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New Meanings

Reading practices have always responded to changing media landscapes, as new formats and writing practices demand novel strategies of understanding. Today, the simple presence of hyperlinks in online news stories results in significantly increased recall of details and assessments of credibility, whether or not the information is credible, in point of fact.[1] Media bandwidth crescendoed over the past thirty years as new and social media were added to traditional outlets; in turn, all media have adapted to the new landscape or ceased operations. The expansion of outlets has led many to bemoan the downfall of credibility accorded to mainstream news organizations, as has the apparent proliferation of "fake news" from outlets with lower editorial standards than traditional media organizations, but near-equal reach.[2] Modern news consumers have adapted: educational institutions teach classes on "media literacy" to young students and even major, multinational corporations have begun to team up with governmental agencies to "empower[] young people with the critical thinking skills necessary in today's digital age."[3] Changing technology

[1] Wise, Bolls, and Schaefer "Choosing and Reading Online News: How Available Choice Affects Cognitive Processing"; Borah, "The Hyperlinked World: A Look at How the Interactions of News Frames and Hyperlinks Influence News Credibility and Willingness to Seek Information."

[2] Schiffrin, Santa-Wood, and De Martino, "Bridging the Gap: Rebuilding Citizen Trust in Media," 1–2.

[3] Burney, "Gov. Phil Murphy Signs a Law to Make N.J. First State to Require Media Literacy for K–12," *The Philadelphia Inquirer*, January 4, 2023; Apple Newsroom, "Apple Teams up with Media Literacy Programs in the US and Europe," Apple Press Release, March 19, 2019.

creates new subjects with novel reading strategies calibrated to exigencies of our media environment. We read differently than we once did, and when the social and political landscape shifts again, so too will our practices.

The same can be said of Late Antiquity: social, political, and material shifts necessitated novel interpretive strategies for scholastic productions. When Nicene Christians first came to significant political power in the late fourth century, they brought with them a structure of knowledge that gave pride of place to projects of aggregation, distillation, and promulgation. Chapter 4 detailed the proliferation of these tools from the margins to the center of the Theodosian scholarly landscape, while Chapters 5, 6, and 7 surveyed the effect of new scholarly practices on the production of manuscripts. My final chapter explores the net effect of the changes described: the new reading strategies that Theodosian Age readers implemented in response to new scholastic forms transmitted in novel formats. I am interested in what might generally be called "interpretive strategies," but which are more precisely modes of "actualization," to use Michel de Certeau's term.[4] As Roger Chartier writes:

> To reconstruct this process of the 'actualization' of texts in its historical dimensions first requires that we accept the notion that their meanings are dependent upon the forms through which they are received and appropriated by their readers (or hearers). Readers and hearers, in point of fact, are never confronted with abstract or ideal texts detached from all materiality; they manipulate or perceive objects and forms whose structures and modalities govern their reading (or their hearing), thus the possible comprehension of the text read (or heard). Against a purely semantic definition of the text … one must state that forms produce meaning and that a text, stable in its letter, is invested with a new meaning and status when the mechanisms that make it available to interpretation change.[5]

At stake for the Theodosian reader was not just understanding what the text in front of them said; they must discern the proper response to those words. The issue was rendered acute in a world of aggregation, when materials with different status stand on a single page, side by side. In nearly every instance, a reader must ask, "do these words express something true, and what is their value in relation to other assertions visible on the page?"

The rise of aggregation as a central facet of scholastic work necessitated the development of corresponding strategies of discernment. Chapter 6 detailed simple paratextual strategies through which

[4] De Certeau, *The Practice of Everyday Life*, 171. [5] Chartier, *The Order of Books*, 3.

Theodosian readers indicated heretical opinions, disused laws, and the like. Here I explore the intellectual strategies that scholars and readers implemented in order to retrieve truth from works whose format placed truth and falsity, heresy and orthodoxy, good law and supervened law, side by side. Of course, algorithms for determining truth within multivocal literary productions predate the Theodosian Age. Yet the sophistication and widespread implementation of these particular strategies across so many scholastic genres and linguistic divides mark the creation of these new reading strategies as particularly embedded in their intellectual environment. Such strategies were not new, but they were newly necessary across scholastic domains.

I argue that Theodosian Age readers responded to the literary scholastic environment of the late fourth and fifth centuries along two central trends. The first that I discuss, "rules for deciding," deal with the problems inherent in reading works of aggregative scholarship. The second, which I group under the heading "institutionalized suspicion of documents," deals with the stresses involved in compiling such works. The extraordinary preeminence of archival sources in Theodosian scholastic work led to new ways of approaching material handed down by tradition and to an invigorated suspicion of archives and documents. Simply put: if one is to authorize, codify, and promulgate a particular historical opinion, one must be certain that the source for that opinion has not been tampered with. Pressure to create monumental, universalizing works of final authority such as the *Theodosian Code* or official ecclesiastical pronouncements such as the *acta* of councils required certainty about the precise wording of archival sources. If conciliar proceedings held no intellectual weight, there would be little reason to certify the contents of *acta* with anything like the rigor brought to bear on the documents from Ephesus (431) or Chalcedon (451). During the Theodosian Age, however, when conciliar proceedings gained the patina of patristic authority and when the documents themselves were bestowed imperial backing, it *mattered* what they said. The centrality of documents to conciliar dispute appeared late in the fourth century, and was already firmly seated in 381, at least to judge by Palladius's exasperated response to Ambrose's insistent questioning at the Council of Aquielia: "You're the judge, [on account of the fact that] your note-takers are here! (*Tu iudex es, tui exceptores hic sunt*)."[6] Conciliar *acta* became theologically

[6] Text Mansi 3.607.

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dispositive only in the period of the Theodosian empire, and in this period we see an institutionalized suspicion of their production and of the production of documents that underlie the final, authorized codex.[7] So it was in the domain of Theodosian patristic theology, but such concerns echoed across the scholarly landscape.

This chapter thus situates Theodosian Age readers with respect to the Theodosian writers detailed earlier. In Chapter 4, I argued that scholars produced aggregative works with an eye toward how they were to be used. I argue now that Theodosian readers used these sources with cognizance of – and concern over – how the collections were produced. The resulting dialectic, visible perhaps only from the outside and in retrospect, defines the new order of books in the Theodosian Age that is my central focus. This chapter presents the last piece of the puzzle, placing textual producers and receivers together into a single frame. The story could not be told in a linear fashion because each Theodosian producer was also a receiver; there is no single way into or out of this labyrinth. But the effect of the analysis should be a sense of coherence visible even among fragmentary evidence.

RULES FOR DECIDING

The *Theodosian Code* was a universal statement of law, but it was compiled from constitutions that revised earlier legal practice, in most cases. Supervening laws were placed next to the laws they supervened, with little attention paid to the state of law prior to 312 CE. In consequence, the *Theodosian Code* is not a handbook of law; it would be nearly impossible to learn legal praxis simply by reading through the

[7] On the lack of early conciliar *acta*, especially stemming from the Council of Nicaea, see Battiffol, "Les sources de l'histoire du concile de Nicée," and Wikenhauser, "Zur Frage nach der Existenz von nizänischen Synodalprotokollen." Wikenhauser offers evidence that *acta* could have been taken – the technology was available and had been used for Christian theological disputations in the third century – but finds no reason to say that they must have been. Richard Lim argues that the lack of *acta* from Nicaea proves that "predominant goal of the council [was not] to secure a formal refutation of a particular theological position." Lim, *Public Disputation*, 184. Lim's position is unfalsifiable, and therefore not particularly interesting historiographically, but I note that it was apparently not an interesting question in antiquity whether there was a protocol taken during the Council of Nicaea, which one would naturally expect of an imperial gathering of such a large size. Athanasius, Hilary, and their interlocutors do not wonder at the lack of *acta* from Nicaea, nor do any claim that such a resource would be useful. Before the late fourth century, conciliar *acta* (whether they were notionally available or not) apparently weren't particularly relevant to theological dispute.

content of the *Code* without the framing offered in works by the great classical jurisconsults: Gaius, Ulpian, Papinian, and the like.[8] There are, however, some constitutions preserved that deal directly with legal praxis, and with the selection and weighing of sources by lawyers in the Theodosian legal framework. I turn to one such example now.

