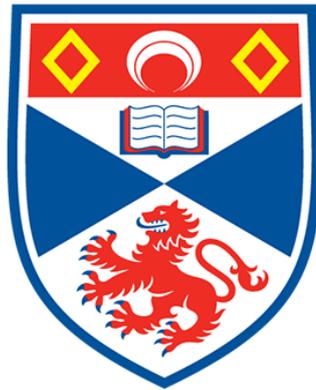


“Why did the legislation of Justinian reflect the language of the Council of Chalcedon?”



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Introduction

Emperor Justinian I, whose reign spanned from 527-565AD is known predominantly for his legal reforms and codifications. Six months after becoming sole emperor in August of 527AD, Justinian promulgated the first edition of the *Codex*.¹ It compiled all three previous Codes, the *Codex Gregorianus*, the *Codex Hermogenianus*, and the *Codex Theodosianus*, as well as any laws passed up to Justinian's day into one concise volume under his name.²

There then followed an intense period of legal reform from 529-534AD. These years saw the production of the *Digest*, a compilation of ancient jurists' opinions on the law and the *Institutes*, a handbook for first year law students in 533AD.³ Finally the second edition of the *Codex*, often known as the *Codex repetitae praelectionis* was published in November 534AD.⁴ Due to the sheer volume of reforms to the law two editions of Justinian's *Codex* were produced only five years apart.⁵ The first edition was quickly outdated and so successfully superseded by the second edition that only the second edition of the text survives to us and will be studied in Chapter One of this dissertation.⁶

Moreover, Justinian continued legislating after the production of the second edition of his *Codex* in 534AD, passing many new laws from 534-554AD, known as *Novellae* or

¹ Tony Honoré, "Justinian's Codification" in S. Hornblower, A. Spawforth and E. Eidinow, *The Oxford Classical Dictionary* (Oxford, 2012), p. 781.

² *The Codex of Justinian: A New Annotated Translation with Parallel Greek and Latin Text*, ed. and trans. Bruce W. Frier et al. (Cambridge, 2016), *Constitutio Imperator*, Preface, p. 3.

³ J.A.S. Evans, *The Age of Justinian: The Circumstances of Imperial Power* (London, New York, 2000), p. 204.

⁴ *Codex of Justinian*, *Constitutio Cordi*, pp. 11-13.

⁵ Simon Corcoran, "Codex Justinianus" in R.S. Bagnall, K. Brodersen, C.B. Champion, A. Erskine and S.R. Huebner (eds), *The Encyclopaedia of Ancient History* (Malden, MA and Oxford, 2012), <https://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah13043>, [15th April 2019], p. 1.

⁶ Simon Corcoran, "The *Novus Codex* and the *Codex Repetitae Praelectionis*: Justinian and his Codes" in S. Benoist, A. Daguët-Gagey and C. Hoët-van Cauwenberghe (eds), *Figures d'empire, fragments de mémoire: pouvoirs et identités dans le monde romain impérial* (Lille, France, 2015), p. 432.

Novels. These were never collected into a definitive official collection in the reign of Justinian, although it appears that one was intended.⁷ The *Novels* which pertain to the Council of Chalcedon will be studied in Chapter Two of this dissertation. These *Novels* have traditionally been the most neglected of Justinian's codifications by scholars.⁸ Their value is now being reappraised, and at the end of 2018, Miller and Sarris produced the first English translation and commentary of Justinian's *Novels*, marking the completion of a fifteen-year project.⁹ It will no doubt revolutionise the study of Justinian's legislation, as there is now a modern, definitive English translation of both the *Codex* and *Novels*.

Chapter Three of this dissertation focuses on not a body of Justinianic legislation, but an individual *Edict* produced in 551AD, entitled the *Edict on the True Faith*.¹⁰ All too often it has been overlooked or merited only a passing mention in scholarly output. This dissertation aims in part to rectify this.

The reign of Justinian and his legislation has attracted the attention of scholars for centuries, and there is no shortage of publications on his reign and his lawcodes. Gibbon, the nineteenth century scholar, in his work the *Decline and Fall of the Roman Empire*, argued that the lasting monument of Justinian's reign was his lawcodes.¹¹ Humfress has agreed with his analysis and stated that Justinian's lawcodes still form the basis of our legal culture today; a remarkable achievement.¹² Scholarship has tended to focus on the study of

⁷ W.W. Buckland, *A Text-Book of Roman Law* (Cambridge, 1966), p. 47.

⁸ Timothy G. Kearley, "The Creation and Transmission of Justinian's Novels", *Law Library Journal*, Vol. 102:3 (2010), p. 377.

⁹ *The Novels of Justinian: A Complete Annotated English translation* eds. and trans. David Miller and Peter Sarris (Cambridge, 2018).

¹⁰ *On the Person of Christ: The Christology of Emperor Justinian*, ed. and trans. Kenneth P. Wesche (New York, 1991).

¹¹ Edward Gibbon, *The Decline and Fall of the Roman Empire*, Volume 4 (London, 1898), p. 441.

¹² Caroline Humfress, "Law and Legal Practice in the Age of Justinian" in Michael Mass (ed.), *The Cambridge Companion to the Age of Justinian* (Cambridge, 2005), p. 161.

Justinian's legislation as part of his reign as a whole, mainly centred around the notion of the "Age of Justinian". Indeed, Maas has recently edited a volume under that title.¹³ More recently the legislation has been the subject of more specific studies. Corcoran has analysed the difference between the first and second edition of the *Codex*.¹⁴ There appears to have been a shift to more specific, linguistic and technical study of Justinian's legislation in conjunction with the proliferation of works on Justinian's reign.

During the research on this dissertation, it became apparent that references to Chalcedon and its language frequently appear in Justinianic legislation. The purpose behind this was compelling. The Council of Chalcedon was the fourth ecumenical council, which sat in October 451AD. It has been considered a watershed ever since because of the resulting separation of the Church.¹⁵ The Council of Chalcedon too has a wealth of scholarship dedicated to it from both theological and historical perspectives. Need's monograph on ecumenical councils embodies the theological viewpoint.¹⁶ Price's recent translation of the Acts of the Council of Chalcedon and the companion volume to it sets out the historical stance.¹⁷

There is a need to provide some background to the Council of Chalcedon because the decrees of the Council and the resulting Christological debate underpin the Chalcedonian language employed in Justinianic legislation. In the fifth century, there was a deeply divisive debate over the nature of Christ. Some argued that Christ "should be

¹³ Michael Maas (ed.), *The Cambridge Companion to the Age of Justinian* (Cambridge, 2005).

¹⁴ Corcoran, "Novus Codex", pp. 425-444.

¹⁵ Patrick T.R. Gray, "The Legacy of Chalcedon: Christological Problems and their Significance" in Michael Mass (ed.), *The Cambridge Companion to the Age of Justinian* (Cambridge, 2005), p. 221.

¹⁶ Stephen W. Need, *Truly Divine and Truly Human: The Story of Christ and the Seven Ecumenical Councils* (London, 2008).

