scriniarius* himself, then Master over the *agentes*, Olympius undoubtedly promoted members of these two *officia*; at the same time, his action would certainly have strengthened his newly won control over consistorial personnel.<sup>58</sup> Prior to Olympius' assuming office, Stilicho, the military man, presumably neglected to advance the lower palatine ranks, maintaining instead the status quo of the palatine administration.<sup>59</sup>

In the East, conversely, the ready reward of ambitious members of the bureaucratic class based on administrative achievement alone, rather than birth, presumably encouraged rapid advancement in office. The acceleration of ministerial conflict involving Rufinus, Eutropius, and Aurelian probably favored certain *officiales* to the exclusion of others. Since the Praetorian Prefect, for example, apparently had usurped certain duties belonging to the Master *in consistorio*, the *agentes'* rise in honorary rank following Rufinus' death, as indicated in the Theodosian Code, might have been due to their restoration to the Master's control.<sup>60</sup> This advancement in prestige apparently celebrated the return of the Master's control over his old *officiales*.

Although there is no evidence for the activity of the consistory in the West during the early fifth century, at least two sources from the East give substantial information on Arcadius' consistory. In Marc the Deacon's *Life of Porphyry*, the consistory seems to have helped determine one of the last conflicts between the Church and paganism. At the request of Porphyry, bishop of Gaza, John Chrysostom petitioned Eutropius, Arcadius' Head Chamberlain, to gain imperial support for the demolition of pagan temples still operative in Gaza.<sup>61</sup>

Claiming that the consistory by this time was no

longer an effective advisory body to the emperor, Jones cites this "unofficial" petitioning by John Chrysostom to show that the consistory had little importance in governmental affairs.<sup>62</sup> In reality, however, the situation was perhaps not as simple as Jones indicates. In the first place, church officials frequently preferred to work informally to gain imperial support.<sup>63</sup> Secondly, in the light of John Chrysostom's delicate relationship with the Empress Eudoxia, Porphyry might have left the matter of approaching the emperor entirely up to the Patriarch's discretion.<sup>64</sup>

Nevertheless, however informally the matter was first brought to the attention of the emperor, Marc the Deacon's passages dealing with the final action contain what appears to be a traditional consistory.<sup>65</sup> In the presence of the bishop and his delegation, the empress sent for her Quaestor to dictate an imperial rescript ordering the destruction of the pagan temples.<sup>66</sup> Apparently afraid of possible bureaucratic deferment, however, Porphyry urged finding a pious Christian officer to carry out the order.<sup>67</sup> The empress then commanded her Head Chamberlain to find the right man for the job. A digression then interrupts the narrative to discuss the irreligious acts of many of the nobility before Porphyry's time.<sup>68</sup> Finally, Cynegius, a consistorian (κωνσταντινούσιος) was chosen, and after receiving an imperial

largess (*χρηματα*) from the empress personally, he left the court to carry out his task.<sup>69</sup>

It seems reasonably clear that the consistory, as a group of officers, met with the empress in the presence of Porphyry. All the characteristics of recent tradition are evident. First, in contrast to the bishop's previous meetings with either the emperor or the empress, on this last occasion *group action* took place, involving at least two high-ranking ministers and a notary.<sup>70</sup> Secondly, as part of the most recent tradition of the consistory, *active debate* took place, highlighted by the bishop's initiative in setting the primary qualification for selecting the right officer for the job.<sup>71</sup> Thirdly, the selection of Cynegius, an official member of the consistory, involved a *ceremonial setting* in which a traditional *largitio* (*χρηματα*) was granted.<sup>72</sup>

Besides these characteristics, a lack of autonomy apparently also persisted in the consistory, rendering it largely ineffective to take initiative alone. Had the consistory a nucleus of *ex officio* membership rather than one or two officers periodically exploiting it, perhaps it might then have had the proper balance of ministerial authority to deal with administrative problems on its own more expeditiously. In both the East and West, however, powerful ministers constantly interfered with the consistory, creating an

atmosphere entirely at odds with harmonious cabinet leadership. If in the West, the consistory finally did achieve a "harmonious" ex officio unity under Stilicho, the ministers involved certainly were not autonomous enough as a unit to make independent decisions. In effect, their ex officio strength existed only on paper. Their potential for effective administration was limited by the reality of Roman imperial politics that ultimately recognized the sovereignty of only one man.<sup>73</sup>

Although the eastern consistory failed to achieve the slightest recognition as an ex officio body, it nevertheless figured prominently in the continuing ceremonial tradition so long attached to its name. Synesius' *Discourse on Royalty* furnishes ample evidence of the consistory's continuous role in diplomacy at Constantinople.<sup>74</sup> In this context, Synesius' work has been seen as instrumental in rallying support for Stilicho's overthrow.<sup>75</sup> No less significant, however, are the parts of the work recording the traditional ceremonial relationship that brought subjects in contact with imperial majesty.

It seems that the occasion for Synesius' appearance at Arcadius' court was the imperial Quinquennalia combined with the presentation of the *aurum coronarium*.<sup>76</sup> As provincial ambassador, Synesius begins his work by describing his

proskynesis before the emperor and his "counsellors" (συνεδρεύοντες).<sup>77</sup> Then the orator refers to "freedom of speech" (παρρησία), with the imagery of countless cities making Proskynesis, both ideas having traditional consistorial connotations.<sup>78</sup> Finally, before devoting himself to the favorite panegyric theme of true *amicitia* among counsellors, Synesius subtly alludes to his honored presence *intra consistoriano*, characterizing them as fervently seeking "royal friendship" (φιλία βασιλική).<sup>79</sup>

Synesius begins his theme on achieving true *amicitia* among counsellors by defining them as "a few intimates and a few friends" with whom Arcadius must consult on matters of state.<sup>80</sup> The reference to "intimates", as distinct from "friends" or traditional counsellors, might have been aimed at urging Arcadius to take counsel always with the empress, the powerful Eudoxia, and perhaps his brother Honorius for the sake of imperial reconciliation.<sup>81</sup> Powerful ministers such as Rufinus and Eutropius might have also fallen under the category of "intimates", reflecting their extraordinary positions of power. In Claudian's poems, of course, both these ministers were described satirically as usurpers of imperial prerogatives.<sup>82</sup> In the case of Synesius, however, his close proximity to the reality of eastern imperial politics forced him to deal seriously with Arcadius' court,

although his remarks might be viewed as further evidence of the deterioration of imperial control over subordinates.

In discussing the danger of insincere *amicitia* to the emperor, Synesius advises imperial reliance on palace guards for protection from false "friends", intending to steal into the innermost imperial "chambers" (ἐνδοτέρῳ τῶν ταμειείων).<sup>83</sup> The emperor was then advised to cultivate "the soldiers as his second friends, calling them comrades".<sup>84</sup> All these remarks shed light on the past tradition of the consistory as well as on new developments in relation to political changes in the early fifth century.

In the first place, in comparison to developments in the fourth century, Synesius' advice to Arcadius to incorporate the soldiery into his *amicitia* appears significant.<sup>85</sup> According to Ammianus, who usually was careful not to confuse military with civil jurisdiction, Constantius II called Ursicinus *commilito*, once the *dux* had passed *intra consistorium* on the judgment of the imperial *consilium* that had met immediately before.<sup>86</sup> In effect, Ursicinus, though honored by an *adoratio purpurae*, still remained outside the inner circle of imperial *amici* who advised the emperor. He was addressed by a title that traditionally belonged to a military *adlocutio*, conducted by an emperor acting the role of, so to speak, a *primus militum*, not a *primus amicorum* in the civil

tradition of the Principate.<sup>87</sup> Similarly, on Julian's becoming emperor, his soldiers rudely demanded entrance in *consistorio*, as if to give legitimacy to their act of revolution.<sup>88</sup> In both cases from the fourth century, the military apparently did not normally participate as consistorians, reflecting the imperial attempt to separate military from civil functions. Julian's soldiers also stood outside the honored palatine authority in attendance at court.

Synesius advised Arcadius to make the soldiers his second rank of *amici*, thereby altering the traditional *ordo dignitatis in consistorio*. Although once called "comrades", meaning military subordinates, the soldiers now symbolically joined the inner circle of those titled "friends", i.e. consistorians of high palatine rank. Although in fact subordinates, as were all consistorians, the soldiers theoretically became imperial advisers and confidants, although in reality they stood at Arcadius' side only as imperial bodyguards. Along with Claudian, Rutilius, and contemporary monuments, Synesius gives important evidence for growing military dominance in civil affairs in both East and West.<sup>89</sup>

For the sake of comparison, Synesius digresses at one point to show how earlier in the Empire, Roman emperors met with foreign ambassadors without ceremonial pomp:

In the midst of these affairs [the Roman campaign in Persia] an embassy from the enemy presented itself. The ambassadors believed they would be received first by imperial counsellors (παραδυναστεύουσι) together with their followers and ushers, after which they would finally meet with the emperor. The emperor at that time was at dinner. Now there were not, as now, these bodyguards . . . both young and old . . . with their shields or lances of gold, whose appearance announces to us the emperor, so to speak, as the first rays of the morning sun.<sup>90</sup>

At the beginning of the passage, Synesius undoubtedly described Arcadius' court when he noted the ambassador's anticipation of having *first* to meet with imperial counsellors before finally seeing the emperor himself. This passage resembles Crook's comments emphasizing the large size of the imperial entourage, including their own *clientes*, that was influential at Arcadius' court.<sup>91</sup> According to both authors, the impression is given that the court at Constantinople was in reality two-part, one part the emperor and his ministers, the other Rufinus, Eutropius or Aurelian and each's personal entourage. Although ranked traditionally as consistorians, chief palatine ministers reigned over "their followers and ushers", to use Synesius' words, in much the same fashion as past emperors had. As such, Arcadius' court, including ministers attended by their own followers, a variety of civil and military officials, senators and various guard detachments, each a separate unit incapable of forming a clear chain of command, constituted a labyrinth of officialdom. Under such conditions, direct access to the emperor was

impossible. Porphyry's circuitous route in gaining imperial assistance is a personal testament to the descriptions of both Claudian and Synesius.

Observing Arcadius' impotence at court, Synesius did not hesitate to advise the emperor to seek out more often troops in the field, as a relief from the confines of the palace.<sup>92</sup> Nevertheless, Synesius also realized that the emperor must continue to work through a bureaucratic structure in order to gain effective control over his realm: "Let those near to the throne, not only the second-in-command, but also the first, follow the emperor's pattern of soul, being of service to mankind as each received his own power".<sup>93</sup>

The reality of Arcadius' court life, however, permitted neither intimacy between emperor and soldier on campaign nor effective chain-of-command between emperor and subordinate. The imperial military force was scattered too far afield to feel the effects, as a unit, of Arcadius' personal concern; on the other hand, the imperial ministerial corps was too dominated by ambitious ministers to feel the same concern. Arcadius increasingly relied on the palatine guard as his only possible safeguard against complete vulnerability, as his position grew more isolated from the court around him. Thus the emperor grew powerless as bureaucratic disorder and military rebellion spread.

Although less explicit than his *Discourse on Royalty*, Synesius' *Egyptian Tale* contains much evidence that adds to the conclusions already drawn from his oration before Arcadius.<sup>94</sup> At the beginning of his allegory that casts Aurelian and Caesarius in the mythical roles of Osiris and Typhos, Synesius describes a meeting of the Egyptian king with his priests to choose a successor to his kingdom. Arranging their "order" (τάξις) according to rank, the priests formed "the first circle" (κύκλος . . . πρώτος) around their king, after which the soldiers took second place in the same manner (κύκλος ἄλλος).<sup>95</sup> This passage is similar to Synesius' previous one emphasizing the growing importance of the imperial bodyguards. It also underscores the growing fusion of civil and military personnel in Arcadius' most immediate entourage of advisers.<sup>96</sup>

Perhaps of greater concern, however, are parts of the *Egyptian Tale* which have been cited to prove the existence at Arcadius' time of the *silentium et conventus*.<sup>97</sup> The emergence of these two administrative bodies marked the beginning of a period in which members of the consistory shared imperial advisory functions with senators. At first, senators slowly began to assume certain judicial roles that traditionally had belonged to officers of the imperial court, until finally the two terms *silentium et conventus* replaced *consistorium* to indicate a combined senatorial and ministerial

meeting over a variety of governmental issues.<sup>98</sup> In the case of the *Egyptian Tale*, it is alleged that senatorial and consistorial personnel first began working together under Arcadius, although Synesius did not call such activity a *silentium et conventus*.

Ernst Stein, for example, cited the trial of Typhos as the earliest example of how, under the synonyms θεοί and γέροντες, members of the consistory and the senate met to decide the fate of Caesarius, on trial for treason.<sup>99</sup> Synesius' evidence alone, however, is far from conclusive. For example, throughout his work he metaphorically employs a host of terms to describe high ranking officers of state, alternating between ἐφορεία θεῶν, γέροντες, θεοὶ ἔτ γέροντες and θεοὶ καὶ θεοὶ ἄνδρες to indicate a variety of official positions.<sup>100</sup> In the passage cited by Stein to prove the existence of a tribunal composed of senators (γέροντες) and consistorians (θεοί), both with equal judicial powers, the trial nevertheless ends with the "gods" (θεοί) sanctioning the verdict of "counsellors in attendance" (σύνεδροι).<sup>101</sup> Synesius' terminology must be interpreted loosely since his titles defy exact analysis and leave one uncertain as to specific jurisdictions. One other source, moreover, indicates that the consistory alone continued to possess normal jurisdiction as a high court of justice.<sup>102</sup>

The development of the consistory in both the East and the West at this time seems fairly evident despite a poverty of evidence. In the East where more detailed information is available, the effectiveness of the consistory to administer as a unit continued to be hampered by the lack of an *ex officio* nucleus. As long as palatine ministers vied with each other for rule over the eastern half of the Empire, the consistory reflected the shift of power from one individual to another. Without a strong emperor to curb such activity, the consistory remained a battleground of ministerial jealousies. Consequently, court intrigue more than anything else, apparently led to incorporation of the palatine guards into the consistory as "friends" of the emperor. Certain consistorial *officia* as well apparently gained in prestige, at least earlier than their counterparts in the West. Their rise in honorary rank can be traced often to the peculiar historical situations prevalent in the East and the West.

In the West, for example, although the consistory apparently briefly had the distinction of an *ex officio* membership, Stilicho's subordination of much of the civil administration to military control left the consistory without autonomy. Ironically, this development, connoting an administrative institution relatively free from ministerial conflict, was achieved only under a form of dictatorship.

The titular prestige of consistorial *officia*, however, lagged under Stilicho, rising sharply only after leadership of the consistory returned once more to civil ministers.

In general, the development of both the eastern and western consistories by the beginning of the fifth century shows a degree of complexity only hinted at during the preceding century. On one level, as an *honorary* body of officers with certain well defined titular prerogatives, the consistory retained its oldest traditional form as a ceremonially elite group. Its requirement for admission, however, remained essentially functional, since enrollment generally depended upon some kind of official duty. As an *honorary* body, its personnel membership continued to fluctuate, depending largely upon ad hoc, personal selection by the emperor. On a second level, as a *functional* body, the consistory had two sides to its character, one *ministerial*, the other lower echelon. On the one side, it was composed of many *officiales* who were relatively safe from the periodic imperial purges. Such lower palatine civil servants were the most permanent part of the consistory; it was they who accomplished the day-to-day work of the great ministers of state. The majority of great ministers, on the other hand, was never permanently part of the consistory. Their positions of power, so close to imperial favor, suffered periodic

purges, leaving their relationship to the consistory tenuous, particularly in the period under Arcadius and Honorius.

Without a powerful individual to protect the consistory as a semi-autonomous agency, the institution was without authority to insure its coordinated ministerial unity. In the East, one great minister after another exploited its potential for ex officio administrative leadership. In the West, the *generalissimo* took the place of the civil minister, as military expediency increasingly became the dominant issue of survival. Based at Ravenna, Honorius' consistory was more stable, but less effective as Stilicho maintained much administrative leadership in the hands of the military.

In the East, where the military situation was less threatening, the imperial position more secure, and the bureaucratic class more meritocratic, circumstances favored the continued importance of the consistory as a governmental agency. The ceremonial tradition linked to court diplomacy, still a vital political force at Constantinople, also focused renewed attention on the consistory. Perhaps it was unable to regain the historical significance it had possessed in the days of Ursicinus, Julian, or Ambrose. Yet the consistory still possessed some importance in the early years of the fifth century, helping to forge a strong link between the Roman past and the Byzantine future.

NOTES TO CHAPTER V

1. See pp. 29-31 above.
2. See pp. 58-59, 65, 67-68 above.
3. *CTh* 6.4.28 (396); for honorary prestige under Gratian and Valentinian II, see *CTh* 11.16.15; 7.8.3; 11.16.18; for the duke's powerful office, especially in the consistory, see Boak, *Master*, 30.
4. In *Amm.* 15.5.18-19 (p. 9 above), the *dux* Ursicinus' participation in *consistorio* was purely ceremonial; for the growing military dominance in civil affairs, particularly in the West, see *Dem.*, *L'unité*, 499.
5. For the greater extent of public debate in *consistorio*, particularly in Ambrose's case, see pp. 99-100 above; while the term *secreta* in the fourth century was only once applied to the consistory (*CTh* 6.35.7 [367], *arcana in consistorio* became increasingly prominent in the early fifth century (*CTh* 6.22.8 of 425); *CJ* 12.19.8 of 443); the use of *silentium* for consistory also became prominent at the same time (Oost, 164); for the growing number of oaths sworn before the emperor in the early fifth century,

- see Zos. 5.49 (cf. C. Lacombrade, "Notes sur l'*aurum coronarium*", *Revue des études anciennes*, LI [1949], 56).
6. *CTh* 9.14.3 (397); as in the statute above (n. 3), the provenance of the legislation seems to be eastern (DeDom., 426); for court intrigue in both the East and the West, see P. Fargues, *Claudien. Études sur sa poésie et son temps* (Paris: Hatshette, 1933), 126.
  7. For the *spectabilis-illustris* distinction, see Goth., II, 108 (cf. Jones, I, 143); for the idea of the ministers meeting singly, then collectively, with the emperor, see Zak., 413-14.
  8. Cf. Amm. 15.5.18 (p. 9 above); Aur. Victor *Caes.* 40.8 (cf. c. 1, n. 3 above); the most obvious anachronistic uses of *consistorium*, of course, are *CJ* 9.47.12 (n.d.) from Diocletian's reign and Amb. *De trin.* 29, where Domitian's "consistory" is referred to.
  9. *CTh* 10.5.1 (398); 6.12.1 (399); on the latter, cf. *CTh* 6.9.1 (372).
  10. For the *spectabilis* classification, see Goth., II, 95, although often Gothefredus was too rigid in applying the *spectabilis-illustris* classification to consistorial personnel (cf. n. 7; c. 4, n. 76 above).

11. For the past ceremonial *ordo dignitatis*, see pp. 10-12 above; the term *ordo* here might also imply the functional office of *comes consistorianus*, in which case no ceremonial aspect was intended.
12. For the arguments, see pp. 28-34 above.
13. For the arguments against accepting *sacrarium nostrum* in 372 for *consistorium* (CTh 6.9.1), see pp. 31-33 above.
14. For the exploitation of the consistory under the Master and the Quaestor, see pp. 86-88 above.
15. For the implicit control of consistorial *officiales* by the two financial Counts *in consistorio*, see pp. 90-91 above; the case for the participation of the Master, the Quaestor and the Count of the Sacred Treasury is more explicit (see pp. 31, 86-88 above).
16. CTh 11.18.1.
17. For the designation here of the *ex officio* four, see Goth., III, 148-9; Zak., 416; the statute clearly distinguishes past from present office-holding (*habeant in commune omnes, siue dum administrant seu postquam administraverint, debitum regiae liberalitatis officium*) and honorary from functional personnel (*illos tantum tironum atque auri munus adstrigat, quos honorarios*

*vocavit antiquitas*).