The so-called "mini-code of 426" was promulgated at Ravenna under the authority of Theodosius II and Valentinian III (though presumably the constitution reflects Galla Placidia's wishes rather than those of her son Valentinian, who was seven years old at the time), including both reforms to inheritance law and clear statements about the sources of law that could be legitimately cited in court as precedential. The "mini-code" was excerpted into five extant constitutions, of which one survives in the *Theodosian Code* and four survive in the *Justinianic Code*.[9] The portion of this "mini-code of 426" that survives in the *Theodosian Code* is perhaps the most interesting, as it deals both with the issue of validating sources and the problem of discernment among competing authorized voices. The constitution is often referred to as the *Law of Citations*, and it is perhaps the purest example of the dangers involved in producing and using aggregative scholarship in service of a universalizing knowledge regime. In it we see a clear illustration of both facets of Theodosian Age textual practice under scrutiny in this chapter: an institutionalized suspicion of documents and rules for deciding.

On its face, the *Law of Citations* provides for the authorization of a collection of Severan juristic texts as holding an equal standing as those of earlier Republican and Imperial jurists. It reads:

> We confirm every writing of Papinian, Paul, Gaius, Ulpian, and Modestinus, such that the same authority shall attend Gaius as Paul, Ulpian, and the others. Additionally, passages from the whole body of his work may be offered [as evidence]. We also decree to be valid the learning of those persons whose treatises and opinions all the aforesaid jurists have incorporated in their own works, such as Scaevola, Sabinus, Julianus, and Marcellus, and all others whom they cite, provided that, on account of the uncertainty of antiquity, their books shall be

[8] Little is known about the typical course of legal education before the sixth century, when Justinian's *Digest* was completed and became the cornerstone of the Roman legal educational system. Justinian's 533 edict *Omnem* briefly discusses the system of education in Berytus before his reforms.

[9] *CTh* 1.4.3, *CI* 1.14.2, 1.14.3, 1.19.7, 1.22.5. Matthews argues that it is "clear" that the *Theodosian Code* is incomplete here, and originally contained all of the extant excerpts. Matthews, *Laying down the Law*, 66.

confirmed by a collation of the codices (*propter antiquitatis incertum, codicum collatione firmentur*). (*CTh* 1.4.3)

The *Law of Citations* authorized the texts of Papinian et al. for use in Roman courts. Codification and authorization of previous authorities, like we see here, was right at home in the courts of Theodosius II and Valentinian III, and recalls any number of parallel scholastic productions of the Theodosian Age detailed earlier. However, the law provides for more than just the authorization of certain sources. It imposes a condition as well: juristic opinions shall be authorized only after they are confirmed through a collation of the books – or, roughly, a confirmation of the wording of the text through multiple independent witnesses. According to the law, this verification is to take place "on account of the uncertainty of antiquity (*propter antiquitatis incertum*)"; because the authors of these texts were long dead, their opinions had been transmitted and commented upon repeatedly in the centuries intervening, and as a result the precise wording had a distinct capacity for instability. In the *Law of Citations* we see a Theodosian attempt to aggregate and authorize the work of a scholastic patrimony, and we find a correlated concern for the purity of the textual tradition involved. The law states that the textual tradition must be confirmed because the resource produced will become a codified authority.[10] This is not a garden variety concern for textual purity: the drafters of this constitution, working in the court of Galla Placidia, were concerned with scribal or editorial incursions into these sources precisely because the end point of the project was legal authorization and promulgation of a certain set of juristic texts; it needed to be right.

The *Law of Citations* does not authorize ancient legal opinions themselves but rather certain *texts* produced by ancient legal thinkers, and specifically the original wording of those texts. For instance, Paul's, Ulpian's, and Papinian's opinions are equally authorized, but not Paul's and Ulpian's commentaries on Papinian: the law explicitly states that the markup/commentary (*notae*) of Paul and Ulpian on the text of Papinian (*in Papiniani corpus*) are not to be considered valid, precedential opinions. So, while the law orders that opinions of Paul are to be certified and authorized, even his authentic comments on the text of Papinian are not.

[10] Even in the context of an imperially sanctioned imperative to "get the text right," as it were, some mistakes slipped through in the *Theodosian Code*. For instance, *CTh* 9.5.1 and *CJ* 9.8.3 transmit fragments of the so-called *Edictum de accusationibus*. These fragments are attributed to Constantine in both codices, but they were in fact issued by Galerius. See Dillon, *The Justice of Constantine: Law, Communication, and Control*, 14.

In other words, the concern was to establish Papinian's words as he wrote them, without corruption from later commentary or editorial incursions – even when the incursions in question are the product of another authorized jurist like Ulpian, whose opinions are acknowledged as equally authoritative by the very same statute.[11] The law stands within a tradition of the increasing textualization of legal praxis during the Theodosian empire. With the *Law of Citations*, the court of Galla Placidia placed ancient works of scholarship – and specifically an authorized version of the texts – as the final arbiter of legal orthodoxy and orthopraxy. Suspicion of the documents and archives in question is motivated by the fact that these books will become the final word on legal matters. There is, then, a sense in which I agree with Oronzo Pecere's suggestion that the act of textual verification and emendation changed in a Christian imperial context:

> In a culture which has deconstructed the literary institutions of classical society, replacing the consolidated hierarchies of its authors/authorities (*auctores*) with biblical texts and commentaries (the center of which, as a result, is the belief that every earthly event or human action carries out a divine plan) it is not surprising that the correction of a book is not simply a technical-scholarly operation, but is conceived according to a theological perspective: in fact, in it the tradition of Alexandrian philology is merged with that of biblical criticism, which had refined the methods and forms of reading texts by experimenting with complex questions of authenticity (*Echtheitsfragen*). Moreover, it should be noted that for Christians, writing itself, traditionally considered a lowly technical craft (*opus servile*), becomes a means for moral and spiritual elevation.[12]

Pecere is right to note that in the Theodosian Age the tradition of textual emendation came to be spiritually significant, and significantly concerned with questions of textual and archival veracity. I hope that this chapter and Chapters 6 and 7 serve to demonstrate that the change, both ideological and material, is not unique to Christian books.

The *Law of Citations* witnesses another significant facet of the Theodosian order of books: problems of discernment, and rules for deciding between authorized voices. The law continues from above:

> Moreover, when conflicting opinions are cited, the greater number of the authors shall prevail, or if the numbers should be equal, the authority of that group shall take precedence in which the man of superior genius, Papinian, shall tower above the rest, and as he defeats a single opponent, so he yields to two. . . . Furthermore,

[11] See further discussion in Letteney, "Authenticity and Authority," 41–42 and 53n42.
[12] Pecere, "La tradizione dei testi latini tra IV e V secolo attraverso i libro sottocritti," 25.

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when their opinions as cited are equally divided and their authority is rated as equal, the regulation of the judge shall choose whose opinion he shall follow.[13]

Here the *Law of Citations* formulates a set of rules and an order of operations through which a scholar can decide between conflicting legal opinions – an eventuality necessitated by the confirmation of a discursive commentarial tradition as legally binding. The solution reached is this: should opinions be evenly split, Papinian's opinion prevails over the others. However, when two authorized jurists rule together against the opinion of Papinian, their collective opinion shall be judged as superior.[14] The decision falls to judicial discretion if and only if opinions are equally split and Papinian has not commented on the matter at hand.