¹⁷ *The Acts of the Council of Chalcedon*, ed. and trans. Richard Price and Michael Gaddis, 3 Volumes (Liverpool, 2007) and Richard Price and Mary Whitby (eds), *Chalcedon in Context: Church Councils 400-700* (Liverpool, 2009).

conceived as having two different Natures, divine and human, united but fully retaining their separate identities.”¹⁸ Others believed that “after the Incarnation, there was only one Nature, a divine one into which Christ’s human nature was in some way subsumed.”¹⁹ Throughout this dissertation, those who believed in the two natures of Christ after the Incarnation shall be called Chalcedonians and those who believed in the one nature of Christ shall be called anti-Chalcedonians. Anti-Chalcedonians have often been termed “Monophysites” or more recently “Miaphysites” by scholars, but this is anachronistic and not a label they applied to themselves.²⁰ The more neutral term anti-Chalcedonians has been adopted throughout this dissertation because it sets out most clearly the opposition to the Council of Chalcedon.

By the time of the Council of Chalcedon, the issue was that both sides saw themselves as following the orthodox Christology and the views of St. Cyril, bishop of Alexandria from 412AD to 444AD. He initially adopted the formula “one incarnate nature of the Word of God” to emphasise the unity of Christ.²¹ But in 433AD he had affirmed that Christ was “out of two natures” to emphasise the duality of Christ.²² The Council of Chalcedon confirmed the orthodoxy of the view of the “two natures” of Christ. But it altered Cyril’s formula to “in two natures” not “out of”.²³ The anti-Chalcedonians refused to accept this idea of Christ being “in two natures” after the union, even though the Council had emphasised that Christ was still “in one hypostasis” or person.²⁴ They accused Chalcedon of

¹⁸ G.E.M. De Ste Croix, Michael Whitby and Joseph Streeter (eds), *Christian Persecution, Martyrdom and Orthodoxy* (Oxford, 2006), p. 262.

¹⁹ *Ibid.*

²⁰ Patrick T.R. Gray, *In Defense of Chalcedon in the East (451-553)* (Leiden, 1979), p. 74.

²¹ Gray, “The Legacy of Chalcedon”, p. 219.

²² *Ibid.*

²³ *Acts of the Council of Chalcedon*, Volume 2, 34, p. 204.

²⁴ *Ibid.*

following the views of Nestorius, the former archbishop of Constantinople (428-431AD) and contemporary of Cyril.²⁵ He emphasised the separation of the human and divine nature in Christ.²⁶

Both the reign of Justinian and his legislative programme and the Council of Chalcedon are saturated with scholarship, and there has been an extensive body of literature produced on them both. However, none of these looks at them in an extensively comparative manner. There appears to be a gap in the scholarship which this dissertation aims to bridge and study the Council of Chalcedon and Justinianic legislation in conjunction. The purpose behind the frequent use of the language of the Council of Chalcedon in Justinianic legislation is investigated. As a result of the comparative approach and the scope of the work, the focus will be on the legislation from 527AD-551AD; before the second Council of Constantinople in 553AD, though it will be discussed briefly. Due to the desire for a comprehensive analysis of the sources rather than a sweeping overview this dissertation does not cover the latter part of Justinian's reign. It seemed to be an appropriate cut off point. The chapters follow a roughly chronological span from the first year of Justinian's reign to 551AD, and each is largely dedicated to a different type of legislation, which made for an interesting and compelling study.

²⁵ De Ste Croix, *Christian Persecution*, p. 260.

²⁶ *The Novels of Justinian*, n. 8, p. 381.

Chapter One- Title One of Book One of Justinian's Codex

The language of the Council of Chalcedon is reflected throughout Justinianic legislation. To obtain a comprehensive picture of how Chalcedonian language informed dogma in the *Codex*, this chapter focuses on the constitutions from Justinian's reign in Title One of Book One, so Constitutions 1.1.5-8. It is noteworthy that whilst these constitutions are all consistently and subtly aligned to the Chalcedonian Definition of Faith, it is not expounded to the point of alienation of the anti-Chalcedonians. This shrewd approach marks a significant ecclesiastical policy of Justinian's reign; to ensure both adherence to the Council of Chalcedon, but also to keep looking towards reconciliation between the anti-Chalcedonians and the Chalcedonians. This policy explains why although the constitutions in Title One, Book One of the *Codex*, were intended to be orthodox statements of belief, references to the Council of Chalcedon are less explicit and unexpectedly nuanced.

The placement of ecclesiastical material in the initial section Book One of the *Codex Justinianus* suggests that doctrinal concerns were at the forefront of imperial policy during Justinian's reign. A comparison with the structure of the earlier *Codex Theodosianus* of 438AD confirms the significance.²⁷ The *Codex Theodosianus* relegates ecclesiastical material to its sixteenth and final book.²⁸ It is interesting that in the first title of Book One, the constitutions pertaining to Justinian's reign consist of statements of belief subtly adhering to the Definition of Chalcedon. Justinian was keen to uphold Orthodox Christianity, as defined at the most recent Church council, that of Chalcedon.²⁹ The papyrus fragment *P. Oxy. 1814*.

²⁷ Kenneth Holum, "Theodosius II" in R.S. Bagnall, K. Brodersen, C.B. Champion, A. Erskine and S.R. Huebner (eds), *The Encyclopaedia of Ancient History* (Malden, MA and Oxford, 2012), <https://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah12207> [15th April 2019].

²⁸ Clifford Ando, "Religion and *ius publicum*" in Clifford Ando and Jörg Rüpke (eds), *Religion and Law in Classical and Christian Rome* (Stuttgart, Germany, 2006), p. 126.

²⁹ *Ibid.*

provides an index for the first edition of the *Codex*, that was completed in 529AD.³⁰ The 534AD *Codex* quickly superseded it, and it is no longer extant.³¹ It is highly illuminating because it is evidence for Book One of the first edition of the *Codex* also beginning with ecclesiastical matters, indicating that Justinian and his advisers had this emphasis on statements of belief in mind from the commencement of his reign.³²

From the outset, Justinian mandated the belief to be abided by across the empire by emphasising rhetoric from the Council of Chalcedon. The rhetoric is employed in many of the constitutions of Title One, emphasising that Justinian was keen to demonstrate adherence to the Council of Chalcedon and to illustrate to his subjects the correct doctrine to follow. These constitutions it must be noted are highly technical in their language and would be difficult for laymen to understand. The primary audience of these doctrinal constitutions then was the clergy. Although to whom C.1.1.5 was dedicated and where it was given have been lost, it is a useful constitution because it was presumably given shortly after Justinian became sole emperor in August of 527AD.³³ It is interesting that although C.1.1.5 does not mention Chalcedon explicitly, it draws extensively on the language employed at the Council on the nature of Christ. The Definition of the Council of Chalcedon declared that Christ was “consubstantial with the Father in respect of the Godhead, and the same consubstantial with us in respect of the manhood.”³⁴ C.1.1.5 expresses that Jesus Christ is, “consubstantial with the Father according to His divine nature, and consubstantial

³⁰ Simon Corcoran, “Justinian and his two codes: revisiting P. Oxy. 1814”, *Journal of Juristic Papyrology*, Vol. 38 (2008), p. 91.

³¹ Corcoran, “Codex Justinianus”, p. 1.