18. 5.32 (cf. Soz, 9.4).
19. In contrast to Zosimus' account, which lists all four offices, but not the name (a lacuna) of the Count of the Private Treasury, Demougeot (*L'unite'*, 415, n. 317; 420, n. 336) unaccountably omits listing the Count's office (cf. Jones, I, 344).
20. For Theodosius' legislation on precedence of rank, see Jones, I, 161-62; III, 30, nn. 60-61; although Theodosius' legislation (CTh 6.9.2) might have laid the basis for a future ex officio relationship between the Master, the Quaestor and the two financial Counts; Rufinus' rise to power, following Theodosius' death, probably involved his exploiting the consistory as a high court of justice (for the many trials used by Rufinus in conflict with his fellow ministers, see Zos. 4.51-52); it is perhaps significant that, in the absence of Theodosius' curbing influence, Rufinus ruthlessly eliminated his last and most powerful ministerial rival, Tatian (Jones, I, 161).
21. For Stilicho's career, particularly his early military successes and marriage to Theodosius' niece, see Jones, I, 341; Dem., *L'unite'*, 129; Seeck, IV, 269; S. Mazzarino, *Stilicone. La crisi imperiale dopo Teodosio* (Roma:

Signorelli, 1942), 62.

22. The Roman senate, without any curbing influence comparable to the palatine administration, was apparently powerless before Stilicho (Dem., *L'unite'*, 285-86; Cam., 362); the fact that Stilicho was commonly believed to have been appointed regent over both sons of Theodosius also undoubtedly added to his power (Dem., *L'unite'*, 101-02); for the *novi homines* of the western court, see Jones, I, 134-35.
23. For example, one of the most severe critics of Rufinus was the bureaucrat John Lydus from a rival ministry (see *Mag.* 2.10); on the other hand, most of the criticism of Stilicho involved his barbarian origin (E. Demougeot, "La théorie du pouvoir impérial au début du Ve siècle", *Mélanges de la Société toulousaine d'études classiques*, I (1946), 205-06).
24. Rut. Nam. *De red. suo* 1.562; Claudian *Ep.* 22.52; Prud. *Praef.* 19; for the possible identification of Rutilius as Master of the Offices, see C. H. Keene, ed., *Rutilii Claudii Namatiani de reditu suo* (London: George Bell & Sons, 1907), 220; on the significance of *commilitio in consistorio*, cf. pp. 64-65 above; for the significance

- of the term *militia*, see Jones, I, 377.
25. *De red. suo* 1.564; for the growing military presence at imperial ceremonies, as depicted in early fifth century art, see A. Grabar, *L'empereur dans l'art byzantin* (Paris: Les Belles Lettres, 1936), 89.
26. *De red. suo* 2.42 (for another interpretation of *arcanum imperium*, see Keene, 231).
27. For Rutilius' paganism, see Keene, 25.
28. For the *dux in consistorio*, see *CTH* 6.4.28 (p. 121 above); in *De red. suo* 2.56, Rutilius also called Stilicho a subverter of *aeterni fatalia pignora regni* (for the growing importance of *arcana in consistorio*, see pp. 121-122 above); for Rutilius' general dissatisfaction with imperial service, see *De red. suo* 1.507-08; 583-84.
29. For Theodosius' war advice to Honorius, see Claudian *De Iycos. Hon.* 320; for Claudian's martial comparison between young Honorius and his father, see *ibid.* 518; in the same poem (ll. 5-6), Claudian links *armorum procures* together with *legumque potentes*; for the poet's general praise of Roman military patriotism, see Farg., 143.

30. *De nupt. Hon.* 31: from the references to *supplex*, *limen sacrum*, *proceres* and *iura*, it seems likely that Honorius used consistorial personnel to win the hand of Stilicho's daughter; for Honorius' love of court pomp, see Farg., 120-21.
31. Cf. *De vicis. Hon.* 65-76; for the reception of foreign embassies at this time, see R. Helm, "Untersuchungen über den Auswärtigen Diplomatischen Verkehr des Römischen Reiches im Zeitalter der Spätantike", *Archiv für Urkundenforschung*, XII (1932), 415; for the lack of ceremonial tradition at Ravenna in comparison with Constantinople, see Dem., *L'unité*, 495-96.
32. For the *laterculum minus*, see Dem., *L'unité*, 209, 497; Jones, II, 641; Mazz., 169; Boak, *Master*, 85; for the *principes*, see E. Stein, "Untersuchungen zum Staatsrecht des Bas-Empire", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, CIL (1920), 221; Boak, *Master*, 72, both of whose ideas have been modified most recently by W. G. Sinnigen, "Chiefs of Staff and Chiefs of the Secret Service", *Byzantinische Zeitschrift*, LVII (1964), 80-105 and Blum, 19.
33. The prefecture was reorganized following Stilicho's death

- (Dem., *L'unité*, 498); for the far reaching extent of Stilicho's control over the civil structure, see *ibid.*, 285-86, 371-72; Mazz., 179; E. Stein, "Untersuchungen zur Spätromischen Verwaltungsgeschichte", *Rheinisches Museum für Philologie*, LXXIV (1925), 379; Stilicho's apparent neglect of the two financial Counts' jurisdiction in *consistorio* might be explained by their apparent decline in power already by this time (Stein, I, 277).
34. For the careers of these three ministers, see Dem., *L'unité*, 427, 441.
35. Before becoming Master, Olympius was a member of the imperial *scrinia* (Dem., *L'unité*, 372, n. 109); for Olympius' early influence over Honorius and the subsequent trial of Stilicho's palatine supporters, see Zos. 5.32,35,44 (Dem., *L'unité*, 427).
36. Dem., *L'unité*, 441-42, 498.
37. Zos. 5.49,51; in the first reference, Jovius forced his fellow magistrates to take an oath of allegiance and perform an *adoratio purpurae* before Honorius.
38. In Zos. 6.7 the populace at Rome rejoiced over the return of the "successful, experienced administrators" under Alaric; for the much discussed question of anti-

- barbarianism, see Stein, I, 235-36.
39. In Zos. 5.29 Stilicho took war counsel with the senate; in Claudian *De cos. Stil.* III 99-112 traitors were judged in the Roman forum to the flattery of the senate; for examples of the growing prestige of the senatorial order, see Claudian *De IVcos. Hon.* 5-6; *Pan. Mallio Theodoro cos.* 256; *Rut. Nam. De red. suo* 157; for examples of Stilicho's use of senatorial influence against Honorius, see *Farg.*, 133-34; Stein, I, 227.
40. *Mazz.*, 205; for the difference between western military and eastern bureaucratic dictatorships, see *Mazz.*, 334; for the implication of the term "proto-Byzantine", see E. Stein, "Introduction à l'histoire et aux institutions byzantines", *Traditio*, VII (1949-51), 103-04.
41. For the careers of these three officers, see Jones, I, 174-75, 203-03; Stein, I, 226, 233; in contrast to the situation in the East, (according to Claudian *De IIIcos. Hon.* 142; *De bello Gild.* 15,352), Stilicho's deliberations with Honorius were free of ministerial rancor.
42. For the satiric aspects of Claudian's writings, see *Cam.*, 66-67; *Farg.*, 42.
43. In *Eutrop.* II.325-41.

44. *ibid.* 402-04.
45. *De cos. Stil.* II.79,86; for the problems involved in evaluating these references historically, see Mass., 62; Farg., 138; Cam., 68; Dem., *L'unite'*, 99; Stein, I, 227-28.
46. *In Ruf.* I.176-80; for the powerful hold Rufinus exercised over court members, including perhaps his own *clientes*, see Zos. 4.51; 5.1.
47. For the powerful position of the earlier Praetorian Prefect, see Stein, "Intro.", 45-46; for his comparable position in the West, see Stein, "Spät.", 379; as to their comparative power at court, Rufinus' *clientes* were in effect his own personal "consistorians", and in distributing imperial *dignitates* he acted the role of imperial granter (for Claudian's unfair criticism here, see Farg. 66-67); Stilicho, on the other hand, apparently had to rely on an *ex officio* consistorial nucleus and his *duces* to infiltrate the higher palatine ranks, of which, contrarily in the East, Rufinus was part *ipso facto*, since he himself held a ministerial post.
48. *In Eutr.* II.62-68.
49. In Zos. 5.11 Eutropius had the eastern senate declare

- Stilicho a traitor, showing its greater prestige at Constantinople; the earliest evidence for a combined senatorial and consistorial advisory group (*silentium et conventus*) comes from the East (see Stein, II, 72-73, n. 3; cf., however, pp. 146-47 above); for the influential eastern administrative middle class, combining both senators and palatines, see Jones, I, 133.
50. For Stilicho's use of the senate against the emperor and the palatine administration, see Stein, I, 227 (cf. Farg., 130).
51. For Rufinus' activity under Theodosius, see pp. 125-26 above (especially n. 20); for his career after Theodosius, see Dem., *L'unite'*, 10-11; for the traditional conflict between the Master of the Offices and the Praetorian Prefect, involving the consistory, see Boak, *Master*, 36-37, 77-78 (cf. pp. 92-93 above); for Rufinus' general lack of support from the imperial court, see Dem., *L'unite'*, 119.
52. Zos. 5.1.
53. Joh. Lydus *Mag.* 2.10; 3.40; for Rufinus' action in general, see Stein, "Staat.", 219-20.

54. Zos. 5,9 (for the decline of the Quaestor's power at this time, see Dem., *L'unite*, 10-11); for the court opposition to Eutropius, see *ibid.*, 193-94.
55. One comparable past situations, cf. pp. 58-60, 65 above.
56. For examples of this lag between western and eastern *officiales*, see *CTh* 11.7.17,18 (in general, see Dem., *L'unite*, 500-01).
57. For the specific legislation, see *CTh* 6.26.7,8, 27.10 (cf. *CTh* 6.26.16).
58. For Olympius' rise to power following Stilicho's death, see pp. 130-31 above; as an example of the Master's supervision over some of his *officiales* who dominated so many palatine functions, see *Rut. Nam. De red. suo* I.563: *officiis regerem cum regia tecta magister / armigerasque pii principis excubias.*
59. For Stilicho's apparent relationship both to the ex officio ministerial and to the lower ranks of the consistory, see pp. 129-30 above.
60. Cf. pp. 135-36 above.
61. *Marc. V. Porph.* 26.11.

62. I, 344-46; cf. I, 360.
63. Cf. *v. Porph.* 39.5, 42.1; according to *Soz.* 8.13, the monastic group "the Longs" requested that their case on heresy be heard informally before the emperor and the patriarch; for informal religious appeals made to the empress Eudoxia in the imperial chapel, see *Dem.*, *L'unité*, 311-12.
64. For John Chrysostom's conflict with the imperial court at this time, see *Stein*, I, 241.
65. *v. Porph.* 50.13-51.11.
66. *ibid.*, 50.13.
67. *ibid.*, 51.1.
68. *ibid.*, 51.3-10.
69. *ibid.*, 51.11-16.
70. For the previous meetings, see *ibid.* 26.11, 39.5, 42.1; Jones' criticism (I, 346) that "other ministers who might have been interested were not consulted at all" is irrelevant, unless the consistory is viewed as having an *ex officio* corps; for the Head Chamberlain's traditional relationship to the consistory, see pp. 97-98 above; for

- that of the notaries, pp. 51 *passim* above.
71. For the rise of debate *in consistorio*, see pp. 96, 100-101 above; Porphyry's self-assertion, contrary to the suppliant's traditional role, probably was part of the bishop's new civic responsibility, replacing that of the defunct *defensor civitatis* (see Stein, I, 225; C. H. Coster, "Synesius, a curialis of the time of the Emperor Arcadius", *Byzantion*, XV [1940-41], 29); Porphyry also might have possibly requested a ministerial member of the consistory when he specifically asked for ἀνὴρ τῶν περιφανῶν perhaps alluding to an officer of "illustrious" rank (cf. n. 102 below).
72. For the traditional granting of *largitiones in consistorio*, see pp. 57-58, 67-71 above; for Porphyry's own *largitio*, following his successful petition, see *v. Porph.* 54.1.
73. Jones, I, 321; J. Karayannopoulos, "Der frühbyzantinische Kaiser", *Byzantinische Zeitschrift*, XLIX (1956), 379-80.
74. For eastern diplomacy, see Jones, I, 342; Dem., *L'unité*, 495-96; for the alleged setting *in consistorio* of Synesius' oration, see Cos., 17-18 (cf. Dem., *L'unité*, 238).
75. For Synesius' attitude toward Stilicho, see C. Lacombrade, *Synesios de Cyrène. Hellène et chrétien* (Paris: Les Belles

- lettres, 1951), 102; Dem., "Théorie", 205.
76. C. Lacombrade, ed. *Le discours sur la royauté de Synesios de Cyrene*. (Paris: Les Belles Lettres, 1951), 16-17; *ibid.*, *Syn.*, 107; for the traditional panegyric theme of presenting the *aurum coronarium*, see Lac., "Notes", 54-55.
77. *Syn. De regno* 1053A; for Synesius' proskynesis as provincial ambassador, see Lac., *Disc.*, 85, 119-20; for the translation of "counsellors", see *ibid.*, 33.
78. *De regno* 1053A; for the importance of "freedom of speech" in *consistorio*, see c. 3, n. 62 above; for the tribute-bearing theme, see p. 69 above; for the type of proskynesis in this later period, see J. Ebersolt, *Constantinople. Études sur la vie publique et privée de la cour byzantine*. (Paris: Adrien-Maisonneuve, 1951), 37.
79. *De regno* 1072B.
80. *De regno* 1072A: τοῖς πέλας τε καὶ φίλοις . . . .  
(for the traditional concept of *amicitia* among imperial counsellors, see pp. 65-66 above).
81. For Eudoxia's powerful position in *consistorio*, see pp. 137-39 above; for Arcadius' policy of common *imperium*

- between East and West in opposition to his ministers,  
see Mazz., 91.
82. Cf. pp. 132-134 above.
83. *De regno* 1072D: ταμειεία here might refer to the consistory,  
since "treasures" were possibly used once before to refer  
to consistorians (p. 65 above), and *largitiones* normally  
came from the imperial treasury under control of the Count  
of the Sacred Largesses (R. MacMullen, "The Emperor's  
Largesses", *Latomus*, XXI [1962], 159-60).
84. *De regno* 1073A: τοῖς στρατιώταις . . . δευτέροις  
ἢ τούτοις φίλοις . . . συστρατιώτας καλῶν; on other examples  
of Arcadius' concern for his soldiers, cf. *ibid.* 1077A,  
1089B.
85. For the comparative significance of passages from Ammianus,  
see pp. 9-10, 52-53, 55 above.
86. *Amm.* 15.5.18 (p. 9 above); for Ammianus' distinction  
between *militares* and *consistoriani*, see *Amm.* 15.5.12  
(p. 52 above).
87. For the traditional *adlocutio* scene, see *Bril.*, 165-69;  
*Grab.*, 75; c. 3, n. 54 above.
88. *Amm.* 20.4.19-22 (p. 64 above).

89. Cf. pp. 126-28, 131 above.
90. *De regno* 1081D; the emperor has been identified as Carus rather than Carin, whom Synesius mentions (Lac., *Disc.*, 56, n. 100); for Synesius' generally critical attitude toward ceremonial pomp, see Dem., "Théorie", 199.
91. Cf. 133-35 above.
92. *De regno* 1089B.
93. *De regno* 1104B.
94. Compared to Synesius' *Discourse, The Egyptian Tale* seems too allegorical in character for presentation in *consistorio*, at least in respect to the panegyric tradition (cf. Lac., *Syn.*, 107-08); for Synesius' allegorical portrayal of historical individuals, see O. Seeck, "Studien zu Synesios", *Philologus*, LII (1894), 444; Lac., *Syn.*, 91 (cf. A. H. M. Jones, "Collegiate Prefectures", *Journal of Roman Studies*, XIVC [1964], 81).
95. *De prov.* 1228A.; for the early Byzantine use of τὰξις to indicate ceremonial arrangement of court personnel by rank, see J. Vogt, ed., *Constantine Porphyrogenitus; Le livre des cérémonies*. 4 Vols.; Paris: Les Belles Lettres, 1935) I (Comm.), 7-8.

96. Cf. pp. 142-45 above.
97. For the *silentium et conventus*, see Jones I, 332-33, 338.
98. For the rise of senatorial participation in judicial matters, see Stein, II, 70-71; cf. C.H. Coster, *Late Roman Studies* (Cambridge: Harvard University Press, 1968), 25-26.
99. II, 73. n. 3.
100. In order of terminology, see *de prov.* 1228C, 1261C, 1269B and 1272A.
101. *De prov.* 1269B-C: after the meeting of the σύνοδος θεῶν καὶ γερόντων . . . θεοὶ δὲ τοὺς μὲν παρόντας συνέδρους ἐπῆνεσαν, ὡς ἀποχρώντα κατεγνώκotas.
102. Philostorgius 11.6 (see Dem., *L'unité*, 231): καὶ συνεδρίου κατὰ τὸ καλούμενον παντιχίον καθεσθέντος (Αὐριλιανὸς δ' ὁ ὑπαρχὸς καὶ ἕτεροι τῶν ἐν ταῖς ἀρχαῖς ἐπιφανῶν ἀρχόντων διεσκόπουν τὰ κατηγορούμενα), αἰτίαις ὁ εὐτρόπιος ἀλοὺς τὴν κεφαλὴν ἀφαιρεῖται (on the traditional "seated tribunal" in *consistorio*, cf. Amm. 15.5.12 (p. 52 above); on the ἐπιφάναι as consistorians, cf. n.71 above; on the long tradition

of the consistory as high court of justice, cf. p. 55  
above).

## CHAPTER VI

### THE LATER FIFTH CENTURY IN THE EAST AND THE WEST

Until about A.D. 450 the law codes provide the best guide to the development of the consistory in both the East and the West. Nevertheless, until the writings of Sidonius Apollinaris, Zacharias of Mitylene, and the early sections from Constantine Porphyrogenitus' *On Ceremonies*, statutes involving the consistory contain, at most, only hints of its inner workings.<sup>1</sup> For example, a statute from the year 415 concerning honorary privileges gained from consistorial service included a relatively new group of officers, the *decurions*.<sup>2</sup> The evidence suggests that inclusion of this new personnel favored certain past developments *in consistorio*, culminating, however, in totally new characteristics of that body.

The inclusion of the *decuriones in consistorio* connotes further deterioration of that body as a small, elite circle of imperial advisers. As a group, the *decuriones* took "vows of duty" (*sacramenta militiae*), had "administrative

tasks to perform" (*ipsi administraverint*), and were permitted to "adore the purple" (*in adoranda nostra serenitate*).<sup>3</sup>

Because of these ceremonial and administrative characteristics, the *decuriones* probably belonged to the higher echelons of imperial trust, but at the same time they undoubtedly increased imperial suspicion, as imperial control weakened with increased personnel serving *in consistorio*. In this same statute, the *decuriones* were also made immune to the *glebal* tax, an indication that they enjoyed senatorial rank and privileges. In the context of the administrative power of the eastern senate, the fact that the *decuriones* took their place in *amplissimus et venerabilis ordo* marked another step in the slow fusion of senatorial and palatine personnel into one group of imperial advisers.<sup>4</sup>

The order of precedence between either functional and honorary (or permanent and ad hoc) members of the consistory also characteristically preoccupied the attention of the imperial government. In two different statutes from the East (425 and 440/1), consistorial personnel were placed in either an honorary or functional category *in consistorio*.<sup>5</sup> In 425, those officers whose function apparently involved advising the emperor administratively (*intra consistorii arcanum . . . et actibus interesse et nostra adire responsa . . .*) were ranked ahead of *comites consistoriani* of honorary standing (*vel*

*absentes sunt facti vel testimonialibus tantum adepti sunt dignitatem . . .*).<sup>6</sup> The latter statute, of 440/1, moreover, addressed to the Praetorian Prefect Cyrus in the East, specifically refers to the Count of the Private Treasury, who as administrator was to be ranked above all "honorary and absent offices".<sup>7</sup> It is obvious, however, that the Count was included earlier in the same statute as one of the *illustres* and *administratores* who took precedence by privilege of rank. This reference to officers of "illustrious" rank must be understood to include the Count of the Private Treasury, one of the four most prominent palatine ministers, so often referred to as *ex officio*.<sup>8</sup> It seems likely that, following recent tradition, the Count's once secure position in *consistorio* was under attack. Perhaps the key to the source of that threat, as so often in the Codes, lies in the office to which the statute was directed, the Praetorian Prefect.