The *Law of Citations* circumscribes a judge's creativity when interpreting legal opinions. A. H. M. Jones famously called it "the low-water mark of Roman jurisprudence" for precisely this reason: because it apparently reduces the resolution of complex legal questions to the counting of heads.[15] But these rules are a solution to a problem of the *Law of Citations*' own making: they were necessary because the law identified, verified, and authorized a contentious and multivocal body of scholarship. The reiteration of these rules just three years later in the *Theodosian Code*, the great high-water mark of post-classical law, suggests either that the depth of the water has been overstated or that the tide of juristic excellence turns on a remarkably short period.

The *Law of Citations* was promulgated three years before the first constitution calling for the creation of the *Theodosian Code*, and it stood as binding juristic praxis. In the context of book one of the *Code*, however, the *Law of Citations* takes on an even more comprehensive meaning: because of its inclusion, the binding nature of the collected juristic opinions could only be abrogated through a *novella*. The *Law of Citations* was no longer read simply in the context of the "mini-code of 426," but as a programmatic statement for the entire body of law. Its inclusion in the *Theodosian Code* reiterates the validity of the concerns and the solution reached, but the same problems that attended the "mini-

[13] *CTh* 1.4.3. This constitution revises a rescript of Hadrian that allowed the judge full discretion in cases of disagreement among commentators. See Gaius, *Institutes* 1.7.

[14] Though, as was mentioned earlier, the commentaries of Paul and Ulpian upon the text of Papinian itself is explicitly *not* authorized by the *Law of Citations*, meaning (one supposes) that a contradictory opinion must be in the continuous text of Paul or Ulpian itself, and not part of their *notae*.

[15] Jones, *The Later Roman Empire: 284–602: A Social Economic and Administrative Survey*, 1.471. See also Watson, *The Law of the Ancient Romans*, 91.

code of 426" – the possibility of forged archival sources and problems of discernment between competing voices – attended the *Theodosian Code*. Unsurprisingly, the Roman senate instituted similar solutions to these problems.

Like Athanasius's *Concerning the Decrees* some two generations before, the *Minutes of the Roman Senate Concerning the Theodosian Promulgation* (*Gesta Senatus*) is the cover letter for a dossier. As discussed in Chapter 5, it comprises minutes from the Roman senate in 438 detailing the reception of the *Theodosian Code* in the West, along with the text of a rescript given by Valentinian III in 443. The rescript is referred to as the *Constitution concerning constitutionaries* (*Constitutio de constitutionariis*), and it legislates duties of the prefect of Rome regarding the publication of the *Theodosian Code*. Here, as part of the proceedings of the Roman senate, we see that the emperor had concerns similar to those visible in the *Law of Citations*; he was worried that the text of the law would be liable to falsification unless its publication and circulation was tightly controlled.

> Therefore, the illustrious prefect of the city (our kinsman and friend, whose duty it is to enforce quite diligently what the Senate has decided for the security of all), shall know that the license to publish copies has been assigned to you; that the production, also, of copies of the aforesaid body of law [the *Theodosian Code*] shall be provided for at the risk of you alone; that those persons may have no traffic in either the publication or production of copies, since it is certain that the hazard of falsification falls upon you. (*Gesta Senatus* 7)

At issue here is not solely the initial editorial work involved in producing the *Theodosian Code*, but control over reproduction and distribution networks which are particularly vulnerable to obtrusion. If Valentinian's rescript appears pessimistic about the conduct of scribes and tradents in legal material, his concern merely reflects what is found in the *Law of Citations* and reauthorized in the *Theodosian Code* itself. The *Minutes of the Senate of Rome*, in turn, reiterates the concern for editorial intrusion again, as the collected senators cry out acclimations aimed at preventing falsification of the authorized codex:

> "Let many copies of the Code be made to be kept in the governmental offices!" Repeated 10 times.
>
> "Let them be kept under seal (*sub signaculis*) in the public bureaus!" Repeated 20 times.
>
> "In order that the established laws may not be falsified, let many copies be made!" Repeated 25 times.

"In order that the established laws may not be falsified, let all copies be written out in letters (*litteris*)!" Repeated 18 times.

"Let no annotations upon the law (*notae iuris*)[16] be added to this copy which will be made by the constitutionaries!" Repeated 12 times.

"We request that copies to be kept in the imperial bureaus shall be made at public expense!" Repeated 16 times.[17]

The two parallel concerns which animate this chapter – suspicion of documents and rules for deciding between authorized voices – reverberate through Theodosian scholarship because they proceed logically from a structure of knowledge in which collections of traditional material are authorized and promulgated in view of universal assent. The fact that Theodosian writers and readers dealt with the same problems in different domains stems from the coherent set of aims and expectations from which each proceeds: universality by way of aggregation, distillation, and promulgation. Different readers and writers dealt with the exigencies the process in different ways, just as the scribes we encountered in Chapter 6 dealt with the peculiarities of aggregative scholarship in a variety of manners. The range of answers that we encounter, however, are all predicated on roughly the same question: "If a multi-vocal tradition is to be transformed into an authorized, aggregative product, how do we know what texts to authorize, and what should we do when they disagree?" The multiplicity of solutions speaks to the coherence of the problems introduced by new dominant scholastic practices in the Theodosian Age. I now turn to the multiplicity of those solutions.

[16] The manuscript reading (*notae iuris non adscribantur*) suggests that *notae iuris* should be understood as scholia on the text of the law – similar to Paul and Ulpian's *notae* on Papinian's corpus, or notes similar to the *Summaria antiqua codicis Theodosiani* discussed in Chapter 6. Mommsen preferred to emend conjecturally *adscribantur* to *adhibeantur*, as the latter would more clearly refer to *notae iuris* similar to those catalogued by medieval legal scholars, or those in *P. Haun* III 45 (discussed in Chapter 7). See, for instance, Vat. Reg. Lat. 1128 203r–206v. On the dual meaning of *notae iuris* already in antiquity, and the interpretation of this acclamation, see Nasti, "Teodosio II, Giustiniano, Isidoro e il divieto di adoperare siglae," 604–609. To this, one might add that the preceding acclamation requiring all copies to be written out "in letters" more clearly refers to *notae iuris* in the traditional sense – juristic abbreviations. It is not impossible that the senators here proclaim the same thing twice with different words, but that is not the most obvious interpretation of the text, either.

[17] *Gesta Senatus* 5, 3.

INSTITUTIONALIZED SUSPICION OF DOCUMENTS AND ARCHIVES

By the time he began writing commentaries on the Christian scriptures, Jerome had reached an impasse. He wanted to hold to an ideal: *hebraica veritas* ("the Hebrew is the truth"). In Jerome's estimation, the final authoritative version of scripture *should* be a faithful rendering of the Hebrew Bible into the vernacular. But he had a problem: Jesus in the gospels, as well as Paul in his letters, quote verses and stories from the "Old Testament" that do not exist in Hebrew, and sometimes they build theological scaffolds around Greek translations that are not faithful to the original. He laments that "[t]he evangelists – and even our lord and savior, and the apostle Paul, also – bring forward many citations coming from the Old Testament which are not contained in our manuscripts ... but it is clear from this fact that the best copies are those which agree with the authority of the New Testament."[18] That is, the "best copies" from a theological perspective were at odds with the "best copies" from a philological perspective. Jerome could either censure Jesus or he could dispense with the ideal of the primacy of the Hebrew scriptures. In the end he did neither. Rather, he used the tools of aggregation and suspicion of documents to justify that the New Testament was true even when it expanded falsely on the Old Testament.