³² Corcoran, “Justinian and his two codes”, pp. 91-2.

³³ John Meyendorff, “Justinian, the Empire and the Church”, *Dumbarton Oaks Papers*, Vol. 22 (1968), p. 45.

³⁴ *Acts of the Council of Chalcedon*, Volume 2, 34, p. 204.

with us according to His human nature.”³⁵ This subtle alignment to Chalcedon through rhetoric reflects the ecclesiastical policy of Justinian to reconcile the anti-Chalcedonians and the Chalcedonians.

C.1.1.6 and specifically the context of its production is crucial in illuminating the continuation of the policy of reconciliation and alignment to Chalcedon. It also evidences furtherance of Justinian’s attempts to appease both sides in the theological dispute. In 532AD it appears that the question of acceptance or not of Chalcedon once again came to the fore in Justinian’s ecclesiastical policy.³⁶ The anti-Chalcedonian and Chalcedonian bishops engaged in discussions in Constantinople in an attempt by Justinian to bring unity to the Church by reconciling the two parties.³⁷ Three days of conversations achieved nothing, but this outcome is hardly surprising because for 80 years the anti-Chalcedonians’ identity had focused around opposition to the Council of Chalcedon.³⁸ However, no sanctions were imposed by Justinian against them, leaving room for reconciliation between the two sides.

In light of this, it is of no surprise that C.1.1.6, published in 533AD is similar to C.1.1.5 in its statement of belief, while subtly aligning itself to the Council of Chalcedon, it makes no specific reference to it; attempting to leave the way open for reconciliation. Although C.1.1.6 is addressed to the people of Constantinople, Justinian would have expected the clergy to ensure that his subjects were in no doubt as to the correct creed to follow.³⁹ Later editions of the *Codex* contain an addendum stating that the same decree was sent “to the

³⁵ *Codex of Justinian*, C.1.1.5.2, p. 21.

³⁶ Fergus Millar, “Rome, Constantinople and the near Eastern Church under Justinian: Two Synods of C.E. 536”, *The Journal of Roman Studies*, Vol. 98 (2008), p. 69.

³⁷ Sebastian Brock, “The conversations with the Syrian Orthodox under Justinian (532)” in Sebastian Brock (ed.), *Studies in Syriac Christianity* (Hampshire, 1992), p. 87.

³⁸ *The Acts of Constantinople 553 with related texts on the Three Chapters Controversy*, ed. and trans. Richard Price, Volume One (Liverpool, 2009), p. 12.

³⁹ *Codex of Justinian*, C.1.1.6, p. 21.

people of Ephesus, Caesarea, Cyzicus, Amida, Trapezus, Jerusalem, Apamea, Justinianopolis, Theopolis (Antioch), Sebaste, Tarsus, [and] Ancyra.”⁴⁰ By disseminating his statement of belief to the furthest reaches of the empire, Justinian hoped to maintain a delicate balance; a doctrine that did not alienate the anti-Chalcedonians, but which was also subtly aligned to Chalcedon.

Constitutions C.1.1.6-8 in Title One express verbatim the idea of the consubstantiality of Christ found in C.1.1.5.⁴¹ This subtle alignment to the Council of Chalcedon avoids any of the controversial formulae of Chalcedon, namely that Christ was “in two natures”, which the anti-Chalcedonians strongly opposed, believing it encouraged the belief of the separation of the natures of Christ into two distinct entities, as the heretic Nestorius believed. But it still adhered to the Council’s Definition in a way that the anti-Chalcedonians did not oppose. A key policy throughout the reign of Justinian was the desire for reconciliation between these opposing theological groups. The dating of C.1.1.6-8 is significant, as all three date from 533-4AD, so after the first edition of Justinian’s *Codex* had been published. Justinian obviously felt the need to amend Book One and include these constitutions in the Second Edition of his *Codex*. The similarities to C.1.1.5 highlight a continuation of the policy of reconciliation through the alignment to Chalcedon, even at the time of the production of the Second Edition of the *Codex*.

The ideology of Justinian’s reign goes a long way to explaining this policy. There was an idea prevalent in the sixth century that the emperor was God’s deputy on earth and to retain the throne the emperor had a duty to rule well, thus gaining divine favour.⁴² A way of

⁴⁰ *Ibid.*, p. 23.

⁴¹ *Ibid.*, C.1.1.6.6, C.1.1.7.5 and C.1.1.8.12, pp. 23-35.

⁴² Gilbert Dagron, *Emperor and Priest: The Imperial Office in Byzantium* (Cambridge, 2003), p. 3.

ruling well was by following and protecting the unity of the Church and the orthodox faith. Justinian saw it as his right to legislate in secular and ecclesiastical matters and so encapsulated statements of faith aligned to Chalcedon through language in his legislation. Justinian pursued an imperial ideology of enmeshing law, imperial power and Christianity more closely than had ever been done by a previous emperor. Thus, the statements of belief in the *Codex* avoid any aspects of Chalcedon that would be averse to the anti-Chalcedonians, as Justinian did not want to alienate them. This policy of reconciliation will also be discussed in Chapter Three, as will the brief lapse in this policy in Chapter Two.

Only constitutions 1.1.7 and 1.1.8 of the constitutions pertaining to Justinian's reign explicitly name the Council of Chalcedon. These references are a means of showing that Justinian and his subjects are upholding the decrees of the four ecumenical councils, including Chalcedon.⁴³ C.1.1.7 is addressed to the Archbishop Epiphanius of Constantinople detailing in conventional language Justinian's determination to defend the orthodox faith across his empire.⁴⁴ The mention of Chalcedon is no doubt due to the fact that the letter is addressed to one of the most influential figures in the Catholic Church. Canon 28 of Chalcedon increased the See of Constantinople's significance in ecclesiastical matters to the first in the East, putting Rome and Constantinople on a more equal footing.⁴⁵ Although in C.1.1.8 Justinian asserts the ultimate authority of the West and Rome, stating the desire to bring the East in line with the West.⁴⁶

However, C.1.1.8 as a constitution appears to be an anomaly in the *Codex*. It dates from 534AD, which would make it one of the latest constitutions in the Second Edition of

⁴³ *Codex of Justinian*, C.1.1.7.11 and C.1.1.8.19, pp. 29-37.

⁴⁴ *Ibid.*, C.1.1.7, p. 25.

⁴⁵ *Acts of the Council of Chalcedon*, Volume 3, p. 67.

⁴⁶ *Codex of Justinian*, C.1.1.8.9, p. 33.