The Praetorian Prefect's power was second to none in the late fourth and early fifth centuries.<sup>9</sup> During the fourth century, the consistory had often been the setting for ministerial conflict between the Praetorian Prefect and the Master of the Offices; now in the fifth century, the two financial Counts apparently lost much of their own powers as both the Praetorian Prefect and the Head Chamberlain increased theirs.<sup>10</sup> Although appearing on the surface as perhaps only

a slight admonition to the Praetorian Prefect, this reiteration in the Code of the Count's pre-eminence in rank has deeper significance in the light of renewed ministerial conflict *in consistorio*. With the increasing power of the Praetorian Prefect to affect provincial affairs, it is reasonable to suppose that the consistory became less and less effective, its chief ministers losing more and more prestige as the centralized, palatine authority declined.

Another series of statutes from this same period provides further evidence of the growing inability of the palatine administration to govern effectively, particularly in the East. These statutes recount the gradual usurpation by the Praetorian Prefect and his *officium* of the traditional responsibility of the consistory to serve as an intermediary body between emperor and petitioner. In a statute of 426, for example, the Praetorian Prefect of the East was admonished to the effect:

Civitatum postulata, decreta urbium, desideria populorum liquido tua sublimitas recognoscit ad imperialis officium pertunuisse responsi admissosque sacrariis nostris semper sui imperatoris aspectu decoratos esse legatos; dixisse libere, quae illorum fuerant a communi fidei constantiaequae commissa.<sup>11</sup>

Twice before, of course, the western emperor had reminded his own Praetorian Prefect that ultimate sovereignty in reviewing legal appeals from the province lay with the imperial

consistory.<sup>12</sup> Subsequently, however, the Prefect won the right to a "silent vote" *in consistorio*.<sup>13</sup> The statute of 426 is also remarkable for its lofty sovereign tone of majesty, perhaps a last resort against further concessions: the central administration (*imperialis officium responsae*) decreed in effect that the consistory still guaranteed every citizen the right to "free speech" (*dixisse libere*) before the emperor himself.<sup>14</sup>

Imperial dictates apparently did little to impede the Prefect's steady encroachment upon consistorial prerogatives. Two years later in the East, yet another imperial statute advised the Praetorian Prefect that his legal advisers (*togati*) could not expect certain tax exemptions normally associated with consistorial service.<sup>15</sup> Nevertheless, by the year 440, the *advocatio praetoriana* in the East did enjoy retirement with honorary consistorial rank (*comitiva consistoriana*).<sup>16</sup> Finally, two years later, the emperor dispatched palatine advocates to the provinces, apparently to ease the burden now placed on the Praetorian Prefect as chief appeals officer.<sup>17</sup> In the face of the increasingly strained resources of the palatine administration, the Prefecture assumed more and more the responsibilities that formerly belonged to the central government.

The increased difficulties experienced by the imperial

court in governing centrally at this time both halves of the Empire altered the traditional corporate form of the consistory. Although always primarily possessing an ad hoc, rather than a permanent membership, the consistory nevertheless had previously managed to maintain a corporate identity, although often dominated by one or more of its high ranking ministers.<sup>18</sup> Beginning in the second quarter of the fifth century, however, eastern emperors particularly began to rely on either individual officers or groups of unspecified palatine officials in the place of consistorians. For example, among those officers instrumental in drawing up the Code of Theodosius II, only one high ranking minister was officially cited as a former consistorial count.<sup>19</sup> For another example, the only imperial representative at the Council of Ephesus under the same emperor was Candidianus, a lowly *comes domesticorum*, whose office had only a tenuous connection with the consistory.<sup>20</sup>

From among traditional consistorians, Theodosius II seemed to favor using the Master of the Offices in a wide range of imperial activities.<sup>21</sup> Acting as chief legate and imperial adviser, the Master appears prominently in the historical work of Priscus, who himself was an eyewitness to many of the events he described.<sup>22</sup> A statute from the year 443 also granted Nomus, one of Theodosius' more eminent

Masters, the authority to place military personnel and activity under closer imperial surveillance.<sup>23</sup> Although the Master's report on the condition of frontier fortifications was to be made *in consistorio*, the consistory evidently was considered merely a secretariat where information was registered, apparently without debate. Following this imperial trend toward greater reliance on individual ministers, group debate *in consistorio* correspondingly became less frequent.<sup>24</sup> Although the Master enlarged his judicial responsibilities to include military personnel serving on the frontiers, his pre-eminence *in consistorio* certainly fell short of what he had held during the last decades of the fourth century.<sup>25</sup> Without an active consistory to broaden his authority, the Master's increased jurisdiction probably had little effect in stemming the advance of provincial military and civil autonomy.

Although the membership of honorary consistorians continued to swell, a drastic cutback of tax exemptions normally associated with such rank probably diminished the future prestige of that body.<sup>26</sup> In a statute of 444 (*NVal* 6.3), twenty *comites consistoriani* and thirty *notarii* on present palatine service were made exempt from a standing order that future consistorians of that rank were to furnish recruits. Apparently this exemption was made on an ad hoc

basis, while the future tax burden reflected the declining prestige of an imperial institution whose administrative ineffectiveness grew more apparent. Although consistorial business remained the same, the emperor apparently drew more and more on ad hoc personnel for advice.

As evidence of the continuing deterioration of the consistory as a palatine institution, a statute of 446 officially recognized the senate (seemingly both in the East and the West) as sharing imperial advisory duties with palatines:

Humanum esse probamus, si quid de cetero in publica vel in privata causa emergerit necessarium, quod formam generalem et antiquis lēgibus non insertam exposcat, id ab omnibus antea tam proceribus nostri palatii quam gloriosissimo coetu vestro, patres conscripti, tractari et, si universis tam iudicibus quam vobis placuerit, tunc allegata dictari et sic ea denuo collectis omnibus recenseri et, cum omnes consenserint, tunc demum in sacro nostri numinis consistorio recitari, ut universorum consensus nostrae serenitatis auctoritate firmetur.<sup>27</sup>

The new process seems clear enough: first chief ministers (*proceres*) met to discuss new amendments to the law; then the senate met in session (*coetus*), before finally, with the consent of both groups, their judgment was made law by imperial ratification. The new process, however, clearly gave precedence to the senate, leaving the consistory without its traditional distinction as high council of state. Certain indications make clear that the consistory was now relegated in corporate prestige to second place behind the

senate.

First of all, although *proceres nostri palatii* initiated the discussion on amendments, the ministers apparently did not meet as a *body*, i.e. *in consistorio*. In contrast, the senate was expressly addressed as a body (*coetus*), while the same statute later refers to a senatorial *consilium*, perhaps emphasizing past senatorial participation in the *consilium principis*.<sup>28</sup> This reference underscored the highest prestige that the senate, particularly in the East, enjoyed by the mid-fifth century.<sup>29</sup> Conversely, by referring to *proceres nostri palatii* instead of *consistoriani*, *comites consistorii*, etc. the statute relegated palatine advisers to a status of either ad hoc or indiscriminate group participants.<sup>30</sup> Finally, the consistory was only mentioned lastly as a secretariat (*in sacro nostri numinis consistorio recitari*), similar to the situation of a few years before when it apparently had recorded the Master of Office's annual report on fortifications.<sup>31</sup>

By the mid-fifth century, the total isolation of the imperial court from provincial petitioners was complete in both the East and the West. Under a law of Marcian's in 450, no provincial citizen was granted assistance from either the emperor or the Prefects in producing a person in court.<sup>32</sup> A few years later in the West, a law similarly

denied the provincial plaintiff direct access to the imperial court, allowing him to make his appeal only through representation by a municipal officer.<sup>33</sup> In the process the consistory gradually became obsolete, a relic of past imperial administrative and judicial capacity to serve the people directly.

In the latter half of the fifth century, Sidonius Apollinaris amply documents the political and social changes which attested to the growing impotence of the western palatine administration. The period of anarchy following the death of Stilicho, especially in Gaul, resulted from continuous barbarian incursions.<sup>34</sup> Once Avitus became emperor following the feeble reign of Valentinian III, however, Sidonius celebrated the dawning of a new era of imperial prosperity based upon Gallic aristocracy.<sup>35</sup> Nevertheless, no matter what Sidonius' predisposition was toward the new regime, his description of Avitus' coronation contained the same ceremonial military trappings as his predecessor's coronation.<sup>36</sup> However distasteful he might have found the political influence of the military, Sidonius apparently had to accept the involvement of the army in imperial politics: *postquam ordine vobis [Majorian] ordo omnis regnum dederat, plebs, curia, miles, et collega simul.*<sup>37</sup>

The conspicuous absence of the consistory in imperial politics in Sidonius' work corroborates the legal evidence

for the decline of the consistory earlier in the century. Although the populace, the senate and the military granted Majorian the emperorship (at least to Sidonius' poetic mind), the imperial court apparently played no part. The chief ministers of state were notably absent from the process of selecting an emperor in the West.<sup>38</sup> Sidonius' respect for the senatorial *ordo* in such matters reflected their growing participation in imperial affairs.<sup>39</sup> As legates and judges, western senators rivalled their eastern counterparts in a variety of activities.<sup>40</sup> Of the high ranking court ministers, only the Quaestor of the Sacred Palace remained prominent in Sidonius' works, although primarily as an ornamental office.<sup>41</sup> Sidonius' regard for consistorial ceremony at Ravenna was slight, being limited to the lower echelons of the consistorial *officiales*: *et iam te aula tulit piusque princeps/ inter conspicuus statim locavit, consistoria quos habent, tribunos.*<sup>42</sup> Although this passage might reflect Sidonius' own past association with that particular *officium*, his peculiar silence on traditional ministerial activity *in consistorio* is apparently another indication of its decline.<sup>43</sup> Furthermore, Sidonius' interest in the *officium* of the notaries, to the exclusion of other personnel, probably once again attests to the growing importance of the consistory as a secretariat.<sup>44</sup>

In contrast to his disregard for the consistory as an imperial advisory agency, Sidonius provides much information on the *consilium* of the Praetorian Prefect of Gaul. At one point, he admonishes a friend not to lose his important post as the Prefect's counsellor: *ne, si extra praerogativam consiliarii in concilium veneris, solas vicariorum vices egisse videare.*<sup>45</sup> In another letter, Sidonius characterized one Praetorian Prefect as follows: *in concilio iubet in consilio tacet.*<sup>46</sup> Sidonius' most detailed account concerning the provincial Praetorian Prefect was one of the memories the poet had of his father's tenure in office:

Cum pater meus Praefectus Praetorio Gallicanis tribunalibus praesideret, sub cuius videlicet magistratu consul Asturius anni sui fores votivum trabeatus aperuerat. Adhaerebam sellae curuli, etsi non latens per ordinem, certe non sedens per aetatem, mixtusque turmae censualium paenulatorum consuli proximis proximus eram. Itaque, ut primum brevi peracta, nec brevis, sportula datique fasti, acclamatum est ab omni Galliae coetu primoribus advocatorum, ut festivitate praeventa horas antelucanas, qui diem serum cum silentio praestolarentur, congrua emeritorum fascium laude honestarent. Nicetium protinus circumspexere conspecti.<sup>47</sup>

Contained in this one passage, one might find all the ceremonial aspects that were associated in the past with the imperial ceremonial consistory. Sidonius furnishes another example of how the provincial political hierarchy gradually assumed characteristics of imperial rule.

Sitting as *iudex* in his provincial court of justice,

the Praetorian Prefect of Gaul apparently took time out to honor ceremonially a newly appointed officer, much as the emperor had once done *in consistorio*.<sup>48</sup> Mixing with those attending the ceremony, Sidonius was fully conscious of the *ordo dignitatis* surrounding the event.<sup>49</sup> After the *sportula* or *largitio* was granted by the new consul, the whole Gallic assembly urged the Prefect's *primores advocatorum, consiliarii* or *adessores* not to stand "in silence", but to prepare a panegyric in praise of the new consul.<sup>50</sup> Like the traditional consistorians, the Prefect's "notables" (*conscripti*) looked on as one of their own, Nicetius, prepared to deliver his praise of Asturius.<sup>51</sup>

This passage only suggests why and how a provincial officer took over much of the ceremonial aspects of imperial administration. In the first place, the Gallic Prefect was naturally drawn to the appeal of Roman tradition, including, of course, the most recent ceremonies of the imperial court; secondly, on at least two occasions at this time, the Praetorian Prefect assumed office, having served previously as Master of the Offices.<sup>52</sup> In such cases the Praetorian Prefect was well versed in imperial ceremonial responsibilities.<sup>53</sup>

During the early fifth century the Praetorian Prefect had successfully overcome imperial resistance to allowing his position and *officium* to become too influential in the

consistory. By the latter half of the century, the obsolescence of the imperial palatine administration allowed the Prefect to exert even greater influence. New responsibilities of provincial government also fell to church officials such as Sidonius, bishop of Arles. The bishop's office not only became closely associated with the *defensor civitatis* during the latter fifth century, but he was also frequently called upon to act as imperial legate in making peace with the barbarians.<sup>54</sup> In this latter role, the bishop often received encouragement in terms reminiscent of the traditional consistorial setting: *agite, quatenus haec sit amicitiae concordia principalis.*<sup>55</sup> By acting in accordance with imperial *amicitia*, Sidonius exemplified once more how a provincial official took over certain ceremonial and functional roles once belonging to the imperial consistory.

The consistory at Constantinople, however, proved to be more vital to certain emperors in the latter fifth century. In both imperial coronations and councils of state, both Leo II and Anastasius had the consistory play significant parts in their reigns. In all instances, moreover, the consistory at Constantinople naturally showed different characteristics from what had developed in the past. As in the West, for example, the eastern consistory also showed definite indications of having lost much of its corporate

identity, although certainly not because of imperial neglect.

On the death of Marcian in 474, the choice of Leo to succeed apparently was made initially by the senate (σύνκλητος) alone.<sup>56</sup> Only after the senate had acted, did imperial "magistrates, bodyguards and the soldiers" fill the Campus Martius, chanting praise for their new leader.<sup>57</sup> Ministerial support from the palace (although not specifically named) followed senatorial initiative, so pre-eminent at this time in many imperial activities.<sup>58</sup> In the Campus Martius, "the prayers of the Palace" (παλάτιον) led the chants of the army, the senate, and finally those of "the people" (λαός).<sup>59</sup> Subsequently, the official procession moved into the imperial basilica, after which, following the presentation of the diadem and imperial robe, "a proskynesis of all the officers according to rank" took place before the new emperor.<sup>60</sup>

Transferred to the imperial palace, the inaugural ceremony became a more private, courtly affair, once "the Prefects and the City Prefect had arranged themselves in the consistory according to custom".<sup>61</sup> Although the terminology employed by Constantine Porphyrogenitus is imprecise, the action of the Prefects initiated the first official ceremony of protocol *in consistorio* under Leo II.<sup>62</sup> Immediately following the Prefects' entrance, "the senators and all the

magistrates took their position", standing by rank to attend the presentation of the μίσσαί to the patricians.<sup>63</sup> This is nothing more than the traditional *ordo dignitatis in consistorio*.

By this point, a multitude of officials, both palatine and senatorial, had participated in inaugurating Leo II. In what followed, however, the palatine magistrates alone took an oath of loyalty "so as not to advise against either the emperor or the state", an action in the tradition of the consistory as a repository of *arcana imperii*.<sup>64</sup> Since the senators were apparently excluded from taking this oath, the act seems to be a remnant of that past tradition emphasizing the unique bond of trust between emperor and his most trusted palatine few, the consistorians. Although here the oath was probably only a ceremonial vestige of its former significance, Anastasius was to use it later against Macedonius, but for more practical ends.<sup>65</sup>

In the circumstances surrounding the imperial elevation of Anastasius, it seems clear that palatine ministers and senators worked together in selecting a new emperor. On the night following Zeno's death, "the magistrates, the senators and the patriarch" met together in the portico before the great triclinium of the palace.<sup>66</sup> After prolonged debate within the group, among whom the Grand Chamberlain alone was mentioned specifically, a deadlock apparently resulted,

whereupon the empress Ariadna was asked to make the ultimate selection.<sup>67</sup> Once the magistrates learned of her decision to nominate "Anastasius the silentiary", they quickly supported her.<sup>68</sup>

The combination of the Grand Chamberlain's participation, the palatine magistrates' ratification of Ariadna's decision, and Anastasius' own past association with a consistorial *officium*, seems significant. Certainly palatine personnel played a much more significant role in selecting the new emperor than they had in the case of Leo II. Furthermore, palatine personnel continued to participate in succeeding events: *comites domesticorum* escorted the emperor-designate to the consistory, where Anastasius awaited a meeting of the *σιλέντιον καὶ κομέντιον*, called for the following day.<sup>69</sup> The exact meaning of both these terms used together, however, is just as uncertain as it was earlier in the century.<sup>70</sup>

The use of *silentium* alone, on the other hand, followed the ceremonial tradition of the consistory: "on the next day all those dressed in white *chlamydes* came forth and were led into the consistory, and were so honored there although not in arms".<sup>71</sup> Like Julian's appearance *in consistorio*, Anastasius perhaps also intended to emphasize his civil authority, hoping to dispel any impression that he had become emperor primarily through military support.<sup>72</sup>

Anastasius' appearance in the consistory, as in the case of Leo II, was also followed by oath-taking, which, however, this time included both senators and magistrates.<sup>73</sup> Again it seems that the swearing of the oath in allegiance to the new emperor was the climactic ceremonial act *in consistorio*.

Nevertheless, the question still exists why Constantine Porphyrogenitus chose to call Anastasius' inaugural reception, a σιλέντιον καὶ κομέντον. The traditional consistory was now called a *silentium*, probably because of the increased secrecy surrounding the imperial court from the late fourth century on. Certainly the recent emphasis given to taking oaths *in consistorio* seems to confirm a greater urgency for secrecy.<sup>74</sup> To call the inaugural ceremonies *in consistorio* a σιλέντιον καὶ κομέντον, therefore, might underscore the combined participation of senators and palatines in oath-taking, but not in giving advice, as the terms are usually understood.<sup>75</sup> This might explain also why the two terms were not applied to oath-taking under Leo II, since only palatine magistrates apparently took an oath to him *in silentio*.

Since part of the work of Zacharias of Mitylene was dedicated to a minister in the imperial service, one might expect some high degree of accuracy from an author wishing to impress a patron with his intimate knowledge of court activity.<sup>76</sup> It is regrettable that the work survives only

in a Syrian version. Nevertheless, it is invaluable, since it records in considerable detail the day-by-day activity of Anastasius' relationship with his consistory.

Among contemporary scholars, Jones particularly has used Zacharias' account to show how by the end of the fifth century, the consistory was ineffective as a council of state.<sup>77</sup> Jones' criticism of the consistory is partially misleading (as it was in the case of Arcadius ) and suffers from his limited criterion that consistorial action, in order to be effective, must offer a high level of parliamentary debate.<sup>78</sup> A considerable part of Anastasius' activity *in consistorio* was aimed at exposing one of his ministers as a traitor. Under the circumstances, consequently, both administering oaths and receiving proskynesis (as tokens of loyalty) were devices utilized by the emperor to test his most trusted consistorians. The gathering of evidence against Macedonius was another purpose for convening the consistory. Neither action required debate.