Jerome's solution is visible throughout his body of work, but it is stated perhaps most succinctly in the preface to his *Book of Hebrew Questions on Genesis*, composed in the early 390s and intended "to refute the mistakes of those who suspect some fault in the Hebrew scriptures (*qui de libris hebraicis varia suspicantur*), and to correct the faults which appear to abound in the Greek and Latin codices by reference to the [Hebrew] authority."[19] Jerome attests suspicion of the biblical text in the minds and work of others, and is skeptical himself of the veracity of the Greek and Latin translations available on the late fourth-century book market: translations known as the Old Latin and the Septuagint, and

[18] Jerome, *Book of Hebrew Questions on Genesis*. *PL* 23.985A–B. Translations made with reference to Hayward, *Saint Jerome's Questions on Genesis*, and Rebenich, *Jerome*, 94–96.

[19] *PL* 23.984B. Jerome intended to write "books of Hebrew questions on all the sacred books (... *libris Hebraicarum Quaestionum, quos in omnem scripturam sanctam disposui scribere* ... *PL* 23.984A)," but did not finish the project. He appears to have continued in this intention at least as late as his commentary on Isaiah, c. 410 CE, as noted by Hayward, *Saint Jerome's Questions on Genesis*, 92.

those by Josephus, Theodotion, Aquilia, Symmachus, and Origen. In cases of faulty transmission or imprecise translation of scriptural texts – that is, in the case of competing codes – Jerome's answer was not further archival work; it was linguistic work.

In Chapter 6 I detailed Jerome's aversion to offering a single, final, authoritative version of the scriptural truth. Like many adherents of the late fourth-century version of Nicene orthodoxy, Jerome thought that scripture and tradition dually undergird the final statement of truth found in the Nicene Creed even when they are faulty. As a result, he was unwilling to offer anything more than a better translation of the Hebrew along with a more accurate commentary, and to place his work beside the deficient efforts of lesser scholars: an aggregative compendium in codex form.

> To enable the student more easily to take note of an emendation, I propose in the first place to set out the witnesses as they exist among us, and then, by bringing the later readings into comparison with it, to indicate what had been omitted or added or altered. It is not my purpose, as jealous people pretend, to convict the seventy translators of error, nor do I look upon my own work as a censure of theirs.[20]

Unlike other attempts to purify the original text of scripture from corruptions, Jerome's own approach, partially adopted from Origen and partially created in response to his own scholastic environment, was to lay bare for his reader the fact of the variation and to encourage them to remain skeptical of the ability of translators and the trustworthiness of scribes. Thus he repeatedly offers two versions of the same text and does not offer an opinion on which is correct, for instance at 49:27, where he says: "Although this is a most clear prophecy of Paul the Apostle … nonetheless in the Hebrew it is read as follows."[21] Jerome was committed to placing the sum total of the scholarly tradition together.[22] In his *Preface to the Book of Job*, Jerome explicitly claims that scriptural texts – and especially those with fraught transmission histories – should be transmitted with asterisks and *obeli* intact.[23] In his *Preface to Ezekiel*, Jerome goes so far as to prescribe scribal practice for copies of his

[20] Jerome, *Book of Hebrew Questions on Genesis*, preface.

[21] *Quam de Paulo apostolo manifestissima prophetia sit … tamen in Hebraeo sic legitur. PL* 23.1060B–C.

[22] Thus, Jerome does not "apparently contradict himself" in his preface to the *Book of Hebrew Questions on Genesis*, as argued by Hayward, *Saint Jerome's Questions on Genesis*, 94.

[23] Text *PL* 28.1079A–1084A. See especially 1080A.

translation: the text is to be written with spaces between words so as to avoid confusion and interpretive failures. His *Preface to the Gospels* takes a somewhat different tack: he claims that he has attempted to change little from current Latin translations unless the translations reflected a corruption in the underlying Greek or the Latin fails to render its sense. He does this, apparently, because the gospel texts were translated directly from the Greek, and not from Hebrew to Greek and then to Latin.[24] Even the text of scripture is liable to censure, but Jerome claims that even faulty witnesses possess authority of one sort or another.

Jerome is perhaps the scholar best equipped to discuss the relationship of Theodosian era scholars to the work of their predecessors because he dealt with a long tradition of translation, and with at least five competing versions of the same text to which he was asked, again and again, to return and translate anew. At the behest of dozens of different patrons he thought constantly about the relationship between his own scholarly output and the work of his disciplinary elders. Though they were written over the course of many years in a number of different locations and institutional contexts, Jerome's prologues all speak to a singular ideology of scholarship; his commitment to a suspicion of documents and archives was thoroughgoing and ongoing. In his case, the archives are scriptures that are both true and incontrovertibly faulty.

THE PROCEEDINGS OF THE COUNCIL OF CHALCEDON

The *Proceedings (acta) of the Council of Chalcedon* are not user-friendly documents. All told, they comprise nearly 1,000 pages, preserved mostly in Greek, with lacunae filled by reference to the ancient Latin translation. They are not verbatim transcripts of the proceedings of the council of 451 but rather a collection of notes (ὑπομνήματα/*commentarii*), petitions, *libelli*, and letters that were edited together with an eye toward validating the case of the prevailing (by definition, "Orthodox") side of the dispute at hand.[25] However, the compiled *acta* were imperial documents, produced in the court of the Eastern emperor in the immediate aftermath

[24] Jerome admits in his *Preface to the Gospels* that the *Gospel according to Matthew* was written in Hebrew, but he appears to have no knowledge of any manuscripts of it. On chains of translation through multiple languages see the wine metaphor at the end of Jerome's *Prologue to the Books of Solomon*.

[25] I have written about the process of collecting and editing the *acta* in Letteney, "Authenticity and Authority," 34–43, upon which this section is heavily dependent. See also Graumann, "'Reading' the First Council of Ephesus (431)," Price, "Truth, Omission,

of the council, and circulated along with supporting documents by early 455.[26]

The *Proceedings'* peculiar structure allow insight into the documents brought before the council along with the interpretation of those documents in a cross section of the later Theodosian Age. Each council read out and copied into its records some portion of the records from the previous meeting. At the first session of Chalcedon (451), for instance, *acta* from the previous council (Ephesus II, 449) were read out before the assembly and entered into the official record. In turn, bishops in Ephesus read out *acta* from the Home Synod of Constantinople (448) and entered those into the conciliar record. Through this process multiple successive layers came to be embedded within a single document. We are left with a textual nesting doll, where the oldest documents in the *Proceedings of the Chalcedon*, held in 451, stem from the Council of Ephesus, held twenty years earlier. The *Proceedings of Chalcedon* thus contain the proceedings of previous councils and information about the way that these documents were read and interpreted. Within the *acta* we see clerics reading and assenting to records from previous councils, along with bishops resisting the authority of these documents, denying their veracity, and questioning their validity as records of the past. The *Proceedings of Chalcedon* are valuable because they allow historians to look over the shoulder of bishops as they interpreted imperially authorized documents, and to make inferences regarding the guiding principles of their interpretive gaze. In the *acta* of Chalcedon we see a fully crystallized suspicion of documents and archives, one that has become part of the institutional framework of interpretation. A few examples will suffice to bear this out. Consider a statement of Basil, bishop of Seleucia, preserved within the *acta* from Ephesus II:

"This statement that they say I made I did not make in these words (ταύτην ἣν λέγουσίν με εἰρηκέναι φωνὴν ἐγὼ οὐκ εἶπον αὐταῖς λέξεσιν). I am not aware of having said this . . . "

Juvenal bishop of Jerusalem said:[27] "So, was your statement altered (αὕτη οὖν ἡ φωνὴ παραπεποίηται)?"

and Fiction in the Acts of Chalcedon," and Graumann, "Documents, Acts and Archival Habits in Early Christian Church Councils: A Case Study."