Justinian's *Codex*.⁴⁷ It is the only constitution not addressed to someone by the emperor; instead, it is from Pope John II to Justinian and was given in Rome.⁴⁸ All previous codifications are compiled of only imperial constitutions.⁴⁹ However, preserved with the constitution is a letter from the emperor to the pope couched in very similar terms to one sent to Archbishop Epiphanius. Stolte has put forward a convincing argument that C.1.1.8 probably did not form part of the original version of the Second Edition of the *Codex*.⁵⁰ He justifies this by looking at the form of the constitution and declares that the fact that it is not an imperial constitution at all, but a letter from Pope John II to Justinian is proof that it did not go through the editing committee of the *Codex*.⁵¹ Rather, he believes that it was added shortly after the initial production by an overzealous editor or someone keenly interested in papal affairs.⁵² Although in his 1996 monograph, *Justinian*, Moorhead saw no issue with C.1.1.8's inclusion in the *Codex*, Stolte's view is more convincing.⁵³ Despite the anomaly of C.1.1.8, both extant letters by Justinian are strikingly similar, suggesting the concern of Justinian to ensure that he was upholding the Chalcedonian faith. Indeed, in C.1.1.8 Pope John II ratifies that Justinian is upholding the Orthodox Catholic faith.⁵⁴ Rome vigorously defended the orthodoxy of Chalcedon, and so there was a need to explicitly conform to this in the letter in a statement of faith that does not materially depart from C.1.1.5 and C.1.1.6.

⁴⁷ *Ibid.*, C.1.1.8, p. 41.

⁴⁸ *Ibid.*, p. 31.

⁴⁹ Evans, *The Age of Justinian*, pp. 202-3.

⁵⁰ Bernard Stolte, "Not in the Code, nor in the Basilica: C.1.1.8 and its translation in the Basilica", *Annali del Seminario Giuridico dell'Università degli Studi di Palermo*, Vol. 54 (2011), p. 291.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ John Moorhead, *Justinian* (New York, 1994), p. 127.

⁵⁴ *Codex of Justinian*, C.1.1.8.6, p. 33.

It is highly significant that none of these constitutions refer explicitly to the controversial formula of the Council of Chalcedon, that Christ was “in two natures” after the union, even though those distinct natures came together “into one person and one hypostasis.”⁵⁵ The idea of Christ being “in two natures” after the union was the crux of the dispute between the anti-Chalcedonians and the Chalcedonians. The anti-Chalcedonians would not accept this formula because they upheld the belief that there was only “one nature” after the union of the humanity and divinity in Christ.”⁵⁶ To the anti-Chalcedonians, the Council of Chalcedon with its “two natures” formula was a victory for the beliefs of Nestorius.⁵⁷ Nestorius who had been the patriarch of Constantinople and was deposed at the Council of Ephesus 431AD believed in the “sharp distinction between the human and divine in the person of Christ.”⁵⁸ It is interesting that the most easily identifiable feature of the Definition of Chalcedon is omitted from Justinian’s statement of belief. Thus, it is clear that this was a deliberate omission by Justinian and his advisers as part of the ongoing policy of reconciliation. Whilst the statements of faith in C.1.1.5-8 are no doubt aligned to the faith of Chalcedon, as has been argued, it has been done in a nuanced manner so as not to cause controversy and alienate the anti-Chalcedonians. This approach contrasts with Justinian’s *Edict* of 551AD, which has a similar desire of reconciliation, but mentions the Chalcedonian formula explicitly, as will be discussed in Chapter Three.

Therefore, one of the major criticisms that haunted the Council of Chalcedon was that it was Nestorian. There is a great emphasis in Justinianic legislation of attempting to distance the Council of Chalcedon from these Nestorian accusations. Indeed, many different

⁵⁵ *Acts of the Council of Chalcedon*, Volume 2, 34, p. 204.

⁵⁶ Need, *Truly Divine*, p. 105.

⁵⁷ Meyendorff, “Justinian”, p. 59.

⁵⁸ *The Novels of Justinian*, n. 8, p. 381.

approaches are taken, such as the anathematisation of Nestorius and the condemnation of the “Three Chapters”, as will be discussed in the following chapters. It clearly indicates a constant concern throughout Justinian’s reign. There was the need for the accusation to be removed if the anti-Chalcedonians were ever going to be reconciled to the Council of Chalcedon and the unity of the Church restored. The earliest attempt at this was suggested by Scythian monks, who came to Constantinople in 518AD, still under the reign of Justin I, Justinian’s uncle, but while Justinian held some power, particularly over religious affairs. The Scythian monks claimed that they had found an omission in the Council of Chalcedon and its Definition, that it did not unambiguously state that “Christ, one of the Trinity, was incarnate and suffered.”⁵⁹ This wording is known to scholars as the Theopaschite formula. They suggested that the formula should be employed to break Chalcedon from its Nestorian association by emphasising what Chalcedon implied, that “the Word was the subject of all of the incarnate Christ’s actions, so that the son could properly be said to have been crucified.”⁶⁰ Justinian originally opposed this formula, but suddenly changed his mind and urged Pope Hormisdas to accept it for the unity of the Church.⁶¹ The issue with this was that Rome, while it did not object to theopaschite language, refused to countenance any alteration to Chalcedon, not wanting to undermine the decrees of the ecumenical councils.⁶²

It was only when Justinian became sole ruler that he employed theopaschite language in his legislation in the *Codex*, ever looking for a compromise to make Chalcedon acceptable to the anti-Chalcedonians. All the constitutions in Title One of Book One that

⁵⁹ *Acts of Constantinople*, p. 9.

⁶⁰ Gray, “The Legacy of Chalcedon”, p. 228.

⁶¹ *Ibid.*

⁶² *Acts of Constantinople*, p. 9.

date to Justinian's reign utilise the same theopaschite language; that Christ became a man, was crucified and "willingly suffered in the flesh."⁶³ Following this, C.1.1.7 and 8, overtly propound that he "is one part of the Holy and Consubstantial Trinity."⁶⁴ Justinian employed this theopaschite language in the *Codex*, which is not explicitly in Chalcedon, as a way of reinterpreting an aspect of Chalcedon's Definition in statements of faith that are aligned to Chalcedon in a hope to placate the anti-Chalcedonians and reconcile them to Chalcedon. By attempting to distance the council from the view of Nestorius and emphasising the unity of the natures of Christ, that he was simultaneously one of the Holy Trinity and human in order to suffer, it was hoped that the anti-Chalcedonians would, to some extent, be appeased. This theopaschite language is also utilised in the *Edict* of 551AD, indicating a consistent policy of reconciliation across Justinian's reign.

Another way of subtly aligning the statements of beliefs in the *Codex* to Chalcedon is through the rhetoric of calling Mary "Ever Virgin-Mother of God."⁶⁵ This epithet had been a point of contention in the fifth session of the Council of Chalcedon because of its omission from the draft Definition of the Faith.⁶⁶ However, the bishops had insisted that it be added to the Definition to definitively stand against the Nestorians, who did not believe in the Virgin Mary being the mother of God.⁶⁷ Accordingly, the term Mary "Theotokos" (bearer of God) was subsequently added to the Definition of the Council of Chalcedon.⁶⁸ Justinian employed this terminology in the constitutions 1.1.5-8.⁶⁹ This approach had the two-strand effect of enabling Justinian to distance Chalcedon from Nestorian accusations, whilst

⁶³ *Codex of Justinian*, C.1.1.5.1, C.1.1.6.5, C.1.1.7.10 and C.1.1.8.18, pp. 21-37.

⁶⁴ *Ibid.*, C.1.1.7.6 and C.1.1.8.12, pp. 27-35.

⁶⁵ *Ibid.*, C.1.1.5.1, p. 21.