Anastasius took over two weeks of continuous sessions *in consistorio* to find Macedonius guilty of heresy and treason.<sup>79</sup> The period may be divided into two distinct phases. First, three separate *silentia* were called: (1) to gather preliminary evidence against Macedonius; (2) to test the loyalty of Anastasius' consistorians; and finally (3) to purge the court

of the Master of the Offices for complicity with Macedonius. Finally, in the second period, a "general council" (σιλεντιον κομβεντον) met to judge the recalcitrant priest.<sup>80</sup> At the outset, however, prompted by a report that Macedonius was planning rebellion with the aid of his Master of the Offices, Anastasius called a traditional consistorial "council", now called *silentium*:

And in the presence of the patricians, he [Anastasius] told of the insult which had been offered to him by Macedonius; and he was distressed, and wept, and adjured them not to be influenced by fear; but, if in truth, their king was displeasing to them, or if they knew that he was infected with the deceit of heresy, they should take his dominion from him, and he should be cast out as an unbeliever. And they fell upon their faces before him, weeping. And they inveighed against the audacity of Macedonius, crying out and reviling him; and they praised the king; and they decreed the bishop's banishment. And in order that the Master of the Offices, who aided him, might be humiliated, he was commanded to expel him, so that he should be sent to Oasis.<sup>81</sup>

Anastasius' behavior was obviously aimed at arousing his consistorians' sympathy, as a prelude to a test of their loyalty. In response to his plea, Anastasius' patricians "fell upon their faces before him, weeping", a traditional prosyknesis in Byzantine form.<sup>82</sup> Once the emperor had gained majority support, he immediately moved to force the Master of the Offices to act against his co-conspirator. The emperor then began to collect sufficient evidence to bring Macedonius to trial officially, informing the consistory continually of

his findings, as if it were a grand jury.

Before convening his second *silentium*, Anastasius heard evidence informally: first a military officer presented incriminating information from partisan priests; then a senator presented evidence specifying Macedonius' heretical conduct.<sup>83</sup> Once these testaments were heard, Anastasius proceeded to call his second *silentium*:

But on the 27th day the king convened a council; and when the Patricians went in the king said to them [referring to his evidence] . . . "Is this a fair statement?". And at once Clementinus and the Patrician said before them all, "May God himself cast him out from his priesthood who has lied unto God". And forthwith the king commanded the Great Prefect to go out into the city and bring together all the orthodox . . . that he might learn who their assailants were. And the Prefect went out and did as he was commanded.<sup>84</sup>

This second *silentium* was obviously concerned more with acting directly against Macedonius than incriminating Anastasius' Master, as had happened in the first. In the second meeting with his counsellors, moreover, Anastasius sought advice officially on the strength of collected evidence rather than moral support for his allegedly impugned character, as he had before. Anastasius apparently decided to amass more evidence to complete his case against Macedonius rather than continue testing his officers' loyalty as he had previously.

Immediately following this second *silentium*,

Anastasius further consolidated his support by granting donatives and administering oaths to the palatine guard and the army as a whole.<sup>85</sup> Anastasius had these oaths of loyalty taken on the Bible. Quite possibly he was insuring himself against the charge of sacrilege, as apparently had happened to Julian after granting a *largitio in consistorio*.<sup>86</sup> The priest Macedonius certainly might have used such a charge effectively against a religiously controversial emperor. In any event, following these actions involving the guard and the army, Anastasius continued to amass evidence, this time in person from a group of priests:

And on the 31st day of July . . . they [the priests] went into the king's presence with great fear and found him filled with rage and agitation. And when they had waited a long time, and everyone was watching in fear to see what commands would issue from him, he opened his mouth and began to speak thus . . ." before God the Judge of all, I make my defense". And when he said this there was great weeping; and when all the Patricians cast themselves down before him, he [Anastasius] spoke against the Master of the Offices.<sup>87</sup>

Although Zacharias does not explicitly say so, this meeting with the emperor was apparently the third and final *silentium*. For one thing, the phrase "into the king's presence with great fear" has a reverential tone characteristic of many past consistories.<sup>88</sup> While his consistorians awaited commands, as if from an oracle, the emperor invoked God's assistance, the supreme *iudex* and only legitimate judge of imperial actions *in consistorio*.<sup>89</sup> Then the Patricians

again performed proskynesis, before rising. Supported by orthodox priests and loyal palatines, Anastasius finally had his Master arrested along with Macedonius' other supporters. This contrasts sharply with his earlier conduct when he attempted only to discredit the Master's loyalty and standing *intra consistorianos*.

Finally, the climax to Zacharias' account comes when Anastasius felt himself sufficiently prepared to bring Macedonius to trial:

And on the sixth day of the month there was a general council (σιλέντιον κομβέντον) and *the orthodox and the Nestorians* who undertook the defense of Macedonius came in before *them*. And they found *the king standing*, because *some bishops* belonging to our party had entered.<sup>90</sup>

Like Constantine Porphyrogenitus' account of Anastasius' inauguration, this passage does not adequately explain why this last council is called a σιλέντιον κομβέντον in the advisory sense usually given the terms.<sup>91</sup> The only possible mention of participating secular personnel (besides the emperor, of course) is the rather cryptic "them", before whom the contending priests appeared. Of course, this group might have included senators, as the term κομβέντον or its equivalent κομέντον implies.<sup>92</sup> Nevertheless, if senators were participants, their judicial or advisory role in the proceedings was not significant enough for Zacharias to mention it.

If, however, the term κομβέντων is understood to imply combined Nestorian and orthodox judges, Macedonius' trial followed a traditional pattern of ecclesiastical participation in deciding church affairs. Constantine I first laid down this synodal pattern at the council of Nicaea in deference to the church. By the reign of Theodosius I, this policy had become standard in dealings with the church, particularly once he had attempted to clear the consistory of prior charges of religious interference.<sup>93</sup> For Anastasius to have granted persecutory powers to senators or palatines would have been a bold exception to the rule of excluding secular personnel from religious affairs.

Hence it seems premature to assign specific judicial or administrative functions to the term *conventus* (or its Greek equivalent), when taken strictly to indicate the eastern senate meeting under Anastasius. Most writers employing *conventus*, exclusive of Zacharias, wrote later than the fifth century, including Constantine Porphyrogenitus, who used the term more to determine status of personnel, however loosely, than to specify their exact function. Neither John Lydus nor Synesius ever used the specific phrase *silentium et conventus* to describe combined senatorial and palatine meetings of a consistorial nature.<sup>94</sup> The "general council" mentioned by Zacharias, of course, might have

included both palatine and senatorial personnel, but, if so, he did not make a point of singling out senators from palatines, as one might expect in employing a term quite distinctive from the traditional term *silentium*.<sup>95</sup>

It is true that a law of 446 specified that both the eastern and western senates were responsible in the future for sharing advisory powers with consistorians.<sup>96</sup> During the fifth century, the apparent decomposition of the consistory as a corporate body necessitated greater imperial reliance on ad hoc personnel, including senators without prior palatine service. Consequently, the term *conventus* seems a misnomer, if understood as a set body of imperial confidants. Emperors were traditionally free to choose their own intimates, and certain senators must have always been close to imperial trust and favor, as Constantine Porphyrogenitus at least makes explicit in the coronation of both Leo II and Anastasius. It was only at Anastasius' side that senators took vows of allegiance *in consistorio*, placing them on an equal footing with consistorians. But this was essentially a ceremonial act and should not be understood as indicating a distinctively administrative capacity *in convento*.

Perhaps the fifth century was too chaotic a period for one to expect tradition and innovation to converge neatly, as the phrase *silentium et conventus* implies. Although having

declined considerably from its peak administrative effectiveness during the latter fourth century, the consistory nevertheless continued to function as a repository for vows of loyalty to the emperor. As an institution, it still embodied ceremonial prestige attached to palatine service. Imperial anarchy, court intrigue and lengthy and secretive diplomatic missions undoubtedly infused these vows with a certain solemnity. As such, the *consistorium domini* continued to play a significant role in the emperor's attempt to reinforce the palatine's devotion and trust, however fluctuating historical circumstances.

## NOTES TO CHAPTER VI

1. For the problems involved in using legal sources for the consistory, see Jones, I, 339-40.
2. *CTh* 6.23.1; cf. *CJ* 12.16.1 (415) where the decurions appear listed with *agentes ex magistro officiorum* and *comites domesticorum*, the latter of which have consistorial connections by the mid-fifth century (see p. 175 above); for the decurions, officers in charge of the *silentiarii* or consistorial ushers, see Jones, II, 571; Dunlap, 220.
3. For vows made *in consistorio*, see p. 70 above; for the use of *administratio* to signify a functional office, see p. 25 above; for the *adoratio purpurae*, see p. 9 *passim* above.
4. The provenance of the statute appears to be eastern (De Dom., 446); for the significance of the *ordo dignitatis*, see p. 10 *passim* above; for a similar use of *ordo*, cf. *CTh* 6.12.1 (399) (p. 123 above); on the connection of the eastern senate with the consistory, cf. pp. 147-48 above.

5. *CTh* 6.22.8 (425) (for the eastern provenance, see *De Dom.*, 440); *CJ* 12. 8.2 (440-41) (for similar eastern statutes issued by Cyrus, Prefect of the East, see *De Dom.*, 459-60); for further commentary on these two statutes, see *Goth.*, II, 124; *Zak.*, 410-11.
6. On the phrase *intra consistorii arcanum*, cf. pp. 121-22 above; for the granting of *dignitates in consistorio*, see pp. 57-58 above; in comparison with the phrasing of this statute, cf. *CJ* 12.8.2: *primo loco habeantur ii, qui in actu positi illustres peregerint administrationes, secundo venient vacantes, qui praesentes in comitatu illustris dignitatis cingulum meruerunt:* the contrast between active functional advisers (*administrationes*) and absent ceremonial recipients of rank (*vacantes . . . praesentes*) seems clear.
7. *CJ* 12.8.2; for the influence of Cyrus under Theodosius II, see Jones, I, 339-40.
8. *Goth.*, II, 345 (commentary to *CTh* 7.83); for the increased prestige of the four palatine ministers as *illustres*, see Jones, I, 529 (cf. also p. 105 above).
9. For his position in the fourth century, see pp. 88-89, 92-93 above; for the fifth century, see Stein, "Spät.", 380.

10. For the increasing financial power of the Praetorian Prefect and the decline of the financial Count's, see Stein, II, 66; the Head Chamberlain also apparently increased his financial jurisdiction at the expense of the Count's (Dunlap, 187).
11. *CTh* 12.12.16.
12. Cf. *CTh* 12.12.8 (382); 12.12.10 (385); for discussion of both these statutes, see pp. 91-92 above.
13. *CTh* 12.12.10 (pp. 92-93 above).
14. The principle of "free speech" (the Greek *παρρησία*), once applied to imperial counsellors, now applied to consistorial petitioners (for the tradition of "free speech" *intra consistorios*, see pp. 99-102 above); although the emperor respected the Prefect's *sublimitas*, the statute's repeated references to the right of direct, popular appeal underscore the Prefect's challenge to that tradition.
15. *CTh* 6.2.26 (428); Pharr (120) translates *togati* as "advocates" (for the *togati* as civil service members, see *RE*, VI A,2 [1937], c. 1663); by the end of the fifth century, the term *consiliarius*, although not strictly part of the Prefect's *officium*, replaced the

term *togatus* (cf. p. 182 above).

16. *CJ* 2.7.8; for the term *comitiva consistoriana=dignitas comitis (consistoriani)* see D. DuCange, ed., *Glossarium mediae et infimae Latinitatis*, I (1883), 438; cf. *CJ* 1.51.11 (444); *comitiva consistoriana* gave honorary privileges to the advisory staff of the Urban Prefect equal to those enjoyed by the *officiales* of the Master of the Offices, an indication of the high prestige of the western Prefecture (see W. G. Sinnigen, *Officium of the Urban Prefecture During the Later Roman Empire*, Papers and Monographs of the American Academy in Rome, XVII (Rome: American Academy, 1957), 83.
17. *CJ* 10.30.3 (442).
18. For examples of ministerial domination of the consistory, see pp. 84-88 above; for the group identity of the consistory, see p. 139 above.
19. *CTh* 1.1.5 (429): besides the Quaestor, only *Iohannes . . . ex comite nostri sacrarii* is mentioned (for the Quaestor's past functional relationship to the consistory, see pp. 86-87 above; for the decline of that relationship in the fifth century, see p. 180 above).

term *togatus* (cf. p. 182 above).

16. *CJ* 2.7.8; for the term *comitiva consistoriana=dignitas comitis (consistoriani)* see D. DuCange, ed., *Glossarium mediae et infimae Latinitatis*, I (1883), 438; cf. *CJ* 1.51.11 (444); *comitiva consistoriana* gave honorary privileges to the advisory staff of the Urban Prefect equal to those enjoyed by the *officiales* of the Master of the Offices, an indication of the high prestige of the western Prefecture (see W. G. Sinnigen, *Officium of the Urban Prefecture During the Later Roman Empire*, Papers and Monographs of the American Academy in Rome, XVII (Rome: American Academy, 1957), 83.
  
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20. A.C. *Oec.* 1.4.8; in regard to the Council, although it seems the consistory was first requested by the Church to enquire into the matter of possible heresy (Jones, III, 66, n. 32), Theodosius II chose not to do so, following a precedent laid down first by Theodosius I (see pp. 102-03 above); for the importance of Candidianus, see Stein, I, 302.
21. For the Master's influential position under Theodosius II, see Helm, 423; Zak., 416-17 (cf. Boak, *Master*, 47).
22. For the Master's role in Priscus' account, see 7,8,13; for the importance of Priscus as a source, see T. Hodgkin, *Italy and Her Invaders* (5 vols; Oxford: Clarendon Press, 1892), II, 59-60.
23. *Th.* II, *Nov.* 2.4.1; cf. *ibid.* 2.3.2; for the significance of the former statute, see Boak, *Master*, 38,89; Jones, I, 337.
24. Jones, *ibid.*
25. For the Master's enlarged judicial responsibilities, see Boak, *Master*, 39; for his greater pre-eminence at the end of the fourth century, see pp. 86-88 above (cf. Blum, 6, 90).
26. For the inclusion of *proximi sacrorum scriniorum*

- as honorary consistorians, see *CJ* 12.19.8 (443/44);  
 for the *proximi* in general, see Jones, II, 577-78;  
 for the lifting of the exemption from furnishing  
 recruits, see Val. III Nov. 6.3 (444).
27. *CJ* 1.14.8 (446); for the implications of this statute,  
 see Jones, I, 339; P. De Francisci, "Per la storia  
 del senato romano e della curia nei secoli V e VI",  
*Rendiconti della Pontificia Accademia Romana di  
 Archeologia*, XXII (1946-47), 284.
28. The reference to a *coetus* implies that functional,  
 rather than honorary, senatorial personnel were  
 advisers (Jones, I, 331-33); for senatorial  
 participation in the *consilium principis*, see Crook,  
 8-20, 23-26, 38 (cf. pp. 27-28 above).
29. For the influential position of the eastern senate,  
 see pp. 146-47 above; for the pre-eminence of both  
 senates under Marcian and Majorian, see Kar.,  
 "Kaiser", 376; in contrast to the eastern situation,  
 the fact that the western senate met at Rome and the  
 consistory at Ravenna must have added to the difficulties  
 of governing the West (see De Fran., "Stor.", 285).
30. In contrast to the Council of Ephesus (cf. p. 175  
 above), the Council of Chalcedon (451) was attended

by an indiscriminate number of imperial advisers, both senators and palatines, among whom only half the offices had past consistorial connections (see *A.C.Oec.* 2.1); according to Jones, (I, 338) the term *proceres nostri palatii* at this time might indicate the growth of an "inner cabinet," but similar to Ammianus' term *primates . . . in regiam* (15.5.18) under Constantius II, it seems more likely that *proceres* connotes *ad hoc* conciliar participation, a consequence of greater imperial reliance on favored individuals rather than on a single *ex officio* agency for consultation and advice.

31. On the phrase *tunc demum in sacro nostri numinis consistorio recitari*, cf. *Amm.* 15.5.5; *Amb., Ep.* 57.3; *CTH* 12.12.10; for the Master's report *in consistorio*, see *Th.* II, *Nov.* 2.4.1, (see pp. 175-76 above).
32. *Marc. Nov.* 1.1.8 (450).
33. *Maj. Nov.* 3.1 (458); for the growing isolation of the imperial administration from contact with the governed, see G. Gigli, *La crisi dell' impero romano* (Palermo: Palumbo, 1947), 212-13.
34. For the circumstances surrounding the military revolt

- from 425 to 455 by the western generals Felix, Aetius and Boniface, see Stein, I, 317; W. Ensslin, "Das Römerreich unter Germanischer <sup>"</sup>Waltung von Stilicho bis Theoderich", *Das Neue Bild der Antike* (2 vols: Leipzig: Koehler and Amelang, 1942), II, 420.
35. For the circumstances surrounding Sidonius' relationship to the emperor Avitus, see A. Loyen, *Recherches historiques sur les panegyriques de Sidoine Apollinaire* (Paris: Les Belles Lettres, 1942), 36; K.F. Stroheker, *Der Senatorische Adel im Spätantiken Gallien* (Tubingen: Alma Mater Verl., 1948), 53; for the circumstances surrounding Valentinian's death and the rise of Avitus to the emperorship, see Jones, I, 240; J. Sundwall, *Westromische Studien* (Berlin: Mayer und Müller, 1915), 13.
36. For example, see *Carm.* 7.5.77-79: *concurrunt proceres et milite circumfuso / agere composito statuunt*; cf. *Ep.* 1.2.4: *circumsistet sellam comes armiger*; *Ep.* 1.3.1: *magisteriis palatinis militaribusque*; *Ep.* 1.11.3: *commilito . . . familiaris* (on the military aspects of earlier imperial ceremony, cf. 142-43 above); in comparison to previous panegyrics, Sidonius' works seem to stress an increased isolation of the emperor from his subjects (C.E. Stevens,

- Sidonius Apollinaris and His Age* [Oxford: Clarendon Press, 1933], 31).
37. *Carm.* 5.386.
  38. For the past ministerial participation in selecting emperors, see p. 85 above; in the case of Avitus, Sidonius does mention *proceres*, leaving much to the imagination of what specific ministers attended (cf. p. 178 above); for another reference to unspecified *proceres*, see *Sid. Ap. Carm.* 1.24.
  39. Cf. *Carm.* 8.9.10; *Ep.* 1.9.4; as Prefect of Rome after 468, Sidonius worked closely with senatorial members (Stevens, 102); for the close working relationship between the senate and the Urban Prefect, see *Sinn., Off.*, 6; *De Fran., "Stor."*, 280.
  40. For senators as imperial legates to Zeno II, see *Malchus*, 10; for the judicial power of the senate, see *Sid. Ap. Ep.* 1.7.9; in the tradition of past military leaders, Ricimer also favored senatorial administrators (see Stein, I, 380); for the high prestige of the western senate under Majorian, see *De Fran., "Stor."*, 287.
  41. For the Quaestor's "oracular" role at court, see

- Carm.* 1.27-28: *qui licet aeterna sit vobis quaestor in aula, / aeternum nobis ille magister erit* (the later title is perhaps a reference to obtaining the Mastership after being Quaestor, perhaps only a play on words); *Carm.* 5.569; for the position of the Quaestor in the East, see Priscus 1; according to Loyen, (*Rech.*, 80) the Quaestor nevertheless played a functional role in Majorian's expedition to Gaul.
42. *Carm.* 23.214; for *tribunus* as an honorary title, see Jones, III, 174, n.67; for the title in relation to the notaries, *ibid.*, II, 575.
43. For Sidonius' possible association with the consistory, probably as *notarius et tribunus*, see A. Loyen, ed., *Sidoine Apollinaire* (2 vols; Paris: Les Belles Lettres, 1960), I, XII; Stevens, 29 (cf. W.B. Anderson, ed., *Sidonius Apollinaris: Poems and Letters*, [2 vols; Cambridge: Harvard University Press, 1936] I, xxxviii, n.1); on the phrase *inter conspicuos= consistorianos*, cf. *Ann.* 21.6.2.
44. Cf. 176, 178 above.
45. *Ep.* 1.3.3; for the office of *consiliarius* under the Praetorian Prefect, see E. Stein, *Untersuchungen*