[26] Schwartz, *ACO* 2.1.3 (pp. xxi–xxii).

[27] Late ancient court proceedings are very commonly bilingual and very often include the full name and title of each party before each statement. . See for instance *P. Oxy.* 63.4381 (TM 22144), the second phase of an official *libellus* proceeding held on August 3, 375 CE. Lines 3 and 11 both record the same title for one of the parties, as we see repeatedly in

Basil bishop of Seleucia said: "I have neither memory nor knowledge of having made it."[28]

Here, Basil of Seleucia defends himself against *acta* from a council that was held just one year prior. The reader may reasonably infer (and perhaps is *supposed* to infer) that the bishops in the room also attended last year's council, and that many attendees remembered what Basil said. Nevertheless, as we saw in the *Law of Citations*, it was the *text* of the council that was authorized and not the events which the text relays. Witnesses are required to respond to the imperially sanctioned account of the council rather than to any living witness. The locus of truth is textual, and the text's authority does not lie in its referentiality – in the fact that it points to the moment of actual import, which happened in the past. Rather, the document *itself* is the authority and it exists separate from the events which it narrates, even when it is faulty.

This startling centrality of documents to conciliar dispute appeared early in the Theodosian Age, as seen for instance in Palladius's exasperated response to Ambrose quoted earlier: "You are judge, [on account of the fact that] your note-takers are here!" Everyone in the room knew that at future events, human witnesses would be required to answer to the imperially sanctioned, authorized codex of the proceedings and decisions of the council rather than to anyone's recollection of the event or any other account. Consider a charge of editorial forgery in the statement of Theodore of Claudiopolis at Chalcedon, made while discussing the Synod of Ephesus II in 449 CE:

"Let him bring in his notaries, for he expelled everyone else's notaries and got his own to do the writing. Let the notaries come and say if this was written or read in our presence, and if anyone acknowledged and signed it."

The most glorious officials and the extraordinary assembly said: "In whose hand are the notes written?"[29]

ACO: *Fl(auius) Mauricius, u(ir) c(larissimus) com(es) ord(inis) prim(i) et dux, d(ixit)*. For an example of the first part of a *libellus* proceeding, see *P. Oxy*. 16.1876 (TM 22012).

[28] *ACO* 2.1.1.546–548 (pp. 144–145) There are a number of striking parallels in the rabbinic corpus, for instance at *y.Shab*. 3.1, 5d, "R. Ami said 'Many times have I sat before R. Hoshaya and I did not hear this statement from him.'"

[29] *ACO* 2.1.1.122–123 (p. 87). The statement of "the most glorious officials and the extraordinary assembly (οἱ ἐνδοξότατοι ἄρχοντες καὶ ἡ ὑπερφυὴς σύγκλητος)" is given on behalf of the chorus. See *ACO* 2.1.1.767 (pp. 170–171) for a discussion of the creation of a chorus within the *acta* of Chalcedon, and the admission of Aetius, the functionary tasked with oversight of the documentary process, that statements of the chorus in

We see here again that the *acta* themselves serve as the authorized account; accusations of malfeasance must be made on the basis of that codified document rather than against other people who were present at the document's creation.

The *Proceedings of Chalcedon* are shot through with a concern, from parties on all sides of the dispute, that official documents have been the victim forgery and editorial malfeasance. As I have argued, they echo rhetoric we see throughout the Theodosian Age. The rhetoric and concerns are shared across corpora, but the solutions sometimes diverge even within a scholastic tradition. For instance, the legal proceeding of Catholics against "Donatists" held at Carthage in 411 show a similar centrality of import given to documents, but in this corpus, attendees built mechanisms of verification directly into the production of *acta*.[30] In fact, the production and verification of documents was so important in 411 that the first session begins with a detailed discussion of the method of transcription and identification of the functionaries called on to perform the task. The solution agreed was as follows. Six functionaries were tasked with recording the proceedings: one scribe (*scriba*) from the legislature's office, one scribe from the curator of Carthage, two clerks (*exceptores*) from the office of the proconsul, one clerk from the office of the *vicarius*, and one clerk of the legate. These bureaucrats from the governmental apparatus were assisted by dueling secretaries (*notarii*) – two each from the Catholic and Donatist factions – intended to take down statements in duplicate.[31] At the conclusion of every statement, the speaker proceeded to the workspace of a notary for each side and signed the statement in his own hand, writing *recognovi* ("I have inspected") or *subscripsi* ("I have undersigned"), often with his full title included.[32]

particular are often altered to reflect the feel of the meeting and not its verbatim procedure. On the chorus at Chalcedon see Letteney, "Authenticity and Authority," 37–40.

[30] Three Catholic functionaries (Severianus, Julianus, and Marcellus) edited and compiled the *Proceedings* as we have them, and as such some bit of interpretive skepticism is warranted (*PL* 11.1231). Nevertheless, the varying quality of the Latin and regular recourse to verbal shortcuts and repetitive phrases suggests strongly that a significant amount of the oral character of the proceedings remain embedded in the transcript and that the touch of the editor was altogether light. See Lancel, *Actes de la Conférence de Carthage en 411*, 1.309–316. On the editorial work of Marcellus (*tribunus et notarius*), before whom the proceedings were held, see ibid., 1.357–363.

[31] Ibid., 1.1.18–20. Text *SC* 195.

[32] The procedure of *subscriptio* in Roman legal documents often involved the addition of an entire sentence rather than just a name. The length of the subscriptions here appear to follow a similar, though simplified, procedure. See Meyer, *Legitimacy and Law*, 207–208. On the ideology and materiality of subscriptions of this type in works of

While the *Proceedings of the Council of Chalcedon* admit continually to their own faulty transmission, the *Proceedings of the Council of Carthage in 411* insist upon their own verbatim account, and derive their authority therefrom. As Brent Shaw put it with characteristic verve, the document from 411 is "a real gem of hard reportage."[33]

The *Proceedings of the Council of Carthage in 411* are among the most self-consciously authoritative texts surviving from antiquity. The importance of documents produced by the council is confirmed from the first page, and quite literally reinscribed on each subsequent sheet. Perhaps most interesting is that scribes transmitting copies of the *Proceedings* show extreme sensitivity to the materiality of the methods of verification instituted at the council. In copies of this text, each statement is followed by more than just the statement *recognovi* or *subscripsi*, as autographs of the proceedings would originally have read. Manuscripts of this text attest to their own status as secondary copies by preceding each mark of verification with the words *et alia manu* ("and, in a different hand"), indicating that the attendee named wrote *recognovi* or *subscripsi* personally, rather than leaving it to the scribal stenographer.[34] Subsequent copies of these documents, in other words, attest to their derivative status, similar to the derivative status of copies of the *Theodosian Code* discussed in Chapter 5, by indicating that the original edition was composed by multiple different hands – that the scribal multivocality which was intended as a mark of authenticity has been lost in transmission.[35]

Scholars in the Theodosian Age were not the first to show concern for the purity of textual transmission: neither in the domain of Christian theological dispute nor anywhere else. I am not arguing that suspicion of documents is a Theodosian or a Christian innovation. It is not. Rather, the case that I present here regards the relationship between the institutionalization of suspicion of documents and prevailing scholastic practices in the Theodosian Age. People have been skeptical of documents as

Christian doctrinal scholarship and dispute, see Pecere, "La tradizione dei testi latini," 24–29.

[33] Shaw, "African Christianity: Disputes, Definitions, and 'Donatists'," 17.