⁶⁶ *Acts of the Council of Chalcedon*, Volume 2, p. 185.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, 34, p. 204.

⁶⁹ *Codex of Justinian*, C.1.1.5.1, C.1.1.6.1 C.1.1.7.6 and C.1.1.8.12, pp. 21-35.

aligning himself to Chalcedon. The recognition of the significance of the term “Theotokos” in the *Codex* is complex. So, it was probably intended for educated bishops and theologians, who would spot the nuance in this terminology. There was a hope that the anti-Chalcedonian theologians would accept that the Chalcedonian Definition was not, in fact, Nestorian, as they had believed. Rhetoric in the *Codex* is carefully placed to allow the Chalcedonian orthodox belief to pervade without alienating the anti-Chalcedonians.

Therefore, it is evident that the language of the Council of Chalcedon informed Title One of Book One of Justinian’s *Codex* in a variety of ways. Constitutions 1.1.5 and 1.1.6 do not mention Chalcedon explicitly. However, C.1.1.7 and C.1.1.8 do due to the addressees in the letters being the most significant figures in the Catholic Church. Even though C.1.1.8 is an anomaly in terms of its format, it still exhibits a concern to uphold the unity of the Church and the orthodox faith. Throughout these constitutions though there is a consistent policy employed by Justinian in their statements of faith. All these constitutions declare the consubstantial nature of Christ to God and humans, in strikingly similar rhetoric to that used in the Council of Chalcedon itself. Thus, subtly aligning their statement of belief to Chalcedon. Moreover, there is a deliberate focus in these constitutions of distancing the Council of Chalcedon from Nestorian accusations. The reference to the Virgin Mary as “Theotokos” and utilising the Theopaschite formula emphasises this dissociation from Nestorians. Most significantly, this is achieved by avoiding the mention of the controversial “in two natures” Christology propounded in the Definition of the Council of Chalcedon. These aspects of the statements of faith in the constitutions all illuminate the two major strands of Justinian’s ecclesiastical policy; reconciling the anti-Chalcedonians to Chalcedon, whilst simultaneously upholding the Chalcedonian orthodox view.

Chapter Two- Justinian's Novels and the Condemnation of Eutyches and Nestorius

The sanctions which are contained within the *Novels* and the condemnation of Eutyches and Nestorius are a further illustration of how the language of the Council of Chalcedon informed Justinianic legislation. These anathematisations occur in all three of the legislations studied; the *Codex*, *Novels* and the *Edict on the True Faith* of 551AD. The anathematisation occurs in the *Codex* and the *Edict* as part of their doctrinal statements of faith. But this is markedly different from its use in the *Novels*, which were more practical.⁷⁰ However, the fact that these condemnations occur in all these legislations is a testament to the continuous ecclesiastical policy of Justinian, over which he had a desire to exert control. It is also indicative of how prominent the Council of Chalcedon was to Justinianic legal and ecclesiastical thought.

The references to the condemnation of Eutyches and Nestorius in Justinianic legislation tend to be grouped together; indicating that their views represented a significant concern to both the Council of Chalcedon and Justinianic legislation. They were the proponents of extreme Christological views at the polar ends of the spectrum, which opposed the Christology propounded at Chalcedon, and to which Justinian was adhering. Eutyches had been an archimandrite in Constantinople in the fifth century and a vehement opponent of Nestorius and his views.⁷¹ He was led to argue in his opposition to Nestorius that the distinction between the two natures may become mingled and result in a third nature.⁷² Consequently, he had been condemned at the Council of Chalcedon in 451AD for

⁷⁰ H.F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law* (Cambridge, 1972), p. 495.

⁷¹ *The Novels of Justinian*, Novel 42, n. 3, p. 380.

⁷² Leo Donald Davis, S.J. *The First Seven Ecumenical Councils (325-787): The History and Theology* (Minnesota, 1983), p. 234.

opposing the Chalcedonian doctrine of “in two natures”, but one hypostasis.⁷³ Thus, the condemnation of Eutyches in the legislation studied is a resourceful way of subtly confirming the adherence to the doctrine of the Council of Chalcedon in Justinian’s reign.

Similarly, the views and person of Nestorius are also explicitly condemned in all three of the Justinianic legislation studied. Nestorius had been the patriarch of Constantinople from 428AD to 431AD and had argued that there were, in fact, two natures and two hypostases in Christ.⁷⁴ The First Council of Ephesus in 431AD had anathematised him, and the Council of Chalcedon subsequently ratified this.⁷⁵ The condemnation of Nestorius in Justinianic legislation had a deeper underlying purpose than just adhering to the Council of Chalcedon, as the mention of the figure of Eutyches represents. From the moment that the Council of Chalcedon had decided upon the controversial formula that Christ was “in two natures”, it had been accused by the anti Chalcedonians as being Nestorian in sympathy.⁷⁶ A label, which even a century later in the reign of Justinian proved near impossible to shake. Therefore, by expressly condemning Nestorius in Justinianic legislation, which often overtly referred to the Council of Chalcedon, it indicates a highly significant policy pursued by Justinian to distance the Council of Chalcedon and its doctrine from being associated with the person and views of Nestorius. There are discussions of the attempts at distancing Chalcedon from the Nestorian accusations in Chapter One and this is developed further in Chapter Three, which focuses on the *Edict on the True Faith* and the “Three Chapters” controversy.

⁷³ *Acts of the Council of Chalcedon*, Volume 2, 34, p. 203.

⁷⁴ Davis, *First Seven Ecumenical Councils*, p. 234.

⁷⁵ *The Novels of Justinian*, Novel 42, n. 3, p. 380.

⁷⁶ Gray, “The Legacy of Chalcedon”, p. 222.

The condemnation of Eutyches and Nestorius are found in Justinian's *Codex* and the *Edict* alongside lengthy statements of belief, propounding the Chalcedonian faith. Chapter One has previously discussed the statements of belief which adhere to and interpret the Council of Chalcedon in Justinian's *Codex*, and Chapter Three will study their influence on the *Edict on the True Faith*. For example, the condemnation of Eutyches and Nestorius is mentioned explicitly in four out of eight of the constitutions in Title One, Book One of Justinian's *Codex*.⁷⁷ C.1.1.7 is particularly informative in the outlook on Eutyches and Nestorius. It declared that if the decrees of the four ecumenical councils, including Chalcedon were not upheld then heretics would have "freedom once again to propagate their poison in the Holy Churches of God."⁷⁸ The emotive and derogatory language of "poison" emphasises the importance Justinian placed on upholding the true faith; the orthodox Chalcedonian faith. Since Eutyches and Nestorius did not conform to this belief, they had to be condemned. Justinian maintained this opposition to Eutyches and Nestorius throughout his reign, and they are again condemned in anathemas 7, 9 and 10 in the *Edict on the True Faith*, following a lengthy exposition by Justinian on the orthodox faith.⁷⁹

However, several of Justinian's *Novels* condemn Eutyches and Nestorius as well, but depart from the apparent formula of the *Codex* and the *Edict* of combining their anathematisation in a lengthy statement of faith. It is pertinent here to discuss the nature of the *Novels*, as it helps to explain this difference. Justinian's *Novels*, refer to the new laws produced after the second edition of Justinian's *Codex* in 534AD, up until his death in 565AD.⁸⁰ As a result, they tend to be responding to specific cases of law and were in nature

⁷⁷ *Codex of Justinian*, C.1.1.5.3, C.1.1.6.7-8, C.1.1.7.15-22 and C.1.1.8.28, pp. 21-37.