- "über Das Officium der Prätorianerpräfe<sup>u</sup>ktur seit Diokletian (Wien: Rikola, 1922), 4-6; Crook, 73-74, 97-100; Ammianus (21.9.8) used the term before in relation to the *adoratio purpurae* (pp. 28, 39 above).
46. *Ep.* 2.1.3 (cf. *Ep.* 5.10.2); for the Prefect's relationship to the provincial *concilium*, see Jones, II, 763-66.
47. *Ep.* 8.6.5-6.
48. For the Prefect's power as appeal judge, see C. Jullian, *Histoire de la Gaule* (8 vols.; Paris; Hatshette, 1926), VIII, 28; H. Nesselhauf, "Die Spät<sup>u</sup>römische Verwaltung der Gallisch-germanischen Lander", *Abhandlungen der Preussischen Akademie der Wissenschaften. Philo.-Hist. Klasse.*, Heft II (1953), 89; for the Prefect's ceremonial court at his residence at Trier, see Jull., 18-19.
49. On the traditional consistorial importance of Sidonius' awareness of ceremonial rank (*per ordinem*), his ineligibility to be seated (*sedens*), and his own unofficial position (*proximis proximus*), cf. pp. 10-11 above (*ordo dignitatis*); p. 15 above (the seated posture); p. 146 above (position by rank); for the

difficulties of Sidonius' Latin (*proximis proximus*), see Loeb ed., II, 614; cf. also Prudentius, *Praef.*, 19-21: *pietas principis extulit adsumptum propius stare iubens ordine proximo.*

50. For the *adseorsos*, see Jull., 27; the reference to *silentium* following the granting of the *sportula*, i.e. *largitio*, connotes past imperial ceremony (cf. p. 36 above).
51. On the designation of the *consiliarii* as *conspicui* in consistorial terms (*inter conspicuos*), cf. Amm. 21.6.2; for the socially aristocratic class of the *consiliarii*, see Stein, *Off.*, 4.
52. For the influence of Roman tradition on the Gallic aristocracy, see Sund., *West.*, 8; at least two Praetorian Prefects contemporary with Sidonius were Masters before (Stroh., 63-64).
53. From his account of court life under the Visigothic king Theodoric II (*Ep.* 1.2.4), Sidonius was also fully aware of the Master's ceremonial duties; for Sidonius' own possible association with the imperial court, see p. 180 above.
54. For the bishop's assuming the duties of the *defensor*,

- see Jull., 65, n.5; Ness., 98-99; Stroh., 72, particularly the latter where the bishop saw himself as part of the Roman *cursus honorum*; for the bishop acting as peace envoy to the barbarians, see Sid. Ap. Ep. 7.6.10, 7.4; for Sidonius' career as bishop, see Stevens, 108.
55. Sid. Ap. Carm. 7.6.10; on *amicitia in consistorio*, cf. p. 65 above; as evidence perhaps of Sidonius' high esteem for his office as well as his past association with the imperial court, Ep. 2.2.13 makes a curious reference to a *consistorium perangustum*, probably a waiting-room in Sidonius' Gallic villa, as yet unsatisfactorily located (And., II, 416).
56. Const. Porph. Cer. 1.91C (CSHB, p. 410); similarly, cf. Malalas 14; Evagr. 2.1; for the circumstances surrounding Leo's elevation to the emperorship, see Stein, I, 353; for a description of the coronation, see A.E.R. Boak, "Imperial Coronation Ceremonies of the Fifth and Sixth Centuries", *Harvard Studies in Classical Philology*, XXX (1919), 41.
57. Const. Porph. *Ibid.*: μέν οἱ ἄρχοντες καὶ αἱ σχολαὶ καὶ οἱ στρατιῶται . . .; for the vague meaning of the term ἄρχοντες here, see Boak, "Cor.", 42.

58. For the judicial powers of the senate at this time, see Malalas 14; Malchus 11; for the senate as part of the imperial reception of foreign legates, see Malchus 1; as imperial advisers to Zeno, *ibid.* 11; as legates themselves, *ibid.* 15; at the recent Council of Chalcedon, senators were also prominent as imperial representatives (Evagr. 2.4).
59. Cons. Porph. Cer. 1.91D (CSHB, p. 410); for the ninth century terminology where the term λαός seems to have designated an aristocratic group rather than the masses or plebs, see Vogt, II (Comm.), 10, n.1.
60. Const. Porph. *ibid.* (CSHB, p. 411): παρὰ πάντων τῶν ἀρχόντων κατὰ τάξιν προσεκυνήθη; for the presentation of the diadem and imperial garments, see Eb., 19; for the proskynesis κατὰ τάξιν, see Vogt, I (Comm.), 7, 29; Eb., 37; both Vogt, who excludes Constantine Porphyrogenitus' material drawn from the sixth century (I.84-95), and Ebersolt concentrate mainly on ninth and tenth century customs and terminology.
61. Const. Porph. *ibid.* (CSHB, p. 415-16): συντάσσονται οἱ ἐπαρχοὶ καὶ ὁ ἐπαρχὸς ἐν τῷ κονσιστωρίῳ κατὰ τὸ ἔθος; for Constantine Porphyrogenitus' vagueness in

using the term ἑπαρχος, see Vogt, I (Comm.), 93;  
 on the use of the title to designate the Praetorian  
 Prefect, cf. Proc. BP 3.10.3: ὅ τε τῆς αὐλῆς  
 ἑπαρχος [v. ὑπαρχος], ὃν δὲ πρῶτον καλοῦσι Ῥωμαῖοι:  
 here it would seem the City Prefect is obviously meant.

62. As far as consistorial terminology is concerned, the  
 phrase συντάσσονται . . . κατὰ τὸ ἔθος implies  
 traditional protocol *in consistorio*, since the verb  
 comes from τάξις, i.e. *ordo* (cf. pp. 182, 184 above).
63. Const. Porph. *ibid.* (CSHB, p. 416); for the presentation  
 of the *missai*, see Eb., 71-72; on the traditional  
 standing posture *in consistorio*, cf. p. 98 above.
64. Const. Porph. *ibid.*; cf. Malchus 15, where both magistrates  
 and senators swear an oath to Zeno; for the significance  
 of the term *arcana*, see pp. 121-22 above.
65. See pp. 190-91 above; according to Helm (397), only  
 consistorians attended the emperor in highly secretive  
 negotiations.
66. Const. Porph. Cer. 1.92A (CSHB, p. 417); for the  
 palatine setting of Anastasius' coronation, see Boak,  
 "Cor.", 38-39; for the relationship of the portico and  
 the "great triclinium" to the consistory and the rest

- of the palace, see Vogt, I (*Comm.*), 98; for the role of the patriarch in imperial coronations, see Eb., 19; for the rise of Anastasius to power, Stein, II, 192.
67. Const. Porph. cer. 1.92D (*CSHB*, p. 421-22); for the powerful position of the Head Chamberlain at this time, see Dunlap, 180 (on his position in the late fourth century, cf. pp. 97-98 above).
68. Const. Porph. 1.92A (*CSHB*, p. 422).
69. Const. Porph. 1.92B (*CSHB*, p. 422); for the *comites domesticorum* at this time, see R. Guiland, "Le domestique des scholes", *Revue des études Byzantines*, VIII (1950), 5; R. Grosse, *Römische Militargeschichte von Gallienus bis zum Beginn der Byzantinischen Themenverfassung* (Berlin: Weidmann, 1920), 138.
70. Cf. Jones, I, 338; Stein, II, 73, n.3 (see pp. 146-47 above); for variations in spelling κομέντων, see F. Viscidi, *I prestiti latini nel greco antico e bizantino* (Padova: Cedam, 1944), 23.
71. Const. Porph. *ibid.*; for the chlamys as traditional ceremonial dress of high court officials, see R. Delbrueck, *Die Consular-Diptychen und verwandte Denkmaler* (Berlin: de Gruyter, 1929), 38-39.
72. For the comparison with Julian, see pp. 64-65 above;

compared to Leo II's coronation, Anastasius' more courtly affair might have been due to his personal preference as an ex-silentiary with experience in imperial ceremony; for the significance of Anastasius' diadem in the ceremony, emphasizing divine support, see Boak, "Cor.", 45-46.

73. Const. Porph. *ibid.*; on Leo's oath-giving, cf. p. 185 above.
74. Oath-taking in *consistorio* became important first under Julian and Valentinian I (p. 70; c.4, n.12 above); but it was not until Ambrose's time that the need for "secrecy" in consistorial matters had become a significant issue, probably due to the increased debate in *consistorio* (pp. 97, 100-01 above); by the fifth century, *silentium* replaced *consistorium* and oath-taking became commonplace, following a period of intense court intrigue under Honorius and Arcadius (pp. 121-22, 132-34).
75. On κομέντων, i.e. *conventus*, implying a senatorial advisory body, cf. pp. 146-47 above; n.92 below; it is certainly clear in the case of Anastasius' coronation that senators did not attend in an *advisory* capacity, although Constantine Porphyrogenitus

(or Peter the Patrician?) might have used the term confusedly because of the prominent place of senators in the imperial ceremony.

76. For the dedication, see *Chron.* 3.1.
77. I, 338 (cf. I, 233).
78. For Arcadius' consistory, see pp. 138-39 above; for the alleged lack of advisory debate under Anastasius, see Jones, I, 338.
79. For the circumstances surrounding the events described by Zacharias (*Chron.* 7.7-8), see Stein, II, 165; Jones, I, 339-40.
80. For the powerful position of the Master at this time, see Stein, II, 9,29 (cf. *Zach. Myt. Chron.* 5.1; *Evagr.* 3.4).
81. *Zach. Myt. Chron.* 7.7.
82. For this typical form of proskynesis, more common in the later Byzantine period, see Eb., 37-38; for the patrician title, see n.95 below.
83. *Zach. Myt. Chron.* 7.8; the military officer was a στρατηλάτης, probably the *magister militum* (Grosse, 183).

84. Zach. Myt. *ibid.* (italics mine).
85. Zach. Myt. *ibid.*: in addition to "all the commanders of the forces . . . all the officers of the scholars . . . and the whole army", some patricians were also granted donatives.
86. Cf. pp. 70-71 above; in the case of Anastasius, however, it is not explicitly stated that he granted donatives *in consistorio*. although the fact that he extracted oaths of loyalty at the same time seems to place the combined act *in consistorio*, except, of course, for the "whole army", which probably received their donatives in the field.
87. Zach. Myt. *ibid.* (italics mine).
88. On the significance of the imperial "presence" *in consistorio*, cf. p. 61 above.
89. On the "oracular" quality of the emperor acting *in consistorio*, cf. p. 101 above; on the title *iudex in consistorio*, cf. p. 52, 94 above; in his panegyric to Anastasius, Priscian (*Pan.* 198-203) extolled these same two imperial virtues: *iudicis ipse sedens iudex caelestis imago per te respondes populis oracula sancta* (on the same sentiments, cf. *Proc. Gaz. Pan.* 12.

90. Zach. Myt. *ibid.* (italics mine).
91. Cf. pp. 186-87 above; Zacharias apparently modified σιλέντιον with κομβέντον, instead of simply calling the meeting a κομέντον (in the Hamilton & Brooks edition used here, Greek terms often appear in the English text without the original Syriac terms indicated; this edition was the only one available to the writer).
92. The term κομβέντιον (*conventus* in Latin), from which the variants κομέντον, κομβέντον, et al. apparently derived, had vague meaning in the early Byzantine period (Viscidi, *ibid.*) and was used inconsistently, particularly in the sixth century: for example, in Malalas 18 (*CSHB*, pp. 438-39), one σιλέντιον κομβέντον called by Justinian apparently included only full senatorial participation, while on another similar occasion called by the same emperor (*ibid.* *CSHB*, p. 494), the meeting included ἀρχοντες but apparently no senators (on other similar inconsistencies, cf. Malalas 5,7,14); for the variant terms used by Church writers, see G.W.H. Lampe, ed., *A Patristic Greek Lexicon* (1964), under κομβέντιον.
93. It is perhaps significant, at least in Zacharias' use of σιλέντιον κομβέντον, that the Latin *conventus*

(i.e. κομμέντον or κομβέντιον) was frequently used to describe ecclesiastical assemblies, including synods (A. Blaise, *Dictionnaire latin-français des auteurs chrétiens* [1954], 219; Du Cange, I, 545); cf. also Theophanes *Chron.* 397A, where the Persian king Carades called the Manichaeans as a whole ἐν κομβέντιῳ in order to discuss the religious issue; consequently, in the case of Zacharias' description, perhaps the joint participation of emperor and priests is indicated by the combined phrase σιλέντιον κομβέντιον; for the tradition of avoiding consistorial interference in Church affairs, see pp. 102-03 above.

94. Cf. *Mag.* 2.17, 3.10; pp. 146-47 above.
95. Zacharias continually uses the term "patrician" to describe those attending Anastasius' *silentia*, singling out only the Master of the Offices, the "Great Prefect" and a military "General" as specific officers; the only mention of a senator pertains to gathering information between *silentia* (see p. 190 above), but not *in silentio*; for the patrician rank, an honorary one not necessarily connected to a functional post, see Jones, I, 106; II, 528-34.
96. *c.J.* 1.14.8 (p. 177 above).

## CHAPTER VII

### THE CONSISTORY AT THE END OF THE EMPIRE

#### *THEODORIC IN THE WEST*

Gothic rule of Italy brought with it no major changes in the Roman administrative structure. Following a long tradition in the West dating from the end of the fourth century, both Odoacer and Theodoric ruled as *generalissimos*.<sup>1</sup> This military basis of power was reflected in the informal relationship they maintained, as kings, with the Roman emperor in Constantinople. Theodoric officially used the Gothic title *rex*, but apparently unofficially maintained control over the *officium* of the *magister militum praesentalis*.<sup>2</sup> Consequently, both his Gothic kingship and Roman *officium* emphasized the essentially non-imperial aspects of his power, much as had been the case with Stilicho, although the latter had never styled himself king.<sup>3</sup> Acting unofficially as a Roman general, Theodoric was also free of the court intrigue that had surrounded earlier dominant ministers in the East; but at the same time, as a Gothic king, he also freely drew upon

his *Gefolgschaft* to complement the Roman administrative structure.<sup>4</sup> This peculiar mixture of Roman and Gothic administrators inevitably affected consistorial tradition.

Theodoric maintained the Roman civil administration for various reasons: (1) practicality demanded continuity of the existing structure, as inefficient as it was; (2) maintenance of a predominantly Roman administration pacified Roman subjects under Gothic rule; (3) given the pre-eminence of the Roman senate, the traditional administrative structure furnished posts for senators to maintain their prestige by public service.<sup>5</sup> High ranking ministers like the Master of the Offices, the Quaestor and the two financial Counts still existed.<sup>6</sup> Their relationship with the consistory, however, continued to undergo many changes. This was partly due to Theodoric's position as military ruler, partly because his use of Gothic administrators altered the bureaucratic structure, including consistorial *officiales*.

A case in point is his introduction of a new body of officials called *comitiaci*. Most recently Jones challenged the traditional view that these officers were *agentes in rebus* under a new title.<sup>7</sup> According to Jones, the *comitiaci* were part of Theodoric's own *officium* as *magister militum*.<sup>8</sup> Although they performed many of the tasks once belonging to *agentes*, the *comitiaci* were responsible to Theodoric and not

to the Master of the Offices. Theodoric apparently used these officials to bypass the traditional administrative structure, much as the Roman Emperor had done earlier before the Master's jurisdiction over the *agentes* had become secure.<sup>9</sup> Like the *maiores domus regiae*, the *saiones*, and the *comites Gothorum*, the *comitiaci* were instruments of Theodoric's policy of working outside the normal Roman administrative agencies.<sup>10</sup>

Since Theodoric preferred to work with many officials not under traditional Roman ministerial jurisdiction, the functional importance of certain ministers consequently declined. Although the evidence is slight and primarily from one source, Cassiodorus, consistorial ministers apparently became even less effective than they had been in the preceding century.<sup>11</sup> For example, Theodoric introduced the office of the *comes patrimonii*, whose financial competence infringed on the traditional jurisdiction of the two Counts of the Sacred and Private Treasuries.<sup>12</sup> The Count's advisory functions are also evident, however embellished by Cassiodorus:

Sed te, quem ad patrimonii nostri curas regalis defloravit electio, non destinatis praeceptionibus instruimus quam usu serenissimae colloctionis erudimus . . . se morum tuorum qualitas assidue viso principe non celabit. Mens tua et oculis nostris patebit et auribus. In vultu et in voce cognoscimus servientium mores.<sup>13</sup>

As so often in the case of administrative changes involving ministries and their bureaucracies, one should look

to the status of *officiales* to gain an understanding of alteration in ministerial leadership.<sup>14</sup> For example, Theodoric scarcely used either the notaries or the silentiaries, a policy in sharp contrast to both tradition and the contemporary situation in the East.<sup>15</sup> The Quaestor and the Master of the Offices, controlling these two *officia*, presumably had less business to do and were correspondingly less important as ministers *in consistorio*.<sup>16</sup> This shift away from reliance on a palatine bureaucracy based at Ravenna followed the recent pattern of government in the West, emphasizing smaller administrative units without strict palatine control.

In an important reference to the consistory, Cassiodorus perhaps offers a key to understanding better Theodoric's unique relationship to Roman administration. In praising Cyprian's promotion to the position of Count of the Sacred Treasury, Cassiodorus describes part of his earlier career as *referendarius*: *nam qui solacia eius petit, mox beneficia nostra suscepit. Obtinuit ille saepius in vectationibus nostris, quod in consistorio agi solebat antiquis.*<sup>17</sup> As judicial clerk and messenger, however, the seemingly minor post of *referendarius* did not prevent intimacy with Theodoric:

Quamvis tantum sit clara unaquaeque dignitas, quantum eam praesentiae nostrae conspectus illuminat, dum semper honorem suscipit, qui nostra colloquia decenter acquirit, nemo tamen sermones nostros tantum meretur quam qui *referendarius* esse dinoscitur.<sup>18</sup>

Cyprian was well known as a close adviser to Theodoric.

Cassiodorus' description of the official duties of the *referendarius*, moreover, had all the characteristics of a traditional consistorian.<sup>19</sup> The essential difference, however, lies in the fact that Theodoric elevated a lowly *officialis* to a traditionally ministerial position.

Cassiodorus goes on to state categorically that Theodoric's *referendarius* performed tasks that traditionally belonged to the consistory. His reference to *vectationes* indicates that an itinerant *Gefolgschaft* had assumed part of the responsibilities of the once centrally located Roman consistory. Along with other newly instituted Gothic officials, the *referendarii* were officers depending directly on the king and not on any ministers of state. Mommsen amply commented on this phenomenon of fragmentation of the traditional Roman bureaucracy.<sup>20</sup> In a host of references, Cassiodorus often emphasizes the hardship borne by the provincial citizen who must carry his appeal personally to Ravenna: *seu ad comitatum venire seu in competenti foro iurgare maluerit, quia nullis necessitatem longinquitatis imponimus, nisi qui suis hoc commodis expedire cognoscunt.*<sup>21</sup> In one letter, answering complaints made by Sueves over land rights, Cassiodorus advised the petitioners to seek out a local judge to hear *oracula nostra*, the imperial judgment.<sup>22</sup> His repeated references to *comitatus* also remind one of the

situation centuries earlier when the travelling imperial entourage was called the *comitatus*, before imperial administration became sedentary at either Ravenna or Constantinople.<sup>23</sup>

Although the administrative aspects of the consistory were altered considerably, evidence nevertheless suggests that the consistory continued to function vestigially as a ceremonial institution. Important modifications are evident here too. Acting as *magister militum*, Theodoric apparently was hesitant to use *sacer* officially to describe aspects of his reign, since use of the term might have antagonized the eastern emperor.<sup>24</sup> A more practical reason is also evident. Contained in the phrase *nostrum sacrarium* is the traditional imperial right to award higher Roman *dignitates in consistorio*. Theodoric had no official license, however, to grant imperial honors. For example, although he had the right to nominate consuls, the designates had to receive their codicils officially from the eastern emperor before assuming office.<sup>25</sup> In one important respect then, imperial ceremony *in consistorio* lost a significant part of its *raison d'etre* under Gothic rule.