[34] Unfortunately the earliest manuscript of the *Acts of the Conference of Carthage in 411* was copied at Lorsch in the middle of the ninth century (Paris, Bibliothèque nationale de France Latin 1546). Needless to say, in all surviving manuscripts, both "In another hand" and "I have inspected" are, in fact, written in the same hand. A more industrious scribe would have at least changed inks.

[35] Already in the second century, Galen lamented that crucial details in autograph copies are lost through subsequent transmission. Galen, *In Hipp. Epid.* I *comment.* I 36, V 10.1, 43.23–29 Text *CMG* 5. Quoted in Hanson, "Galen: Author and Critic," 25.

long as there have been people and documents. The change that I document is this: the centrality of traditional documents for the creation of reliable knowledge led to the necessity of scrutiny. The prevalence of this trope across the Theodosian scholastic landscape results from practical shifts in the way that most scholars went about their tasks in the late fourth and early fifth centuries. I argue that historians can and should take note when precedented actions are undertaken for unprecedented reasons. There are limitless reasons to be skeptical of documents, and yet Theodosian readers and writers, by and large, were skeptical of documents because their scholastic projects were built on the aggregation of archival sources. Mine is not a whig history of practice, in which all of the features of the Theodosian Age order of books necessarily flow from a single, motivating shift. Nevertheless, there are certain scholarly practices that imply others. A structure of knowledge in which archival documents are central to the production of truth invites, or perhaps demands, scrutiny of those sources.[36]

Some scholars during the Theodosian Age adjudicated disputes between opposing authorities on a case-by-case basis. Some scholars, such as those involved in the production and dispute over the documents before the Council of Chalcedon in 451, engaged in intensive archival work and interpersonal dispute to adjudicate problems of transmission of documents manufactured by the imperial chancery, sometimes as little as twelve months prior. Scholars at the Conference of Carthage in 411 knew that the *Proceedings* of the council would become part of a tradition obsessed with archives, so they implemented unprecedented mechanisms of verification from the first moment of the document's production. In all of these examples we see scribes and writers self-consciously paying attention to the problems caused by work predicated on archival sources that themselves have unclear transmission histories.

As I showed at the beginning of this chapter, Jerome was unwilling to make a final, one-size-fits-all rule about which version of the scriptures was true and therefore authoritative. It would be hard for Jerome to stick both to his ideal of *hebraica veritas* as well as to accede to the authority of the words of Jesus and the Apostles by saying that anything that is not found in the Hebrew is false. He would end up censuring either the

[36] Yehudah Brandes makes a similar contention regarding the rabbinic corpus and what I have called "rules for deciding." Brandes, "The Beginnings of the Rules of Halachic Adjudication: Significance, Formation and Development of the Rules Concerning the Tannaic Halacha and Literature," vi–vii. I return to this point later.

Hebrew Bible or Jesus; neither is a good look. Some scholars, however, had no such compunction about strict rules for deciding between opposing authorities. We saw one example of such an algorithm in the *Law of Citations*. I now turn to another.

THE THEODOSIAN TALMUD

The rabbis of Late Antiquity were scholars, and they worked and lived within a self-aware system of scholastic disputation. This is, perhaps, the full extent of clear similarities between rabbis and the other scholars engaged in this book. Among the greatest challenges in studying rabbinic literature is that basic questions remain unanswered by the tradition itself. As Yitz Landes observes:

> Of the various difficulties facing the student of classical rabbinic literature one immediate one, that is for the most part unsolved by the evidence provided in the corpus itself, is what this corpus even is and how it came into existence … No classical rabbinic text ever discusses its origins. At best, the Talmuds offer sporadic statements concerning the authorship of the Mishnah, Tosefta, and tannaitic midrashim, but without offering any explanation as to why they were compiled.[37]

It was not until the Geonic age, around the turn of the millennium, that rabbis began to engage in sustained historical theorization as to the "when and the why" of the rabbinic corpus. The tradition was completely devoid of the sort of programmatic statements that I have engaged in this book thus far: texts like the constitutions calling for the creation of the *Theodosian Code* or the explicit theorization as to the "how" and the "why" of theological disputation penned by Athanasius, Ambrose, and Jerome. The rabbinic corpus offers no leg-up to understand its intellectual project, and at times the text seems to be purposefully obtuse.[38] Any

[37] Landes, "The Transmission of the Mishnah and the Spread of Rabbinic Judaism, 200 CE–1200 CE," chapter 8.

[38] As it is traditionally transmitted with *Berakhot* in first position, the Mishnah's beginning with "At what time … " may indeed be subtly meta-poetic, as has been argued repeatedly. But the subtlety was apparently so thick as to evade all but the keen eye of modern critical commentators. Additionally, *Berakhot* did not originally stand at the beginning of the corpus; *Terumot*, the longest tractate, did. For his part, Rabbi Sherira Gaon does not go to *Mishnah Berakhot* to answer questions related to the provenance and impetus for the rabbinic tradition in his own *Epistle* on the subject. See Landes, "The Transmission of the Mishnah and the Spread of Rabbinic Judaism." While the idea that the beginning of *Berakhot* should be read as a meta-poetic statement of the *Mishnah*'s ideological program is thoroughly modern, Maimonides does suggest in the introduction to his *Commentary on the Mishnah* that the passage is, nevertheless, meta-poetic as such.

contextualization of rabbinic materials will necessarily be speculative – if the question was interesting in antiquity, we have no record of anyone asking it.

And yet, it is the rabbinic material most clearly situated in a Roman province of the Theodosian Age that glimmers with intriguing tendencies that are both singular among rabbinic texts and conceptually similar to the developments that I have traced in the wider realm of Theodosian Age scholastic production. Namely, the two facets of Theodosian codification engaged in this chapter appear in the *Palestinian Talmud* as well; there, too, scholars deal with the effects of textual authorization and answer the same concerns seen in other Theodosian corpora with similar intellectual strategies. By placing the *Palestinian Talmud* in its Theodosian scholastic context, we may recognize it as a particularly Roman and Theodosian project. The correlation suggests that practices developed within a Christian empire, proffering Christianized intellectual practices across the scholastic landscape, came to inflect even the scholarly production of "rabbis [who] proclaimed their alienation from normative Roman culture in every line they wrote," as Seth Schwartz rightly argues.[39] A full discussion of the ways in which a peculiarly Theodosian structure of knowledge inflects the *Palestinian Talmud* is beyond the scope of this book. Here I offer here just two examples, which I argue are illustrative of the place of the *Palestinian Talmud* among Roman provincial literature.

The *Palestinian Talmud* (sometimes referred to as the "Yerushalmi") is structured as a commentary on the *Mishnah* and reached its final form sometime early in the Theodosian Age. The text is layered, woven together in a mixture of Hebrew and Jewish Palestinian Aramaic. While some statements in the text are attributed to named authorities, others remain anonymous. The largest part of the anonymous material comes from the general narrative voice of the *Palestinian Talmud* – known to medieval and contemporary scholars as the "Stam" (סתם, translated "anonymous," though literally "stop" or "seal" — a metonymic use to refer to the final layer editors that "seal" or "close" the book).[40] The last generation of scholarly sources named in the *Palestinian Talmud* come from the so-called fifth generation: rabbis who lived and worked in the second half of the fourth century. Whether the Stam of the *Palestinian Talmud* should be attributed to the final generations of the named sages, or whether it is a

[39] Schwartz, *Were the Jews a Mediterranean Society?*, 114.

[40] *B.San.* 86a explicitly discusses the presence of a stammatic layer and its source in *Mishnah*, *Tosefta*, *Sifra*, and *Sifrei*.

subsequent redactional layer, its temporal context is squarely Theodosian; more precision is impossible given the current evidence.[41] This is a work of aggregative scholarship that crystallized into its current form during the Theodosian Age and, as I argue later, the suspicion of documents and rules for deciding that we know from other Theodosian Age works are unequivocally attested only in the latest layer of the *Palestinian Talmud*.