⁷⁸ *Ibid.*, C.1.1.7.18, p. 31.

⁷⁹ *On the Person of Christ*, p. 183.

⁸⁰ Kearley, "Creation and Transmission", p. 379.

more practical, on the ground legislation than was either the *Codex* or the *Edict* with their more ideological statements of belief.⁸¹ The *Novels* covered a range of concerns from administrative to ecclesiastical.⁸² This chapter focuses on the *Novels* pertaining to ecclesiastical matters; particularly those explicitly referring to the Council of Chalcedon or Eutyches and Nestorius. All these factors help to explain why the *Novels* appear different in form to the *Codex* and the *Edict*. Given their more practical application (at least in theory), statements of faith with lengthy detail on doctrinal matters would not be fitting to the purpose of the *Novels*. *Novels* 109, 115 and 131 all condemn Eutyches and Nestorius either explicitly or implicitly as heretics. They put these anathematisations into more practical effect. *Novel* 109 declares that heretical women cannot have privileges over their dowries.⁸³ In a similar vein, *Novel* 115 states that only orthodox descendants can inherit property.⁸⁴ It continues saying that one of the only valid reasons in which a child may disassociate their parents from property is if they are heretics.⁸⁵ *Novel* 131, which is ecclesiastical, as opposed to the aforementioned constitutions, makes clear that heretics are not to receive property from the Church.⁸⁶ These give a flavour of the more practical application of the *Novels*; as they use the condemnations as sanctions to bar heretics from privileges. Supporters of Eutyches and Nestorius and anyone not adhering to the Council of Chalcedon are not to benefit from these privileges. This is a strikingly different angle from the one employed in the *Codex* and the *Edict*. As much as these *Novels* were designed in theory to be more practical than the *Codex* and the *Edict*, these *Novels* would have been difficult to enforce.

⁸¹ Jolowicz, *Historical Introduction*, p. 495.

⁸² *Ibid.*

⁸³ *The Novels of Justinian*, Novel 109.1, pp. 712-13.

⁸⁴ *Ibid.*, Novel 115.3, p. 740.

⁸⁵ *Ibid.*, 115.4, p. 742.

⁸⁶ *Ibid.*, Novel 131.14, p. 876.

There is a lack of evidence of how or even if they were enforced. However, they do provide the historian with an insight into Justinian's legal and ecclesiastical thought; a consistent policy of adhering to the Council of Chalcedon through the condemnation of key figures like Eutyches and Nestorius.

Significantly, two of the *Novels* discussed here, *Novels* 115 (542AD) and 131 (545AD) were written by Junillus Africanus.⁸⁷ Junillus was the Quaestor of the Sacred Palace from 542AD-546AD.⁸⁸ In 543/4AD, responding to Justinian's legal reforms, he produced his unofficial biblical exegesis, entitled the *Instituta Regularia Divinae Legis*. It provided an introductory textbook to Divine Law.⁸⁹ Junillus has not been well received over the centuries. His work had last been extensively researched in 1800 by Heinrich Kihn until Maas re-evaluated it in 2003.⁹⁰ Several modern scholars dismissed Junillus' work as boring.⁹¹ However, Michael Maas's seminal work, *Exegesis and Empire*, has been crucial to challenging these traditional views of Junillus. In his *Instituta*, Junillus conforms to the Chalcedonian view of the nature of Christ. He states that while Christ has both human and divine natures, they are a unity.⁹² Imperial bureaucrats during Justinian's reign were expected to adhere to the orthodox Chalcedonian faith. More crucially for this study, it emphasises that Justinian's legal ministers in charge of the composition of the *Novels* were perfectly competent and able to produce doctrinal statements in this body of reform legislation. The fact that none are present in these *Novels* pertaining to Chalcedon and the

⁸⁷ *Handbook (Institutes) of the Basic Principles of Divine Law*, ed. and trans. Michael Maas, *Exegesis and Empire in the Early Byzantine Mediterranean. Junillus Africanus and the Instituta Regularia Divinae Legis* (Tübingen, 2003), p. 65.

⁸⁸ Michael Maas, "Junillus Africanus' *Instituta Regularia Divinae Legis* in its Justinianic context" in P. Allen and E. Jeffreys (eds.), *The Sixth Century, End or Beginning?* (Brisbane, Australia, 1996), p. 132.

⁸⁹ Maas, *Exegesis and Empire*, p. 2.

⁹⁰ *Ibid.*, p. 6.

⁹¹ Moorhead, *Justinian*, p. 137.

⁹² Maas, *Exegesis and Empire*, I.16, p. 153.

condemnation of Eutyches and Nestorius exemplifies its deliberate exclusion; the *Novels* had a different, and more practical nature, which would not fit comfortably with a doctrinal statement of belief.

It is interesting then that *Novels* 115 and 131, produced by Junillus, refer to the Council of Chalcedon by name and confirm the decrees of the four ecumenical councils.⁹³ It highlights that “defence of orthodoxy was an integral part of Justinian’s legislation.”⁹⁴ *Novel* 131 goes further and declares that the decrees of the ecumenical councils should be regarded as law.⁹⁵ This declaration is highly significant because not only does it show the emphasis Justinian placed on the ecumenical councils, especially those of Chalcedon, but it also underscores Justinian’s desire for power and the ability to pass laws on ecclesiastical and secular matters. Justinian believed that as God’s deputy on earth he had a duty to ensure that the correct and orthodox faith was being upheld across the empire and so styled himself as the sole interpreter of the law.⁹⁶ His reform legislation, here through the person of Junillus, served to reposition the emperor as a central figure in the framework of Christian orthodoxy.⁹⁷ In the expert hands of Junillus, legislation was one way of doing this. Through *Novels* 115 and 131 Justinian was ratifying the Church Councils’ decisions, especially Chalcedon’s as law under his own name. Despite, being unjustly criticised by Procopius in his *Secret History* as being ignorant in all aspects of law, it is evident that Junillus was highly competent.⁹⁸ His *Instituta* and the *Novels* produced by him are

⁹³ *The Novels of Justinian*, Novel 115.4, p. 739 and Novel 131.1, p. 869.

⁹⁴ Maas, “Junillus Africanus”, p. 141.

⁹⁵ *The Novels of Justinian*, Novel 131.1, p. 869.

⁹⁶ Maas, “Junillus Africanus”, p. 141.

⁹⁷ Peter Sarris, *Economy and Society in the Age of Justinian* (Cambridge, 2006), p. 206.

⁹⁸ Procopius, *The Secret History*, eds. and trans. G.A Williamson and Peter Sarris (London, 2007), 20.17, p. 83.

illustrative of the adherence to the Council of Chalcedon that Justinian demanded, not only of his imperial bureaucrats but all of his subjects.