The consistory nevertheless continued to receive important dignitaries, a responsibility which undoubtedly explains why the Master of the Offices still held high prestige:

Per eum senator veniens nostris praesentatur obtutibus,  
ammonet trepidum, componit loquentem, sua quin etiam

verba solet inserere, ut nos decenter omnia debeamus audire. Aspectus regii haud irritus promissor, colloquutionis nostrae gloriosus donator, aulici consistorii quasi quidam lucifer.<sup>26</sup>

Roman eloquence was prized under Theodoric, and Cassiodorus' term *aulicum consistorium* emphasizes the courtly rather than administrative aspect of the Gothic consistory. While still centralized at Ravenna as part of the traditional court, ministerial leadership apparently capitalized on Theodoric's disinclination to emphasize *nostrum sacrarium*. By drawing prestige from ceremonial activity *in consistorio*, the Master of the Offices, for example, inadvertently presented a false image of his administrative importance.

A florid description of the Quaestor of the Sacred Palace's palatine duties also reminds one of his past administrative leadership *in consistorio*:

Reverenter astabat, opportune tacitus, necessarie copiosus . . . . Est nimirum curarum nostrarum felix portio . . . qui tanti particeps fit secreti . . . . Illuc vota confluunt supplicantium et, quod est omni thesauro pretiosius penes ipsum civilitatis nostrae fama reponitur.<sup>27</sup>

But nowhere does Cassiodorus specifically cite the consistory. In another reference, he also fails to mention it when donatives are to be granted to certain Gothic settlers on Roman territory:

Ideo praesenti iussione mandamus, ut octavo iduum Iuniarum die deo auxiliante ad praesentiam nostram

venire debeatis: qui sollempniter regalia dona suscipitis, si venire protinus festinatis.<sup>28</sup>

Only the references to "our presence" and the "solemnity" of the occasion seem to contain traditional consistorial connotations.<sup>29</sup> They are nevertheless little more than literary allusions to past consistorial importance as a well-defined agency of the central imperial government.

Cassiodorus' *formula praefecturae praetorio* contains another example of encroachment upon past imperial prerogatives in *consistorio*: *ingressus palatium nostra consuetudine frequenter adoratur et . . . militia perfunctis tribunorum et notariorum honorem tribuit et milites suos illis exaequat, qui inter procures mixti nostris conspectibus obsecundant.*<sup>30</sup>

Besides usurping the traditionally imperial prerogative of *adoratio purpurae*, the Praetorian Prefect apparently also had power to grant the office of either notary or tribune to his own *officiales*. Upon assuming these offices, the Praetorian Prefect's *milites* mixed freely with *procures* and *conspecti*, individuals traditionally consistorians.<sup>31</sup>

Following developments of the preceding century, the Praetorian Prefect continued to embellish his position with consistorial elements that were once uniquely the emperor's.

The designation of advisers to both the Gothic king and the eastern emperor as *procures* (or its Greek equivalent)

is common in sources other than Cassiodorus at this time. In two letters to Roman synods, for example, Theodoric reminded ecclesiastics that he could have his *proceres* intervene in church matters if necessary.<sup>32</sup> The term *proceres* traditionally implies an ad hoc body of advisers similar in character to the Gothic *maiores*, *comites* and *saiones*, all without clear affiliation to the consistory. By using such officers, Theodoric essentially relied on ad hoc personnel in administrative matters.

Cassiodorus cites the consistory only four times in all of his writings. Three of these references might have definite administrative connotations, leaving the fourth (*aulicum consistorium*) as a primarily ceremonial body.<sup>33</sup> In one of these three references, praising Cyprian's past service as *referendarius*, Cassiodorus nevertheless makes it clear that this Gothic office performed administrative duties no longer part of the consistory.<sup>34</sup> In another reference, Cassiodorus mentions the Praetorian Prefect's knowledge of *consistorii nostri secreta* but does not indicate any specific consistorial business or other personnel.<sup>35</sup> That leaves the *formula comitivae primi ordinis* which relates the consistory to obtaining the rank of Count of the First Order:

Quando perfecti viri pro tot laudabilibus institutis huius inveniunt praemia dignitatis et merito cum tanta pompa ceditur, quae senatorii quoque ordinis splendore

censetur, spectabilitas clara et consistorio nostro dignissima, quae inter illustres ingreditur, inter proceres advocatur: otiosi cinguli honore praecincta dignitas, quae nullum novit offendere, nullum cognoscitur ingravare et super omnia bona concitare nescit invidiam. Quocirca provocati moribus tuis comitivam tibi primi ordinis ab illa indictione maiestatis favore largimur, ut consistorium nostrum sicut rogatus ingrederis, ita moribus laudatus exornes.<sup>36</sup>

In an article concerning this passage, W. G. Sinnigen has convincingly shown that entrance into the consistory was not automatic upon one's gaining the rank of Count of the First Order.<sup>37</sup> Sinnigen goes on to state that Cassiodorus' phrase *sicut rogatus* implies that the Count "was called upon to appear to give advice".<sup>38</sup> There are various reasons, however, to dispute the view that the consistory was necessarily an advisory council of state under Theodoric.

As used by Ammianus, the term *rogatus* implies invitation, but not necessarily to advise administratively, since the consistory could be a court of reception or serve to commemorate promotion in rank.<sup>39</sup> Under Theodoric, promotion in rank apparently formed a chief occupation in a consistory increasingly concerned with ministerial ceremony rather than administrative activity. Cassiodorus seems to emphasize such ceremony, the act of entering the consistory expressed: "just as you might enter our consistory, if invited, so your good reputation (*moribus laudatus*) might embellish (*exornes*) our consistory." Thus the Count receives imperial recognition of his superior moral character, adding to the esteem of the consistory:

distinctively honorary office: *quanto felicius honorem splendidum sumere et cogitationum molestias non habere?*<sup>40</sup>

Perhaps the Count even personally (*sicut rogatus*) received the *cingulum* of his titular office, a distinctive honor, following retirement from service.<sup>41</sup>

The Count of the First Order's significance, as his title implies, probably lies in the fact that he stood in a ceremonial relationship, an *ordo dignitatis*, to his fellow officers. If called into the consistory, Cassiodorus' Count of the First Order had the honor of standing "in the first rank" *inter illustres*; but since (according to Cassiodorus) he shared that distinction with provincial officers (*rectores provinciarum* or *consiliarii*), it seems unlikely that all these officers alike advised Theodoric as a body.<sup>42</sup> The *rectores*, for example, ranked traditionally outside of consistorial classification. On the other hand, the *consiliarii* had recently gained some consistorial distinction, but there is no evidence that Theodoric ever relied on them as an advisory group *in consistorio*.

The role of the consistory has also been discussed in relation to the trial of Boethius for treason.<sup>43</sup> As Master of the Offices in 524, Boethius was charged along with the senator Albinus with conspiring against Theodoric, in whose presence (*in conspectu regis*) Boethius denied the

charge.<sup>44</sup> Hearing witnesses provided by Cyprian against Boethius, Theodoric chose to believe "false witnesses rather than the senators".<sup>45</sup> At last, the Urban Prefect Eusebius was called to trial, after which Boethius was sentenced to death.<sup>46</sup>

Other than noting that Theodoric was present at Boethius' trial, contemporary sources do not indicate that an official consistory might have met to try him. Since Theodoric summoned the Urban Prefect, Sundwall believed that either the consistory turned over jurisdiction to him in the case or Theodoric had a senatorial commission headed by the Urban Prefect try Boethius.<sup>47</sup> It seems clear that a kind of ad hoc commission met, since some senators sat as judges while others stood as witnesses.<sup>48</sup> As for Boethius himself, his initial defense of Albinus could have been made before Theodoric either as consistorial judge or in private. Given Theodoric's general policy, it seems more likely that the latter was the case. It suited the Gothic king's character better to deal with governmental problems on an ad hoc basis.

Although on the surface the Roman administrative structure apparently changed little, its existence does not necessarily imply effective exploitation by the Goths. Except for a few references from Cassiodorus, the consistory

is conspicuously absent from the annals of Gothic history. Apparently, the recent tradition of the consistory's disintegration as a vital governing agency continued under the Goths. Since Theodoric was Gothic instead of Roman, he also brought with him his *Gefolgschaft*, which further minimized the consistory's role in government. The consistory continued to exist only as a ceremonial institution for ministerial prestige. But this prestige was only a token that obscured the reduced Roman importance to the Gothic realm.

#### JUSTIN AND JUSTINIAN IN THE EAST

Although obscure in some details, the account of Justin's imperial selection clearly indicates the complexity of ministerial interests *in palatio* that had developed in the eastern Empire.<sup>49</sup> On the morning after Anastasius' unexpected death, both Celer, the Master of the Offices, and Justin, the *comes excubitorum* were informed of the situation.<sup>50</sup> Since neither Anastasius himself had indicated a successor, nor was the empress present to aid in the decision, the matter of selection fell to various palatine factions. The situation was further complicated by other factors. While Celer and Justin represented the *scholares* and *excubitores* as palatine corps, indiscriminate magistrates and "the people" had

gathered in the Hippodrome, creating a tumultuous scene.<sup>51</sup> According to other sources, the Head Chamberlain was also involved in behind-the-scenes activity to make a selection.<sup>52</sup> Thus the Master and the Head Chamberlain represented civil power *in palatio*, the *comes excubitorum* the most immediate military influence, and the masses of magistrates and "people", the various pressure groups that could form over any important public issue.

After Justin's selection was officially confirmed, evidence suggests that imperial leadership introduced a policy of greater autocratic control over palatine ministries.<sup>53</sup> At the outset this policy involved weakening the powerful position of the Master of the Offices, which had posed such a threat to Justin's accession. Celer promptly resigned, and the corps of scholarians was eventually reduced to an ornamental minimum.<sup>54</sup> The position of Master under Justin and Justinian never again matched the administrative influence it had wielded over the preceding centuries. At one point the Master's post became a retreat for a higher minister demoted in the face of public pressure, at another it lost its autonomy entirely by being joined to the quaestorship.<sup>55</sup> Other times, the Master was employed as ambassador-at-large, while some of his traditional jurisdiction was withdrawn or reduced, apparently at the instigation of the Praetorian

Prefect.<sup>56</sup>

Other consistorial ministries also felt the effects of imperial autocracy. Counts of the Sacred and Private Treasuries were characterized at various times as *θεράποντες* or *παλατινές*, indicating reduced prestige under Justin and Justinian.<sup>57</sup> Following the pattern of the preceding century, both Counts continued to lose financial powers as they increasingly became centralized under imperial authority.<sup>58</sup> The office of *comes patrimonii*, established first under Anastasius, further weakened their financial autonomy.<sup>59</sup> The position of Count of the Sacred Treasury, like the Master's, also became a retreat for a higher minister, reduced by Justinian under public pressure.<sup>60</sup> Under such circumstances, it is questionable how effective these ministers were, holding temporary posts until public pressure abated. On more than one occasion during his turbulent reign Justinian expediently transferred ministers from post to post, obviously sacrificing the benefits of continuity in office to placate the public.

Of the four chief consistorial ministers, only the Quaestor of the Sacred Palace apparently maintained, perhaps even increased, his traditional pre-eminence. Apparently, he was regarded as less a military threat to the emperor, since the Quaestor did not command palatine guards, such as

the scholarians under the Master's jurisdiction. Another reason might be the office's theoretical competence as legal adviser. Proclus, Justin's influential Quaestor, was certainly important in this respect.<sup>61</sup> In view of Justinian's personal concern, moreover, legal advice continued to necessitate reliance on the Quaestor's advice.<sup>62</sup> Nevertheless, in matters of practical administration, evidence suggests that the Quaestor along with the Master also relinquished powers to the Praetorian Prefect, John of Cappadocia.<sup>63</sup> This situation reflected in the latter's pre-eminence over all of Justinian's ministers in general administrative matters.

For a variety of reasons, the Praetorian Prefect under Justin and Justinian remained as powerful as ever, if not more so. John of Cappadocia's astute financial sense made his office supreme in a period when imperial expenses increased tremendously due to Justinian's wars.<sup>64</sup> The Prefect's traditional supervision over the provinces also gave that office unparalleled power in Justinian's reforms. John's exceptional talents were utilized constantly in his reorganization of the provinces adapted to local civil and military needs.<sup>65</sup> In general, capitalizing on increased imperial control over palatine ministries, the Prefect added to his powers jurisdictions that were stripped from ministers considered too threatening by proximity to the emperor.

Imperial policy of autocratic control over palatine ministries directly affected the consistory, since the consistory was no longer under the quasi-independent control of ministers. Early in Justin's reign, for example, the consistory was first mentioned in connection with negotiations between the emperor and Pope Hormisdas in order to reverse previous anti-papal policy.<sup>66</sup> Gratus, a *comes sacri nostri consistorii*, was Justin's imperial legate to the Pope in his attempt to unite the eastern Church with Roman orthodoxy.<sup>67</sup> Although praised in one papal letter as an exceptional *iudex*, Gratus apparently never actively advised either party in the proceedings.<sup>68</sup> He acted only in the capacity of imperial legate. In his relationship to Justinian, however, Gratus was more important than his inconspicuous title implies.

In a letter from Justinian to Pope Hormisdas, the former, acting officially as Justin's *comes*, extolled the virtues of Gratus, calling him a *vir sublimis, unanimes mihi amicus*.<sup>69</sup> The terminology is interesting for the possible light it throws on both the imperial relationship to a consistorial representative and Justinian's own to Justin, his ruling uncle. By calling Gratus *amicus*, Justinian used the by then unfamiliar classical title for imperial adviser to the *consilium principis*.<sup>70</sup> The title suggests an informal relationship between subordinate and ruler, in this case

Justinian. Although Justinian was not yet emperor, he surely was the real power behind Justin's throne.<sup>71</sup> By using Gratus, an inconspicuous *magister memoriae*, Justin and Justinian employed a legate of bureaucratic rather than ministerial standing, such as the Master of the Offices, traditionally an ambassador to foreign powers. The use of bureaucratic personnel in such activities implies a high degree of imperial suspicion, which in the past had prompted emperors to bypass ministerial levels of intermediate control.<sup>72</sup> By relying directly but informally on palatine bureaucrats and disregarding hierarchic command, Justinian was acting typically as a suspicious autocrat.

On Justin's death Justinian officially became emperor by calling a *silentium et conventus* to ratify his election.<sup>73</sup> Unlike other coronation accounts, that of Constantine Porphyrogenitus curiously omits mentioning its exact procedure and membership. Apparently the importance of the event was minimized in accordance with the recent imperial policy of reducing ministerial activity *in consistorio*. Justinian's early laws also emphasized the emperor's working informally with consistorial personnel. In thirteen statutes of 529, all promulgated *in novo consistorio palatii Iustiniani* and addressed to Demosthenes, Praetorian Prefect of the East, the emperor dealt with the complex subject of making legal

appeals to the consistory.<sup>74</sup> The consistorial terminology follows the tradition established in the fifth century:

Si imperialis maiestas causam cognitionaliter examinaverit et partibus cominus constitutis sententiam dixerit, omnes omnino iudices . . . sciant hoc esse legem . . . . Cur autem ex suggestionibus procerium, si dubitatio in litibus oriatur et sese non esse idoneos vel sufficientes ad decisionem litis illi existiment, ad nos decurritur? Recitata septimo milliario urbis Constantinopolitanae in novo consistorio palatii Iustiniani.<sup>75</sup>

This statute exemplified Justinian's early attitude toward his *comites consistoriani*. Confronted with ever-increasing provincial appeals to his court, he attempted to work within the existing structure rather than reorganize the entire system of appeals, as he did only later.<sup>76</sup> At the highest level of that system, he had not yet established a *silentium et conventus* to hear appeals reaching Constantinople. Instead, Justinian called consistorial judges *proceres*, implying an ad hoc selection of imperial judges, many of whom were apparently unqualified.<sup>77</sup> Throughout this series of statutes of 529, there is not a hint as to the exact membership of a consistorial group. Similar to past statutes dealing with legal procedure, these laws apparently cited the consistory primarily as a place of promulgation and perhaps to commemorate the building of suburban consistories *in palatio*.<sup>78</sup>

By the year 537, Justinian's attitude toward hearing appeals *in consistorio* shifted with his decision to have the senate officially share judicial responsibilities with *proceres*.

In two laws from his *Novellae*, one addressed to Tribonian serving both as Master of the Offices and Quaestor, the other to John as Praetorian Prefect of the East, Justinian codified the future relationship between senators and magistrates.<sup>79</sup>

Hearing appeals, both groups sat jointly *in silentio et conventu*. Thus the terms *silentium et conventus*, indicating adjudicating bodies of officials, became recognized officially for the first time in public law.<sup>80</sup>

Both the Praetorian Prefect and the Urban Prefect were assigned duties to supervise this new arrangement of senatorial and palatine judges.<sup>81</sup> These two ministers consequently assumed powerful positions *in consistorio* that had belonged traditionally to members of the so-called *ex officio* palatine ministers. The Quaestor Tribonian, to whom the first law was addressed, might have maintained some authority as legal theoretician, but the Prefecture held effective power as Justinian's chief ministry of appeals.<sup>82</sup>

In regulating this new imperial procedure of hearing appeals, Justinian emphasized a senatorial administrative responsibility which, although new, had its roots in the Principate. By calling senatorial participation a *conventus*, he appealed to its traditional role in the *consilium principis*.<sup>83</sup> The establishment of *silentium et conventus* formed a permanent judicial corps of imperial advisers.

Before this time, basically following Justin's policy, Justinian had apparently preferred to rely upon an ad hoc corps of advisers as general administrative policy. The Nike Revolt furnishes another example of how Justinian early in his reign utilized both senatorial and palatine ad hoc personnel to staff his advisory corps.

According to Procopius, at the first outbreak of the insurrection Justinian was inside the palace with his entourage of advisers.<sup>84</sup> They included magistrates and senators, as well as John of Cappadocia and Tribonian, both of whom temporarily were dismissed from office to meet the demands of the rebels.<sup>85</sup> As the insurrection grew more formidable, Justinian began to think seriously of flight, seeking advice from his counsellors.<sup>86</sup> At last, however, after a rousing speech by Theodora, Belisarius was commissioned to quell the insurrection, which he finally accomplished after much bloodshed.<sup>87</sup>

Close examination of Procopius' account reveals that Justinian apparently did not rely on any formal advisory body, such as a *silentium et conventus*. At the outset of the rebellion, for example, Procopius does not specify exactly who attended the emperor. He states only that "the emperor, his intimate staff, and some of the senate" were present with Justinian.<sup>88</sup> The unusual term *συνοικουσα* implies an intimate domestic staff, perhaps indicating here a very informal body

of attendants. As a group, it might have contained *proceres*, but besides the later mention of John of Cappadocia and Tribonian, no specific ministers are mentioned. Procopius' use of βουλή, on the other hand, probably means a group of senators, but confusedly so, since he later uses the term to denote the imperial court in general, and a significant number of the senate participated in the revolt against Justinian.<sup>89</sup>

At one point Procopius mentions the fact that the palatine guard was reluctant to back Justinian immediately, choosing rather to await future events.<sup>90</sup> It is well known that both Justin and Justinian strictly regulated the imperial bodyguards, a move probably part of Justin's policy of reducing the Master of the Offices' ministerial power.<sup>91</sup> The reluctance of the guard to side with Justinian might be attributed to their resentment of his autocratic policy.