In its tractate on *Heave Offerings* (תרומות), the *Palestinian Talmud* offers a set of rules for deciding between authorized voices.[42] The rules are given by Rabbi Zeira, a resident of Roman Palestine during the third generation of rabbinic scholars:

R. Yose said in the name of R. Johanan that [in disputes between] R. Yose and his colleagues (רבי יוסי וחביריו), practice (הלכה) follows R. Yose ... R. Zeira [and] R. Jacob bar Idi in the name of R. Johanan [say: in disputes between] R. Meir and R. Simeon, practice follows R. Simeon. [In disputes between] R. Simeon and R. Judah, practice follows R. Judah. One need not mention that [in disputes between] R. Meir and R. Jehudah, practice follows R. Jehudah. R. (Ab)ba bar Jacob bar Idi in the name of R. Jonathan: [between] R. Meir and R. Simeon, practice follows R. Simeon. [In disputes between] R. Simeon and R. Judah, practice follows Rebbi Judah, and one need not mention that (ואין צריך לומר) [in disputes between] R. Meir, R. Jehudah, and R. Simeon, practice follows R. Jehudah. And from this you infer that (ומינה את שמע) [in disputes between] R. Judah and R. Simeon, practice follows R. Judah.[43]

For the first time in the rabbinic tradition, these rules offer an internally consistent algorithm for deciding between scholarly opinions of the *Tannaim* ("Repeaters") who lived many generations before – mostly in the Antonine Age. The rules are particularly interesting in their Theodosian context because the solution reached to the problem of codified authorities who occasionally disagree is remarkably similar to the solution reached in the *Law of Citations* mentioned earlier. Yehudah Brandes has analyzed this passage in the context of the *Palestinian*

[41] See Moscovitz's discussion in "The Formation and Character of the Jerusalem Talmud."

[42] By "rules for deciding" I mean an algorithm indicating the hierarchy of authorized voices. I do not mean the rules like those explicated in *b.Zeb.* 49b–51a, which do not concern deciding between authorized sources but are rather generalized rules of logical deduction within the talmudic system. There are similar rules discussed in *y.Yeb.* 4.11 concerning the relationship of named and unnamed (literally "*stammatic*") halakhic opinions. I also do not mean the general rules of interpretation attributed to Hillel in *Sifra*, *Beraita de-R. Yishmael* 1.8. On rules of logical deduction, see Kahana, "On the Fashioning and Aims of the Mishnaic Controversy" (Hebrew).

[43] *Y.Ter* 3.1, 42a. Readings according to Leiden 4720 (Scaliger 3). The spelling of "Rabbi Jehudah" is inconsistent in the manuscript, and is reflected in the translation. Translations of the *Palestinian Talmud* made with reference to Heinrich W. Guggenheimer, *The Jerusalem Talmud*, and with the advice of Amit Gvaryahu.

Talmud as a whole and has found that not a single *sugya* ("section," roughly) contradicts these simple rules for deciding between conflicting opinions that were initially proposed by R. Yohanan in the late third century.[44] Building on Brandes's work, Richard Hidary demonstrated that it is likely *only* the Stam – the anonymous, Theodosian Age layer of the *Palestinian Talmud* – that unequivocally endorses rules for deciding between voices that were first suggested over a hundred years before.[45] The Theodosian layer of the *Palestinian Talmud* embraces a common answer to an obvious problem of codification, one known from other Roman sources of the period. Rendering the insight more interesting is this: the Sassanian recension of the same text takes a radically different approach.

The *Babylonian Talmud* (sometimes referred to as the "*Bavli*") was compiled in Sassanian Iraq some two centuries later and it certainly has a number of rules for deciding, as noted by Dov Zlotnick, including a principle of הלכה כסתם משנה ("the law is according to the anonymous Mishnah") by which the anonymous voice has final say when rabbis disagree. Even later commentators such as Rashi (late eleventh century CE) saw principles in the *Bavli* such as the notion that contradictory regulations should be preserved even when they come down in the name of a single teacher, or from a teacher who changed his mind – a principle that "would have been understood, if not praised, by Roman jurists."[46] But the Babylonian rabbinical community had a different approach than the rabbis of late Roman Palestine to algorithmic rules for deciding like we see in the *Law of Citations*.

The *Babylonian Talmud* contains a parallel to the *Palestinian Talmud*'s rules on deciding in its own tractate on *Communal Mixing* (ערובין). The *sugya* comprises two parts. First, it repeats the same rules for deciding recorded in the Palestinian tractate on *Heave Offerings*, quoted earlier. In the *Babylonian Talmud*'s version of this tradition, the "rules for deciding" offered and embraced by the *Palestinian Talmud* are followed by a sustained discussion, including six countervailing cases where the rules are shown to be riddled with exceptions – with the implication being that the rules themselves are useless. As Hidary concludes:

[44] Brandes, "The Beginnings of the Rules of Halachic Adjudication."
[45] Hidary, *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud*, 55.
[46] Zlotnick, *The Iron Pillar, Mishnah: Redaction, Form, and Intent*, 206. A broader discussion of these rules, their genesis, and their medieval reception is available on pages 194–217. The Rashi discussion is in *b.Sheb* 4a.

Thus, the two parts of the *sugya* actually stand in tension with each other, one stating the rules and the other questioning them. The first part is parallel to the Yerushalmi presentation, while the second part is unique to the Bavli. The Yerushalmi never doubts the authority of the rules, not in [*Heave Offerings*] nor anywhere else ... The *Bavli*, however, does quote the controversy and leaves it open-ended, suggesting that the *Bavli* editors themselves saw reason to doubt the categorical application of these rules.[47]

While there is reason to believe that the compilers of the *Bavli*'s anonymous redactional layer knew and responded to its redactional counterpart in the *Palestinian Talmud*, the *Bavli* as a whole arose out of and crystallized in a remarkably different intellectual and political milieu.[48] Here we see one vestige of the intellectual contexts of these two remarkable projects; while the Roman provincial compilers embraced rules for deciding, Sassanian rabbis were – at the very most – ambivalent about them and inconsistent in their application.

The Stam of the *Palestinian Talmud* unequivocally supports the rules for deciding and applies them uniformly. As Richard Hidary argues, it is *only* the Theodosian stammatic layer which considers these rules to be ironclad. Parallels with broader Roman scholastic aims and methods are not restricted to the invocation of rules, however.[49] Like the *Law of Citations*, the *Yerushalmi*'s Stam also witnesses a suspicion of authorized traditions, and offers creative solutions to the problem of intermittently unreliable transmitters. The tractate *Fast Days* (תעניות) undertakes a discussion of private fasts and their relationship with a particular fast day, the Ninth of Av:

[47] Hidary, *Dispute for the Sake of Heaven*, 50.

[48] If it is true, as Issac HaLevy argued, that the Stam of the *Bavli* knew and used the conclusions of the Stam in the *Yerushalmi*, then we have here an even clearer rejection of a peculiarly Theodosian methodology. On HaLevy's argument see Gray, *A Talmud in Exile*, 12. See also Gray's own similar argument regarding the Bavli's apparent knowledge of the stammatic layer of the *Yerushalmi* in *Avodah Zarah*. ibid., 175–197. My point stands whether the *Yerushalmi's* stammatic material was known directly to the compilers of the *Bavli*, as Gray suggests, or whether correspondences are understood as arriving out of a *talmud qadum*, as suggested by Friedman, *Talmudic Studies: Investigating the Sugya, Variant Readings, and Aggada*, 46–47, among others.