Novel 42 gives credence to this as a policy employed by Justinian in his reform legislation. In the preamble, it states that the emperor always ratifies ecclesiastical decisions, for example when it comes to anathematising heretical priests; like Eutyches and Nestorius.⁹⁹ The fact that Justinian again contains these ratifications in his legislation reinforces his desire to legislate in ecclesiastical and secular matters. Furthermore, *Novel 42* is a clear example of Justinian encroaching into ecclesiastical spheres through his legislation. The epilogues of the *Novels*, as modern editors usually term them, set out Justinian's expectations for the constitution.¹⁰⁰ Justinian expected *Novel 42* to be pinned up in various churches across the empire, to give his decision as wide an audience as possible.¹⁰¹ Not only does Justinian pass legislation on ecclesiastical matters under his name, but he even invaded ecclesiastical spaces as a means of publishing his legislation. The emperor's deliberate ideology of merging law, imperial power and Christianity could not be clearer.

Indeed, there is evidence in *Novel 42* that in around 536AD there was a hardening of imperial policy to a more staunchly intolerant Chalcedonian stance.¹⁰² Strikingly contrasting that of the *Codex* and *Edict*, which seem to represent a policy of reconciliation between the Chalcedonians and the anti-Chalcedonians, which is explored in Chapters One and Three. The political circumstances of the time can explain this hardening of imperial religious policy. In May 535AD Pope Agapetus came to Constantinople on a diplomatic mission on the

⁹⁹ *The Novels of Justinian*, Novel 42, Preamble, p. 379.

¹⁰⁰ Kearley, "Creation and Transmission", p. 381.

¹⁰¹ *The Novels of Justinian*, Novel 42, Epilogue, pp. 384-5.

¹⁰² *Ibid.*, p. 379.

orders of the Ostrogothic King Theodahad to prevent Justinian from invading Italy.¹⁰³ Moreover, the former bishop of Trebizond, Anthimus, was appointed Patriarch of Constantinople.¹⁰⁴ Anthimus had been one of the Chalcedonian bishops in the conversations held in 532AD between the Chalcedonians and anti-Chalcedonians. But soon afterwards he had been influenced by and had entered into communion with Severus of Antioch.¹⁰⁵ The Chalcedonians opposed him for being anti-Chalcedonian. In March 536AD Agapetus deposed Anthimus and replaced him with a man of Chalcedonian sympathies, Menas.¹⁰⁶ On the emperor's orders, Menas convened a Synod in Constantinople in May 536AD.¹⁰⁷ It anathematised Anthimus, Severus of Antioch, a leading anti-Chalcedonian theologian, bishop Peter of Apamea and a monk called Zooras.¹⁰⁸ *Novel 42*, produced on the 6th August 536AD, confirms this ecclesiastical decision, highlighting Justinian's desire to contain Church decisions in his legislation.¹⁰⁹ Because Justinian needed Rome's support to further his plans against Ostrogothic Italy, he temporarily replaced his policy of reconciliation between the Chalcedonians and anti-Chalcedonians with a stricter pro-Chalcedonian policy.¹¹⁰ *Novel 42* reflects this and ratifies the decision of the Synod and bans these heretics and any followers from cities in an attempt to stop anti-Chalcedonian ideas from spreading. Interestingly, there is no mention of Severus or Peter in early Justinianic legislation, emphasising the desire for reconciliation from the outset of Justinian's reign.¹¹¹

¹⁰³ John W. Barker, *Justinian and the Later Roman Empire* (Wisconsin, 1977), p. 104.

¹⁰⁴ Millar, "Rome, Constantinople", p. 70.

¹⁰⁵ Gray, *In Defense of Chalcedon*, p. 59.

¹⁰⁶ Barker, *Justinian*, pp. 104-5.

¹⁰⁷ Millar, "Rome, Constantinople", p. 70.

¹⁰⁸ *The Novels of Justinian*, Novel 42, pp. 379-85.

¹⁰⁹ *Ibid.*, p. 385.

¹¹⁰ Barker, *Justinian*, p. 105.

¹¹¹ Millar, "Rome and Constantinople", p. 68.

Novel 109, dating to 541AD, like *Novel* 42, also mentions the condemnation of Severus, as well as Eutyches and Nestorius, indicating the continuation of the hardening of imperial policy to one that was more firmly Chalcedonian in stance.¹¹² However, by *Novel* 132, known as the “Edict on faith, to Constantinopolitans”, published in April 544AD, there is no mention of Severus explicitly, only “heretics.”¹¹³ Rather than being an edict on faith like the ones studied in the *Codex* or *Edict*, it is a constitution which declares that heretical meeting places were illegal and these places of worship would be forfeit.¹¹⁴ Maintaining the anonymity of the heretics suggests that the imperial policy had reverted to a policy of reconciliation between the Chalcedonians and anti-Chalcedonians, as the Christological debate once again preoccupied Justinian. In late 543AD or early 544AD, Justinian published his Edict against the Three Chapters in an attempt at this reconciliation. The so called “Three Chapters” controversy will be studied more closely in Chapter Three.

Therefore, the fact that there is mention of the condemnation of Eutyches and Nestorius in all the Justinianic legislation studied; the *Codex*, the *Novels* and the *Edict on the True Faith* suggests a consistent ecclesiastical policy in the reign of Justinian to subtly align the legislation through Chalcedonian language to the decree of the Council of Chalcedon. The *Codex* and *Edict* employ these condemnations alongside doctrinal statements of faith to reinforce the orthodox Chalcedonian faith of the empire. But, the *Novels* emphasise a more practical approach of using these condemnations as sanctions to deprive heretics of privileges. However, it must be noted that it is difficult to know with what success these constitutions were enforced. Still, the *Novels* are illuminating both in Justinian’s continuous

¹¹² *The Novels of Justinian*, Novel 109, Preamble, pp. 711-2.

¹¹³ *Ibid.*, Novel 132, p. 879.

¹¹⁴ *Ibid.*

ideology of entwining law, imperial power and Christianity in his reign. Justinian is keen to ensure that legislative power derives from the person of the emperor. The political pressure and context of the production of the *Novels* should not be overlooked. Events of 536AD created a temporary shift in imperial policy from focusing on reconciliation between the Chalcedonians and anti-Chalcedonians to intolerantly Chalcedonian. But by 544AD and later by the production of the *Edict on the True Faith* in 551AD this imperial policy of reconciliation had been resumed.

Chapter Three- The Edict on the True Faith of 551AD

In 551AD Justinian issued the *Edict on the True Faith*, which formed part of the Justinianic legislation produced against the so-called “Three Chapters”. The “Three Chapters” were the person and works of Theodore of Mopsuestia, the anti-Cyrrillian works of Theodoret of Cyrrhus and the letter by Ibas of Edessa to Maris the Persian.¹¹⁵ It comprised of what Justinian saw as an orthodox statement of belief, following the Council of Chalcedon and its rhetoric, and thirteen anathemas. The *Edict* is highly informative on Justinian’s ecclesiastical and imperial policy. The condemnation of the “Three Chapters” and the reinterpreting of Cyril’s formula “one nature of God the Word Incarnate” emphasise the focus on reconciliation between the anti-Chalcedonians and the Chalcedonians, as well as a continuing adherence to the Council of Chalcedon.