The unique combination of Justinian's autocratic policy, serious public disturbances, and the possible sacrifice of ministers to appease the mob, presumably hindered effective joint ministerial activity *in consistorio*. Conciliar debate is a case in point.<sup>92</sup> Justinian's council meeting to decide whether or not to invade Libya, for example, offers an illuminating example of how joint ministerial leadership acquiesced in imperial demands.<sup>93</sup> Confronted by Justinian's

enthusiasm over the idea of liberating Christians from the Vandals, both his civil and military advisers "mourned in silence", apparently afraid to voice their serious reservations against manning such an expensive expedition.<sup>94</sup> Only John of Cappadocia had the courage to offer legitimate objections. Before making his substantive remarks, however, John began by offering a panegyric praising imperial "trust" and "license to free speech" among counsellors.<sup>95</sup> His remarks contrast sharply with the apathy displayed by his co-advisers to Justinian.

As in the case of his account of the Nike Revolt, Procopius is unclear as to who exactly participated in the council meeting over Libya. Aside from the Praetorian Prefect John, he mentions the financial ministers, who along with John were probably reluctant to undertake gathering taxes for such an expensive expedition.<sup>96</sup> But since in the same passage he also mentions that "every one of the generals" and of the "soldiers" were also reluctant, it is questionable how many spokesmen were *in consistorio* to represent all these views.<sup>97</sup> Moreover, at this meeting, contrary to the one held concerning the Nike Revolt, Procopius does not mention senatorial participation.<sup>98</sup> Apparently, Justinian continued to make policy by using impermanent *ad hoc* advisers.

Although Justinian legally compelled senators and

magistrates to share certain judicial responsibilities, they did not normally do so as advisers. In cases of high treason, a *silentium et conventus* might be convoked, but the two bodies did not necessarily work together to reach a common verdict. When Artabanes, for example, was charged with plotting to usurp the throne, Justinian first "had all those from the senate sit in the palace, as they were used to doing in disputed matters".<sup>99</sup> Despite an attempt to involve Germanus, Justinian's nephew, in the plot, the senate eventually cleared both Artabanes and Germanus on grounds of insufficient evidence.<sup>100</sup> In this instance, the senate acted alone *in conventu* to render a decision of acquittal.

Justinian, however, displeased with the decision, apparently convoked a *silentium* immediately afterwards in order to overturn the senate's findings: "when all were inside with the emperor . . . two of his magistrates out of flattery agreed with his opinion (against the senate's decision)".<sup>101</sup> At that point, "the others (present with the emperor) were silent", until Marcellus, a Commander of the Scholarians, spoke up, finally convincing Justinian to accept the senatorial verdict.<sup>102</sup> If not for the boldness of individuals such as John of Cappadocia or Marcellus, Justinian could easily have turned advisory councils into mute, rubberstamps of his will.<sup>103</sup> Later, at another trial for

high treason involving Belisarius, Justinian apparently successfully bypassed the *conventus*, relying instead on palatine personnel as judges.<sup>104</sup> Such autocratic proceedings are often found at the heart of Procopius' most biting indictments of Justinian.<sup>105</sup>

Although by law senators (*conventus*) met with magistrates (*silentium*) to hear imperial appeals jointly, this procedure probably did not apply to the day-by-day governing of the eastern Empire. The Nike Revolt, for example, undoubtedly caught Justinian unprepared to meet with all his regular advisers. In the case of the council held over possibly invading Libya, on the other hand, its meeting was undistinguished in either membership or active participation. In the case of political trials, Justinian again followed an irregular pattern, once pitting the palatine *silentium* against the senatorial *conventus*, another time employing ad hoc magistrates to the exclusion of senators. Very rarely apparently, outside of hearing appeals, did the *silentium et conventus* work together to render a common verdict, free of imperial intimidation.

Justinian wisely realized that a centrally located palatine administration was no longer sufficient to meet the provincial needs of his Empire. The apex of that palatine structure was traditionally the consistory or *silentium*,

as it was then called. In the West, its deterioration coincided with the rise of provincial problems that the central government found itself unable to solve.<sup>106</sup> These same problems existed in the East, but on a smaller scale. Nevertheless, by Justinian's reign, the reorganization of eastern provincial administration became imperative, affecting, of course, the traditional role of the consistory.

The Praetorian Prefecture traditionally stood outside of the consistory, more often than not in jurisdictional conflict with consistorial ministers. Under John of Cappadocia, however, the Praetorian Prefect apparently gained considerable independent power over that body. This is evident from one of Justinian's *Novellae* that granted supervisory powers to the Praetorian Prefect hearing provincial appeals *in consistorio*.<sup>107</sup> On another occasion (probably *in consistorio*), John of Cappadocia alone led the opposition to the emperor's plan of invading Libya.<sup>108</sup> But the full extent of John's power manifested itself in Justinian's provincial reforms. Some of these changes eventually curtailed the traditional power of the consistory at Constantinople to act as supreme court of appeals for provincial petitioners.

In order to reduce the heavy load of appeals brought before the consistory, John of Cappadocia apparently initiated the first changes in the provincial court system.<sup>109</sup> Among

the measures introduced, the office of *defensor civitatis* was strengthened and made independent of provincial governors, and new officers, called *iudices spectabiles*, further reduced the governors' previous legal responsibilities.<sup>110</sup> Since the governors were notoriously corrupt as judges, these moves were intended to reduce the tremendous flow of appeals from their courts into Constantinople. In the capital itself, another new officer, the *quaesitor* was created to help regulate the influx of provincial appellants.<sup>111</sup> John apparently stopped short, however, of reforming his own office, perhaps fearing similar loss of its jurisdiction over appeals.<sup>112</sup> This seems probable, since one of Justinian's major reforms following John's demise established provincial vicarates fully immune from palatine interference.<sup>113</sup>

Justinian's realization of ineffectiveness in the palatine administrative hierarchy perhaps prompted one of his actions in Italy following its reconquest. He disbanded completely the palatine *comitatus*, including the consistorial ministries.<sup>114</sup> Provincial officers were granted autonomous control over tax collection, power which the consistory had traditionally contested.<sup>115</sup> At the expense of leaving the Roman senate without imperial posts to fill, it is attractive to suppose that Justinian also realized the danger of leaving a palatine structure operative in Italy, from which a usurper

might challenge his sovereignty.

Constantine Porphyrogenitus offers substantial evidence of Justinian ceremonial use of the eastern consistory. Although the remains of Justinian's imperial palace have almost totally disappeared, scholars have attempted to reconstruct the consistory and adjoining imperial apartments, where many historical events described by Constantine Porphyrogenitus took place.<sup>116</sup> His work, of course, incorporated Peter the Patrician's Latin treatise on Justinian's imperial ceremony, written four centuries earlier.<sup>117</sup> Despite its exclusion from the most recent edition of *On Ceremonies*, Peter the Patrician's work is the basis for any understanding of imperial ceremony in the sixth century.<sup>118</sup>

By this century, imperial ceremony *in consistorio* had apparently lost much of its ritualistic uniqueness that so impressed Ammianus Marcellinus two centuries earlier. For example, imperial ceremonies, once confined to the innermost chambers of the palace, now could be held in the Hippodrome, as if a public spectacle.<sup>119</sup> If he desired, the emperor also could promote officials in ceremonies held in his private quarters instead of *in consistorio*.<sup>120</sup> Thus the consistory lost much of its former uniqueness as a "sacred" institution celebrating advancement *intra consistorianos*. Justinian apparently felt more at ease

as administrator than in ceremony. His preference for informality might also help explain why his advisers were often described merely as domestic attendants instead of as consistorians.

Nevertheless, certain ministers and officers traditionally associated with ceremonies *in consistorio* remained prominent. One account, for example, concerns the promotion of the *comes admissio-num*, an officer who two centuries earlier as *magister admissio-num* had introduced Ursicinus into Constantius II's consistory.<sup>121</sup> The *comes* was still under the jurisdiction of the Master of the Offices, who was also present to witness and help initiate the ceremony.<sup>122</sup> At the outset of his account, Peter the Patrician sets the stage by equating *silentium* and *consistorium*, where "the emperor sat".<sup>123</sup> The Master then led all the magistrates into the emperor's presence to await the granting of codicil to the new *comes admissio-num*.<sup>124</sup> After receiving his *dignitas*, the new officer finally "adored the emperor's feet and stood near him".<sup>125</sup> Thus the initiate officially became a *comes consistorianus*, one who traditionally "stands in attendance" upon the emperor.

Although the Master of the Offices remained ceremonial chief of protocol in Justinian's consistory, the Praetorian Prefect's greater administrative importance is reflected in

the respect paid his office *in consistorio*. For example, in the ceremony of promotion to the rank of Augustalis, although the initiate is called *comes consistorianus*, his ultimate honors include his reception by the Praetorian Prefect into his own *officium*.<sup>126</sup> At another ceremony to receive Italian legates, Justinian's lower palatine officials "adored" the Gothic Praetorian Prefect acting as legate, a standard practice apparently only in the West.<sup>127</sup> The Urban Prefect, for his part, could also deliver a panegyric in praise of the emperor, just as John of Cappadocia did *in consistorio*.<sup>128</sup> As earlier in the West, the eastern Prefecture apparently also adopted many ceremonial features once exclusively the emperor's own.

In view of the complex ritual observed at the eastern court, it is doubtful whether serious political exchanges ever occurred between Justinian and foreign dignitaries *in consistorio*. There was always the occasion, however, for the emperor to remind legates of the trust involved in diplomacy. At a reception of Persian legates, for example, Peter the Patrician recounts how the emperor took the occasion to hold a "colloquium", obviously a basis for possible future pacts between the two powers.<sup>129</sup> Such a pact was traditionally termed an *amicitia*, a concept also having consistorial significance.<sup>130</sup> For the consistory fundamentally existed

as an institution that brought individuals together, whether imperial officers, foreign legates or citizen petitioners, in the mutual quest for imperial recognition. Ceremonies *in consistorio* made that recognition explicit by the grant of imperial *amicitia*.

Justinian's lack of a permanent, *ex officio* consistory followed the tradition of recent Roman history. His official introduction of the *silentium et conventus* into Roman law was undoubtedly prompted by the urgent need to find a more efficient way to handle provincial appeals. But it was only a limited recognition of the recent tradition of greater senatorial participation in judicial affairs. Concerning administrative advisers, the term <sup>3/</sup>ἀρχοντες or *proceres* still dominated sixth century sources, implying the traditional ad hoc basis for selecting imperial confidants. Justinian also reinforced that tradition early in his reign by his reluctance to grant independence to any one of his palatine ministers. Only the Praetorian Prefect dominated consistories, probably capitalizing on his pre-eminence as appeals minister.

Justinian's consistory maintained historical importance as a ceremonial institution, possibly rivalling its prestige under Constantius II two centuries earlier. As Constantinople eclipsed Ravenna and Italy fell to the Goths, the eastern consistory became the last stronghold of Roman imperial

ceremony. It continued for some centuries to remind the civilized world that Byzantine rule was the only legitimate link with the Roman past. Byzantine imperial ceremony beginning with Justinian, in some sense last of the Roman emperors, symbolized that past, and the consistory expressed that legacy in a fusion of oriental and occidental splendor.

NOTES TO CHAPTER VII

1. For this military tradition, see W.G. Sinnigen, "Administrative Shifts of Competence under Theodoric", *Traditio*, XII (1965), 457-58; cf. Th. Mommsen, *Gesammelte Schriften* (8 vols.; Berlin: Weidemann, 1905-1913), VI, 483.
2. For the title of *rex*, see Mom., *Ges. Schr.*, VI, 422, 479; W. Ensslin, *Theodorich Der Grosse* (München: München Verl., 1947), 159; for the view that Theodoric had unofficial control over the *officium* of the *magister militum*, see A.H.M. Jones, "The Constitutional Position of Odoacer and Theodoric", *Journal of Roman Studies*, LII (1962), 128-30, whose view modifies that of Mommsen, Stein and Ensslin.
3. Cf. pp. 128-30 above; both Odoacer and Theodoric, similar to Stilicho, also used the official title *patricius* (see Sinn. "Shifts", 458), but the title was essentially honorific, bestowed as a sign of "good will" by the eastern emperor (Jones, "Pos.", 126, 129).
4. On the ministerial rule of Rufinus, Eutropius and

- Aurelian in the East, cf. pp. 132-35 above; for the Gothic *Gefolgschaft*, see Sinn., "Shifts", 465; for the Gothic administration in general, see Mom., *Ges. Schr.*, VI, 404.
5. For these various reasons in order, see Jones, "Pos.", 129 (cf. Jones, I, 245); M. Brion, *Théodoric, roi des Ostrogoths: 454-526* (Paris: Les Belles Lettres, 1935), 243; Sinn., "Shifts", 466; under the Goths, the Roman senate continued to maintain the high prestige it had achieved during the preceding century (see Mom., *Ges. Schr.*, VI, 423; Stein, II, 43).
  6. For these ministers in general under the Goths, see Ens., *Theod.*, 28, 165-72.
  7. For the older view, see Ens., *Theod.*, 165-66; Mom., *Ges. Schr.*, VI, 406-09.
  8. "Pos.", 128-29 (cf. Jones, I, 254-55; III, 48, n.43); for a general statement of the problem, see Sinn., "Shifts", 461-64.
  9. On the use of the *agentes* by Constantius II, bypassing the Master's control, cf. pp. 58-60 above.
  10. For these Gothic officers, see Ens., *Theod.*, 173;

- Jones, I, 254-55; Mom., *Ges. Schr.*, VI, 455-56;  
 Stein, II, 121; for the use of the *comitiaci* and  
*saiones* to interfere with the centralized bureaucracy,  
 see Sinn., "Shifts", 464-66.
11. For the career and writings of Cassiodorus, see Stein,  
 II, 109; on the situation in the fifth century, cf.  
 pp. 172-76 above.
  12. For the *comes patrimonii*, see Stein, II, 51-52;  
 Jones, I, 255; Kent, 22; the office was primarily  
 held by Goths in the West (see Jones, "Pos.",  
 129-30).
  13. Var. 6.9.1-3; for the problem of using Cassiodorus  
 historically, see Sinn., "Shifts", 459-60; Cassiodorus'  
 references to *curae*, *collocutio*, and *nostrae aures*  
 all have traditional consistorial connotations  
 (cf. p. 30 above: CJ. 1.14.12: *aures . . . nostrae*).
  14. Sinn., "Shifts", 460; cf. pp. 90-91 above.
  15. Mom., *Ges. Schr.*, VI, 399, 421 (cf. Brion, 224);  
 the *scholae palatinae* were also reduced, affecting the  
 Master's jurisdiction (see Sinn., "Shifts", 459); in  
 the East, the influence of Anastasius' notaries was  
 strong and the emperor himself rose to power from the

- position of silentiarion (see pp. 185-87 above).
16. On the traditional relationship of these two *officia* to the two ministers, cf. pp. 58-59 above.
  17. *var.* 5.41.3; for the office of *referendarius*, see *Ens.*, *Theod.*, 169; Jones, II, 575.
  18. *var.* 6.17.1.
  19. On the consistorial significance of *praesentia nostra*, *honos* and *nostra colloquia*, cf. pp. 61, 31 above; p. 246 above; acting as *referendarius*, Cyprian was later instrumental in having Boethius condemned for treason (see pp. 227-28 above).
  20. *Ges. Schr.*, VI, 483; Theodoric's reliance on *ad hoc* personnel, particularly in governing the provinces, reminds one of the situation at the end of the third century, when itinerant imperial advisers (*comites*) were also prominent (cf. pp. 25-28 above).
  21. *var.* 4.40.3; cf. *var.* 1.7.3; 1.8.3; 2.20.1; 4.44.2; 5.12.3.
  22. *var.* 5.15.3; on the "oracular" judgment of the emperor *in consistorio*, cf. p. 96 above.
  23. On the traditional relationship of the *comitatus* to

- the consistory in hearing provincial appeals, cf. pp. 91-93 above.
24. Ens., *Theod.*, 164-65 (cf. Mom., *Ges. Schr.*, 462, n.2).
  25. Jones, "Pos.", 126.
  26. Cass. Var. 6.6.2; for the reduction of the Master's functions to ceremonial affairs, see Sinn., "Shifts", 459; by this time, the Praetorian Prefect had usurped his position as "the alter ego of the emperor" (Mom., *Ges. Schr.*, VI, 399).
  27. Cass. Var. 5.3.3; cf. p. 101 above.
  28. Var. 5.26.2.
  29. On these two traditional aspects of the consistory, cf. pp. 61, 67 above.
  30. Var. 6.3.4-5; on similar scenes emphasizing the recent preeminence of the Praetorian Prefect and his *officium*, cf. pp. 181-82 above.
  31. On the consistorial terms *proceres* and *conscripti*, cf. pp. 177, 181 above; for Theodoric's use of the term *proceres*, see Ens., *Theod.*, 27, 174-75 (cf. Mom., *Ges. Schr.*, 457, n.1).
  32. *Acta Symm.* 4, 5; for the minimal interference by Gothic

- kings in Church affairs, see Jones, I, 263; in Jordanes, *get.* 289, 300, 304, Theodoric's advisers are called *proceres*, *primi* and *primates* (on *ad hoc primates* under Constantius II, cf. *Amm.* 15.5.18 [p. 9 above]).
33. For the reference to *aulicum consistorium*, see pp. 222-23 above.
34. *Var.* 5.41.3 (p. 220 above).
35. *Var.* 11.6.3.
36. *Var.* 6.12.2-3.
37. "Comites Consistoriani in Ostrogothic Italy", *Classica et Mediaevalia*, XXIV (1963), 164 (cf. Stein, "Staat.", 225; *ibid.*, II, 120; *Ens.*, *Theod.*, 172, n.78).
38. "Comites", 164.
39. 14.7.10-12: *rogatus . . . admissusque in consistorium* (p. 49 above).
40. *Cass. Var.* 6.12.1.
41. *Cass. Var.* 2.28 is addressed to a Stephanus, who received the honorary Countship of the First Order following retirement from the functional post of *princeps officii nostri* (see Stein, "Staat.", 224);

as a member of Theodoric's personal *officium*,  
Stephanus was perhaps "invited" to appear personally  
before Theodoric to receive his honor.