[49] Hidary, "Tolerance for Diversity of Halakhic Practice in the Talmud," 408–410. Hidary does discuss one case in the Yerushalmi, noted by Brandes ("The Beginnings," 249n51), where Amoraim decide against Rabbi Yose – at *y.Shab* 6.5, 8c. "However, that case involves the colleagues of Rabbi Yanai, the first-generation Palestinian Amora who preceded Rabbi Yoḥanan and therefore would not have known the rules." Ibid., 412n38.

It has been taught, "The Ninth of Av that coincided with the eve of Sabbath, a person eats even an egg and drinks even a cup so that this person should not enter the Sabbath while fasting," so the words of R. Yehudah. R. Yose says, "He should complete the fast." R. Zeirah in the name of R. Yehudah, R. Ba, R. Imi bar Ezekiel in the name of Rav, "The halakha is in accord with him who says that he should complete the fast." Why did he not simply say, "Practice follows R. Yose?" There are reciters who recite and swap the words of the sages.[50]

For my purposes here, the problem under discussion in this sugya is less relevant than the solution adopted by the *Yerushalmi*'s redactional layer. The core issue is that two authorities disagree. In normal circumstances, a rabbinic student following along with the discussion, regardless of the particular issue at stake, should be able to predict the solution reached by the text: namely, that "The halakha is in accord with him who says that he should complete the fast." This is, after all, simply an application of the rules for deciding laid out in the passage of *Heave Offerings* discussed earlier: "[In disputes between] R. Yose, and his colleagues, practice follows R. Yose."[51]

The *Palestinian Talmud* is famously terse, and the anonymous redactional layer (Stam) rarely offers clarifying information that can be gleaned from the discussion or that should be known by the rabbinic student already. Accordingly, the Stam clarifies why it is that such an obvious answer, in this case, is worth recording in full. An explicit ruling is necessary because some scholars "swap the words of the sages," such that the wrong name might be attached to halakhic guideline leading to an improper judgment made on the basis of the rules for deciding.[52] Here, in the voice of the *Palestinian Talmud*'s Theodosian redactor, we see the complexities of applying rules for deciding even in a tradition of tightly controlled legal recitation where editorial obtrusion is difficult, to say the least. The application of such rules is intimately bound up with suspicion of the tradition itself, and extra care is taken in this and other sugyot to ensure that rules are applied to the correct tradition, because the existence of any instability in the tradition renders the rules for deciding essentially worthless. In this case, suspicion of documents caused the famously terse

[50] *Y.Ta.* 2.10, 66b. See nearly identical moves in *y.Ta.* 1.3, 64a and *y.Kil.* 9.3, 32b. "There are reciters who recite (אית תניי תני)" is a fixed phrase within the rabbinic corpus.

[51] *Y.Ter.* 3.1, 42a.

[52] It is not clear whether the concern here is over accidental or purposeful reattribution of halakhic opinions in order to change the outcome of a debate. The latter is particularly common in the *Bavli*.

redactor of the *Palestinian Talmud* to become uncharacteristically loose lipped.

Hayim Lapin is right to stress that "what makes the rabbinic movement so striking is the juxtaposition between an apparently thoroughgoing Romanization of the subject population and the emergence, precisely where we expect Romanization to be most effective, of groups of men who organized to express their non-Romanness."[53] And yet we glimpse glimmers of regional variability in these divergences between Sassanian and Palestinian rabbis; we start to see Roman ways of knowing finding expression even in a corpus of material that disclaims its Romanness at every turn. Amit Gvaryahu argued recently that rabbinic laws on usury show that Palestinian rabbis held a shared concept of the scope and definition of a "loan" with the Roman jurists, even while they rejected the substantive law embraced in Roman courts:[54]

> The difference in the substantive law . . . is what enabled the rabbis to say, and in all likelihood to sincerely believe, that their law and the Roman law were "different:" that they did not follow the laws of the Romans, they did not avail themselves of their courts, they did not abandon the laws of the Torah and of their ancestors. They were upright in following the commandment, "and you shall not follow their laws." But at the same time, some rabbis at least needed to be able to say that the Torah was, in fact, a *law*, and as such it shared much in discourse, scope, heuristics, and definitions, with the law of the Romans . . . But we should also bear in mind that for its adherents, rabbinic law was at its core *not* "Roman." Borrowing and structural similarities were, for the rabbis, a way to effect distinctiveness.[55]

My argument here is similar to Gvaryahu's, but I see borrowing on a scholastic level in addition to a structural one. The *Palestinian Talmud* is thoroughgoingly out of step with the other works of Theodosian Age scholarship engaged in this book. For one, it wasn't written down. The

[53] Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100–400 CE*, 65.

[54] From the Roman perspective, Rabbinic courts would have been understood under the rubric of roman arbitration (*arbitrium ex compromisso*). See, for instance, the comparative discussion between a Gentile "Alexis" (ליכסה) and R. Mana in *y.Shev.* 7.7, 38a, comparing Roman legal praxis around legal summons (using the Greek terms, as one might expect in the East, for instance דיאטיגמטין for διάταγμα) with rabbinic practices. (Discussed in Lapin, *Rabbis as Romans*, 119–123.) See also *CTh* 2.1.10, a law of Arcadius and Honorius (February 3, 398) that appears to confirm the duty of arbitration in a provincial court in all matters except "those which pertain to the teaching of their religion (*quod ad religionis eorum pertinet disciplinam*)," the only exception being civil matters that may be adjudicated by a Jewish judge only if agreed by both parties.

[55] Gvaryahu, "Rabbis and Roman Jurists on Navigating Financial Markets."

idea of an authoritative oral tradition that stood beside scriptural material was, quite literally, anathema to Nicene Christians. Yet the *Yerushalmi*'s compilers were part of the Roman world that they rejected in part.[56] Bertyus (modern-day Beirut), the epicenter of Roman law in Late Antiquity, lies just over 100 miles north of Caesarea Maritima, on the Levantine coast. The form and content of the *Palestinian Talmud* exclaims its singularity on the Roman scholastic landscape, but some of its underlying assumptions about the production of authoritative knowledge betray the tradition as arising partially within a Theodosian Age scholastic framework, facets of which we have seen time and again over the last six chapters. This scholastic framework has a provenance, too: it is inflected by Christian ways of knowing, forged in the fires of doctrinal controversy. The effect of my analysis, too, is to help situate the Stam of the *Palestinian Talmud* in its Theodosian context, to stress both the coherence of some facets of its method within the Roman scholastic context of the late fourth century, and to help differentiate ideologically, and perhaps also temporally, between the stammatic layer of the *Yerushalmi* and the last generation of named sages.

CONCLUSION

This chapter has attempted to demonstrate the ways in which Theodosian Age scholars read and interpreted differently from their predecessors because of exigencies related to the aggregative format. From the *Law of Citations* to the *acta* of church councils and even in the *Palestinian Talmud* we see Theodosian readers grappling with the fact of codification and employing remarkably similar intellectual strategies in reading and interpreting intellectual products of the late fourth and early fifth centuries. Rules for deciding and an institutionalized suspicion of documents and archives proliferated through the scholastic landscape in response to the changing formats and aims detailed in Chapters 5 through 7: "new readers of course make new texts, and their new meanings are a function of their new forms."[57]

[56] The classic statement on the Greco-Roman context of classical rabbinic texts is Lieberman, *Hellenism in Jewish Palestine: Studies in the Literary Transmission, Beliefs and Manners of Palestine in the I Century BCE–IV Century CE*. For an assessment of the *Bavli*'s Sasanian context, see Secunda, *The Iranian Talmud: Reading the Bavli in Its Sasanian Context*.

[57] McKenzie, *Bibliography and the Sociology of Texts*, 29.