42. Cf. Sinn., "Comites", 159-60.
43. See J. Sundwall, *Abhandlungen zur Geschichte des Ausgehenden Römeriums* (Helsingfor: Ofv. Finska Vet. Soc. Förh., 1919), 244-48.
44. Anon. Val. 85.
45. *ibid.* 86.
46. *ibid.* 87.
47. Sund., *ibid.*, 248.
48. *ibid.*
49. The most complete account is Const. Porph. *Cer.* 1.93; for the obscurities and conflicting views from other sources, see Jones, I, 267-68; A.A. Vasiliev, *Justin the First* (Cambridge: Harvard University Press, 1950); for the general circumstances, see Stein, II, 219; B. Rubin, *Das Zeitalter Iustinians* (2 vols.; Berlin: de Gruyter, 1960), I, 55.
50. *Cer.* 1.93 (*CSHB*, 426); both Celer and Justin apparently were the leading candidates for imperial nomination

- (Rubin, I, 55); for the *excubitores*, part of the imperial bodyguard, see Jones, II, 658-59.
51. For the sequence of events involving these factions, see Const. Porph. *Cer.* 1.93 (CSHB, 426-27); it is difficult to define "magistrates" (*ἀρχοντες*) and other official terms at this period (see Boak, "Cor.", 42; Ch. Lecrivain, *Le sénat depuis Dioclétien à Rome et à Constantinople* [Paris, 1888], 226-28); in *Coll. Avell.* 141, Justin omits mentioning "the people" (*δῆμος*) as a factor in his elevation, but includes the senate, perhaps part of Constantine Porphyrogenitus' "magistrates" (cf. Vas., 75, where "high officials of senatorial rank in general" include *ἀρχοντες*).
52. For the implications of this source, see Jones, I, 268; by the sixth century, the Head Chamberlain was extremely influential (see Dunlap, 284; cf. pp. 97-98 above); on "domestic" personnel as imperial advisers, cf. pp. 237-38 above.
53. For the autocratic character of both Justin's and Justinian's reigns, see Stein, II, 278-79; G. Ostrogorsky, *History of the Byzantine State*, trans. by J. Hussey, 2nd ed. (Oxford: Blackwell, 1968), 73-76; Rubin, I, 85; part of this criticism,

- of course, stemmed from the aristocratic bias of authors against *novi homines*, such as Justin and Justinian (Rubin, I, 65-67); Justinian apparently had a suspicious and restless character that demanded a highly docile administrative structure (J.W. Barker, *Justinian and the Later Roman Empire* [Madison: University of Wisconsin Press, 1966], 80; C. Diehl, *Justinien et la civilisation byzantine au VI<sup>e</sup> siècle* (Paris: E. Leroux, 1901), 122; J.B. Bury, *History of the Later Roman Empire* (2 Vols; London: MacMillan, 1923), II, 27.
54. For Celer's resignation, following the scholarians' attacking Justin at his accession, see Vas., 52, 402; for the strict control exercised by Justinian over the later scholarians, see Vas., 401-02; Rubin, I, 64.
55. From 533 to 534, Tribonian was Master of the Offices, following his demotion from Quaestor under pressure from the Nike Revolt, after which he again became Quaestor in 535 (see Jones, I, 279; Diehl, 104-05); in Just. Nov. 23 (536), Tribonian is addressed as both Master and Quaestor, although the substance of the legislation clearly concerned his competence as Quaestor (for the influential career of Tribonian, see P. Noailles, ed., *Les collections de Nouvelles de*

*l'empereur Justinien* [2 vols; Paris: Sirey, 1912],  
I, 5.)

56. Justinian's most famous "ambassador-at-large" was his Master Peter Barsymes (Proc. *HB* 8.11.2; Jones, I, 295); Peter negotiated with Theodahad, a barbarian king (for these negotiations, see Jones, I, 275); the Prefect John of Cappadocia apparently was responsible for reducing much of the Master's traditional palatine jurisdiction over the *cursus publicus* and the scholarians (Jones, I, 284).
57. For these terms applied to both Counts, see Joh. Lydus *Mag.* 2.27; Proc. *HA* 22.12 (for the historical worth of Procopius' *Secret History*, see Stein, II, 720-21; cf. Jones, I, 266-67; its evidence should always be corroborated by other sources); for the traditional use of *palatini* to describe consistorial *officiales*, see p. 90 above.
58. On their reduced financial powers, cf. pp. 172-74 above.
59. For the office of *comes patrimonii*, see Jones, I, 425; although obscure in its exact jurisdiction, the *comes patrimonium* under Justinian represented "a court official rather than a state official", indicating the

- decline of the two Counts' traditional autonomy (Bury, II, 354-55); the *comitivae* of both financial Counts also continued to lose financial jurisdiction to the Praetorian Prefect (Stein, II, 424-25).
60. It is implied that Peter Barsymes was reduced in rank to Count of the Sacred Treasury from Praetorian Prefect in 546 due to popular pressure, but in 554/5, he became Prefect once more, continuing in that office probably until his death (see Jones, I, 295).
61. Proclus advised Justin against accepting the Persian offer to have King Chosroes' son adopted (Evagr. 4.12; Proc. HB 1.11.10-12; cf. Proc. HA 9.41); Proclus apparently acted in *consistorio* (ἐν βουλῆ), (for Proclus' exceptional influence, see Stein, II, 246-47; Vas., 128).
62. Tribonian was Justinian's most active and influential legal adviser (see n.55 above); for Justinian's activity as lawgiver, see Rubin, I, 158-65; Stein, II, 281.
63. Stein, II, 405-07.
64. For John of Cappadocia's influence, see E. Stein, "Justinian, Johannes der Kappadozier und Der Ende der Konsulats", *Byzantinische Zeitschrift*, XXX (1929-30),

- 377-79; Jones, I, 284-85; Stein, II, 435-36; for the monumental expenses involved in Justinian's campaigns, see Jones, I, 283-85.
65. For John's provincial reorganization, see Jones, I, 279-83 (pp. 242-43 above); under John, the Praetorian Prefect was also apparently instrumental in reducing the *cursus publicus* and disbanding four regiments of the *scholae palatinae* (Jones, I, 284).
66. *Coll. Avell.* 142.45, 147 (for a discussion of these letters, see Vas., 162-63); Anastasius had also used consistorial personnel in connection with papal negotiations (*Coll. Avell.* 111).
67. Gratus is acknowledged as *comes sacri nostri consistorii* first in *Coll. Avell.* 143; previous to this (*Coll. Avell.* 142), he is referred to without title.
68. For Gratus as *iudex*, see *Coll. Avell.* 144 (on the consistorial title *iudex*, cf. pp. 52-53 above).
69. Justinian calls himself *comes* (*Coll. Avell.* 162), after referring to Gratus as his *amicus* (*Coll. Avell.* 147); for Justinian as *comes* (probably *domesticorum*) under Justin, see Vas., 92, 179; Stein, II, 222-23; by this time the *comes domesticorum* was part of the

- consistorial entourage (see p. 175 above), indicating Justinian's "official" advisory position to his uncle, Justin.
70. For the traditional association of *amicus* with the *consilium principis*, see p. 65 above; by Justinian's period, the use of the term to describe imperial advisers had virtually disappeared.
71. Jones, I, 268-69; Vas., 179.
72. Similar to Constantius II's reliance on *comites*, *agentes in rebus* and notaries (pp. 58-60 above), Justinian also relied on bureaucratic *secretarii* and *referendarii* in a variety of duties under his own direct control (Joh. Lydus *Mag.* 3.27; Proc. HA 14.11); the significance of the two offices under Justinian has been fully discussed in Stein, *Off.*, 49-50; II, 737-38;
73. Const. Porph. Cer. 1.95 (cf. Rubin, I, 125; Treit., 53).
74. CJ 1.2.22; 1.14.12; 2.55.4; 4.1.12; 4.34.11; 5.12.30; 5.30.5; 6.4.3; 6.30.19; 6.42.30; 6.61.6; 8.53.34; 11.48.20; by this time the Praetorian Prefect was an important appeals minister working closely with

palatine jurisdiction (for the complicated appeals system shared by the Prefect and the emperor, see Jones, I, 504-07).

75. *CJ* 1.14.12.
76. For Justinian's later reorganization, see pp. 242-43 above.
77. On the fifth century use of *proceres* to denote an *ad hoc* basis for choosing advisers, cf. pp. 177-78 above; at this time, Justinian also apparently relied on *ad hoc* delegations of judges for certain appeals outside the consistory (see Jones, I, 506; Vas., 392); for the inadequacy of many of the judges, particularly under the Praetorian Prefect, see Jones, I, 500-01.
78. On similar legislation promulgated *in consistorio* under Julian and Theodosius I, cf. pp. 31, 102 above; for Justinian's commemoration here of his building suburban consistories, see Diehl, 86.
79. *Just. Nov.* 23 (536); 62 (537) (for the significance of this legislation, see Diehl, 98; *Lecr.*, 225-26; Rubin, I, 165; Stein, II, 432); for similar legislation concerning *proceres* under Theodosius II, see pp. 177-78 above.

80. On the non-legal evidence for *silentium et conventus* before Justinian, cf. pp. 146-47, 192-95 above.
81. Just. Nov. 62.2.
82. For the Quaestor Tribonian's authority as chief legal adviser to Justinian, see pp. 231-32 above; for the Praetorian Prefect's power, see p. 232 above.
83. In Just. Nov. 62.1, Justinian extolled the administrative responsibilities of the senate; cf. *CJ* 1.14.8 (pp. 177-78 above) also recalling the earlier tradition of the *consilium principis*.
84. Proc. *HB* 1.24.10; for the influence of the circus factions on the revolt, see Stein, II, 239; Vas., 115.
85. Proc. *HB* 1.24.10-11.
86. Proc. *HB* 1.24.32.
87. Proc. *HB* 1.24.33.
88. Proc. *HB* 1.24.10: βασιλεὺς δὲ καὶ ἡ συνοικουσα καὶ τῶν ἀπὸ βουλῆς ἐνιοι; on Procopius' peculiar use of συνοικουσα, cf. *HA* 14.8.
89. For the term indicating the imperial court in general, see Proc. *HB* 1.24.32: οἱ δὲ ἀμφὶ τὸν βασιλέα ἐν

βουλῆ ἦσαν; cf. also *HB* 3.10.2, where the council held on the possible invasion of Libya is also called a βουλή, apparently without senatorial participation; in *HB* 7.32.43, Procopius uses βουλή συγκλήτη to indicate a *conventus* of senators trying Artabanus (n.99 below); that only part of the senate supported Justinian in the Nike Revolt is clear from *HB* 1.24.25: ἤδη δὲ καὶ τῶν ἐκ βουλῆς ξυνιόντων, ὅσοι οὐκ ἀπολειφθέντες ἐτύγχανον ἐν τῇ βασιλεύσῃ αὐτῇ.

90. *HB* 1.24.39.

91. See p. 230 above.

92. On traditional conciliar debate *in consistorio*, cf. pp. 95-101 above.

93. Proc. *HB* 3.10.1-22.

94. Proc. *HB* 3.10.8: τῶν ἄλλων σιωπῇ τὰς παρούσας ὀδυρομένων τύχας; on the tradition of "silence" *in consistorio*, cf. p. 36 above.

95. Proc. *HB* 3.10.8; on the tradition of imperial *pietas* and παρρησία *in consistorio*, cf. pp. 11, 66 above; for the practical effect of panegyrics on imperial policy, see G. Downey, *Justinian and the Imperial Office*, (Cincinnati: University Press, 1968), 8-9.

96. HB 3.10.3: ὁ τοῦ ταμειρίου ἡγούμενος καὶ ὅτω ἄλλω  
 φόρου ξυλλογῇ δημοσίου ἢ βασιλικοῦ ἐπετέτακτο;  
 for the three financial Counts involved in tax collection  
 under Justinian, see p. 231 above.
97. HB 3.10.4-5.
98. Only ἀρχαί attended the meeting, called a βουλή (Proc.  
 HB 3.10.2); on Procopius' varied use of the latter term  
 to describe council meetings, cf. n.89 above.
99. Proc. HB 7.32.43: ἅπαντας βασιλεὺς τοὺς ἐκ τῆς  
 συγκλήτου βουλῆς ἐν παλατίῳ ἑκάθισεν; here it is clear  
 that a *conventus* was convoked, since the entire senate  
 sat in session.
100. Proc. HB 7.32.46.
101. Proc. HB 7.32.47: ἐπεὶ δὲ εἴσω πάντες ἐν βασιλέως  
 ἐγένοντο . . . τῶν τε ἀρχόντων δύο μὲν τινες θεραπεύοντες  
 αὐτον ὡμολόγουν τὴν γνώμην; for a discussion of this  
*silentium*, see Stein, II, 591.
102. Proc. HB 7.32.48; for a similar scene in *consistorio*,  
 see pp. 238-39 above; the emphasis on "silence"  
 surrounding Justinian's *silentia* seems characteristic  
 of his autocratic character.

103. On Constantius II's similar attitude toward consistorial meetings, cf. *Amm.* 15.5.5 (p. 51 above); where a relatively minor palatine officer, Malarichus, also had to speak out against autocratic proceedings; on another comparison between the two emperors, cf. n. 72 above.
104. Malalas 18 (*CSHB*, 493-95): although Malalas calls the trial a *σιλέντιον κομβέντων* (*CSHB*, 494), only "magistrates", the Patriarch of Constantinople and some scholarians attended (for the discussion of this source with others used by Stein to prove a *silentium et conventus* under Justinian, see Stein, II, 779, n.5).
105. Cf. *HA* 8.24-26; 11.1; 13.21; in *HA* 14.7-8, although Justinian and the senate apparently met as if *in conventu*, a prior decision had already been made by the emperor and his *σύνοικος*.
106. On the situation in the West during the late fifth century, cf. pp. 182-83 above.
107. *Just. Nov.* 62.2 (p. 236 above).
108. *Proc. HB* 3.10.8 (p. 239 above).
109. For the urgent need for provincial reform under Justinian, see Diehl, 272; Stein, II, 470.

110. For the office of *defensor civitatis* at this time, see Bury II, 336-67; Stein, II, 467-68; for that of the *iudices spectabiles*, see Jones, I, 282.
111. For the office of *quaesitor*, see Stein, II, 455-56.
112. Jones, I, 283.
113. For this reform, see Jones, I, 294; Stein, II, 465-66.
114. For this move, see Jones, I, 291; on the significance of the Gothic *comitatus*, cf. pp. 221-22 above.
115. Cf. p. 90 above.
116. For some colorful reconstructions of the early Byzantine palace, see Diehl, 82, 91-92; Boak, "Cor.", 38-42; Eb., 77; Vogt, I (*Comm.*), 98.
117. For the relationship of Peter's Latin work to Constantine Porphyrogenitus' *On Ceremonies*, see Stein, II, 723-29, especially 728, n.3.
118. Vogt's edition of *On Ceremonies* excludes Peter the Patrician's work (c.6, n.60 above); for the importance of Peter's work as a basis for understanding Justinian's ceremonies, see Diehl, 88-89.
119. Const. Porph. Cer. 1.84A (*CSHB*, 386); for the relationship of the *silentium* to the sixth century Hippodrome,

- see Christophilopulu, 84.
120. Const. Porph. Cer. 1.84C (CSHB, 387); for the private imperial *cubiculum* in imperial ceremony, see H.W. Haussig, *A History of Byzantine Civilization*, trans. by J.M. Hussey (London: Thame & Hudson, 1971), 54; Justinian's use of the *cubiculum* characterizes his informal attitude toward courtly activity (cf. pp. 233-34, 237 above).
121. Const. Porph. *ibid.*; on Ursicinus' reception, cf. Amm. 15.5.18-19 (p. 9 above).
122. Const. Porph. *ibid.*; for the Master's jurisdiction over the *comes admissionum* (earlier called *magister admisionum*), see Boak, *Master*, 14.
123. Const. Porph. Cer. 1.84A (CSHB, 386); for the significance of the *silentium* as primarily a ceremonial audience to receive dignitaries, see Christophilopulu, 80, 83-84; the seated posture of the emperor has a long consistorial tradition (see p. 15 *passim* above).
124. Const. Porph. Cer. 1.84B (CSHB, 387).
125. *ibid.* C (CSHB, 387): καὶ λαβὼν φιλεῖ τοὺς πόδας αὐτοῦ, καὶ ἵσταται ἔμπροσθεν αὐτοῦ;  
for the tradition of the standing attendant,

- in consistorio* see p. 16 *passim* above.
126. Const. Porph. Cer. 1.85; for the *augustalis* as a member of the Praetorian Prefect's *officium*, see Jones, II, 587; for the numerous entourage surrounding the Praetorian Prefect, see Zach. Myt. Chron. 9.14 (cf. pp. 181-82 above); John Lydus (*Mag.* 3.30) furnishes a vivid description of his own participation in the Praetorian Prefect's "court".
127. Const. Porph. Cer. 1.88B (*CSHB*, 397); for the *adoratio* of the Praetorian Prefect in the West, see p. 224 above.
128. Const. Porph. Cer. 1.87C (*CSHB*, 395); on John's panegyric *in consistorio*, cf. p. 239 above.
129. Const. Porph. Cer. 1.90D (*CSHB*, 409); for the translation of *συντυχία*, meaning "colloquium", see Reiske, *CSHB*, XIII, 407.
130. Const. Porph. *ibid.*: *τελεία φιλία*; for the traditional *amicitia in consistorio*, see pp. 65-66 above.

## CONCLUSION

If one general characteristic stands out in the development of the consistory from Diocletian to Justinian, it is the rule of least resistance to whoever was emperor at the time. Lacking institutional autonomy, the consistory inevitably reflected the general policies held by each of the emperors in power. Ministerial membership in *consistorio* depended too much on imperial favor not to suffer periodic purges on the occasion of a change of ruler. Only the lower echelons of consistorial *officiales* might escape unscathed, until they themselves rose in rank, assuming more vulnerable positions as high ministers of state

In summary, the major developments of the consistory followed a checkered pattern characteristic of each emperor's major concerns. Under Diocletian, the beginnings of a new court etiquette emphasizing greater consciousness of rank before semi-divine authority helped put an end to the more informal tradition of the *consilium principis*. In its place, the fully developed *consistorium domini* under

Constantius II reflected the elevated majesty of an emperor whose notoriously suspicious character made him more feared than revered. In the second half of the fourth century the administrative capacity of the consistory increased, as emperors like Julian and Valentinian I gave less emphasis to ceremonial matters of state.

Early in the fifth century, evidence suggests that increasing militarization of normally civil affairs at Ravenna fostered a consistory with ex officio membership, although without autonomy. Stilicho's policy of civil subordination to military rule stripped the consistory of any competition for office by ministers, the heart of consistorial administrative activity since the early Pannonian emperors. In the East, however, this competition apparently continued unabated, as reflected in the court turmoil under Rufinus and Eutropius, each minister striving to increase his own power under the minority rule of Arcadius. Contrasting sharply with the West, where the apathy of the consistory resulted from Stilicho's ironfisted rule, the court at Constantinople became increasingly unmanageable, ending with Arcadius' symbolic attempt to recruit the palace guard as *amici principis*.

During the rest of the fifth century, increasingly chaotic conditions in the West left the consistory largely

ineffective, as provincial officers assumed greater burdens of once centralized administrative responsibilities. Gothic rule accelerated this process further, Theodoric relying heavily on his itinerant *Gefolgschaft* to fill consistorial duties once performed at Ravenna. In the East, on the other hand, the consistory continued to play an important role in both domestic and foreign affairs, although Justinian reduced its activities mainly to hearing provincial appeals jointly with the senate. The Praetorian Prefect now presided over these hearings, replacing the authority once enjoyed by individual palatine ministers *in consistorio*.

In essence though, the consistory experienced only superficial change throughout the course of its long development. Under a political system that emphasized one-man rule, necessarily backed by a strong military, it is unrealistic to expect the growth of an ever-increasing autonomous agency of centralized government, staffed with ministers who shared responsibilities by virtue of office and experience. On the contrary, such a system promoted highly personalized attitudes from emperors who came into daily contact with consistorial ministers, whether trusted or not. A reluctance to delegate authority necessarily follows, if security resides solely in the greatest amount of authority possessed by one man.

Originally a ceremonial setting to glorify imperial majesty, the *consistorium domini* never lost that quality of subservience attached to its earliest activity. Even when granted maximum administrative freedom, as, for example, under Valentinian I, the consistory nevertheless remained largely dominated by the overriding concerns of petty ministerial rivalries. Perhaps the chief reason for its lack of autonomous decision-making lay within the imperial system itself. Mutual responsibility for governing the empire *in consistorio* had little opportunity to develop as long as the threat of imperial suspicion remained hanging over its activities. From Constantius II to Justinian, imperial suspicion constantly interfered in the daily concerns of consistorians to manage the empire. In short, the genitive sense of *consistorium domini* was always possessive, indicating for posterity where the ultimate source of authority lay in administering the later Roman Empire.

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- CSHB*             *Corpus scriptorum historiae Byzantinae.* Edited by B.G. Niebuhr. 34 vols. Bonn: Weber, 1828-97.
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