Justinian’s theological adviser, Theodore Askidas had suggested that condemning the “Three Chapters” was a way to reconcile the anti-Chalcedonians and the Chalcedonians. Accordingly, in around 544/5AD Justinian is known to have issued an edict to that effect although the edict is no longer extant.¹¹⁶ Some scholars have questioned Askidas’ motives and have argued that the suggestion to Justinian of the condemnation of the “Three Chapters” was a retaliation against the Palestinian monks, who had condemned Origenism, but admired Theodore of Mopsuestia.¹¹⁷ Theodore Askidas is thought to have had Origenist sympathies.¹¹⁸ However, Price has argued against such an interpretation and declared that historians should not reduce the condemnation of the “Three Chapters” to this.¹¹⁹

¹¹⁵ *Acts of Constantinople*, p. 16.

¹¹⁶ Davis, *First Seven Ecumenical Councils*, p. 238.

¹¹⁷ Gray, *In Defense of Chalcedon*, p. 64.

¹¹⁸ *Ibid.*

¹¹⁹ *Acts of Constantinople*, p. 18.

Regardless of Theodore's motives, what matters is that Justinian saw it as a possible means to reconcile the anti-Chalcedonians, which as Chapter One has shown had troubled him since the beginning of his reign.

Published in 551AD, the *Edict on the True Faith* was a response to the backlash at the condemnation of the "Three Chapters" and will be the focus of this chapter.¹²⁰ The *Edict's* primary purpose was to show that the condemnations were in line with the Council of Chalcedon, whilst simultaneously striving for reconciliation between the anti-Chalcedonians and the Chalcedonians. Theodore of Cyrhus and Ibas of Edessa had been friends with, and followers of Nestorius but the Council of Chalcedon had exonerated them.¹²¹ These vindications fuelled the anti-Chalcedonian criticism that the Council of Chalcedon was Nestorian in sympathy.¹²² By condemning the "Three Chapters" in the *Edict*, Justinian sought to rebut this accusation. Distancing the Council of Chalcedon from its Nestorian accusations was yet another tactic by which of Justinian sought to reconcile the anti-Chalcedonians to the Council of Chalcedon. The anathematisation of Nestorius in Justinianic reform legislation was another attempt to separate Chalcedon from the views of Nestorius and is discussed in Chapter Two. In 551AD Justinian is further widening this gulf by excoriating figures and the works of those with Nestorian connections despite their exoneration at Chalcedon.

Staunch Chalcedonians like Pope Vigilius refused to sanction the condemnation of the "Three Chapters".¹²³ Under pressure from Justinian to accept the anathematisations

¹²⁰ Gray, *In Defense of Chalcedon*, p. 68.

¹²¹ Richard Price, "The Council of Chalcedon (451): A Narrative" in Richard Price and Mary Whitby (eds), *Chalcedon in Context: Church Councils 400-700* (Liverpool, 2009), p. 83.

¹²² John Meyendorff, *Christ in Eastern Christian Thought* (New York, 1975), p. 59.

¹²³ Davis, *First Seven Ecumenical Councils*, p. 242.

Pope Vigilius had fled in 551AD to the Church of St Euphemia at Chalcedon.¹²⁴ This was the exact location, where the Council of Chalcedon had been convoked a century previously.¹²⁵ Thus, it was a highly symbolic adherence to the original decree at Chalcedon and defiance of the condemnation of the “Three Chapters”. Gray has convincingly argued that Justinian realising that he would need Rome onside for his condemnation to be any success, produced the *Edict* in 551AD to help Vigilius reconcile himself to the condemnation of the “Three Chapters”.¹²⁶ This helps to explain why Justinian went to such great lengths in the *Edict* not only to show that the Council of Chalcedon was not Nestorian, but also that condemning the “Three Chapters” was not at odds with Chalcedon; a delicate balance to strike.

The *Edict* does not repeat the heresies of Theodore Mopsuestia from the *Edict* of 544/5AD, but instead focuses on why his posthumous condemnation should be permitted.¹²⁷ In the *Edict on the True Faith* Justinian produced a venomous refutation of those who argued that Theodore of Mopsuestia should not be condemned because he died in communion with the Catholic Church. Justinian declared that in reality Theodore was already expelled from the Church because he had died following his heretical beliefs.¹²⁸ He succeeded this by quoting that the Lord had stated that heretics “are dead though they are yet alive.”¹²⁹ As a result of his heretical beliefs, Theodore was not part of God’s holy Church regardless of whether or not he appeared to have died in communion with it; he would not receive salvation. Moreover, the *Edict* ingeniously cites a precedent of a heretic being

¹²⁴ Need, *Truly Divine*, p. 118.

¹²⁵ *Ibid.*

¹²⁶ Gray, *In Defense of Chalcedon*, p. 68.

¹²⁷ *Acts of Constantinople*, pp. 24-5.

¹²⁸ *On the Person of Christ*, p. 192.

¹²⁹ *Ibid.*, p. 193.

condemned after death at the Council of Chalcedon. It argued that Domnus, the bishop of Antioch, had been posthumously condemned because “he had dared to write that the Twelve Chapters of St Cyril should be passed over in silence.”¹³⁰ Posthumous condemnation, the *Edict* suggested, had been used by the Council of Chalcedon in similar circumstances. The *Edict* shifted the focus to the fact that it was the duty of followers of the Orthodox faith to ensure the condemnation of heretics, and that their ideas did not pollute others.

Ibas of Edessa’s letter to Maris the Persian was written in 433AD and fiercely criticised Cyril and the pro-Cyrrillian sessions of the First Council of Ephesus.¹³¹ The problem Justinian faced was that somewhat controversially the *Letter* had been used at the Council of Chalcedon to confirm Ibas’ orthodoxy.¹³² The *Edict* condemned the Letter for denying the Virgin Mary as “Theotokos” and claiming, among other heresies, that Christ was a mere man.¹³³ In this light, it is easy to see why the acceptance of such a letter at Chalcedon was perceived as controversial. Even the anti-Chalcedonian bishops accused the *Letter* of heresy during the conversations with the Chalcedonian bishops in 532AD; the same conversations which were discussed further in Chapter One.¹³⁴ In furtherance of Justinian’s policy of reconciliation, *the Edict on the True Faith* attempts to circumvent these objections by stating that the letter received and studied at Chalcedon could not possibly have been the heretical letter to Maris the Persian. The letter presented to the Council by the defenders of Ibas had undoubtedly been a different one.¹³⁵ This ingenious reinterpretation of an aspect of the

¹³⁰ *Ibid.*, p. 194.

¹³¹ Price, “The Council of Chalcedon”, p. 85.

¹³² Gray, “The Legacy of Chalcedon”, p. 233.

¹³³ *On the Person of Christ*, p. 187.

¹³⁴ *Acts of Constantinople*, p.10.

¹³⁵ *On the Person of Christ*, p. 189.

Council of Chalcedon by Justinian and his advisers deftly removed the problem of the condemnation of the *Letter to Maris the Persian*.

Despite appearances to the contrary, the condemnation of the “Three Chapters” in the *Edict* is in line with the Chalcedonian Faith. It simply reinterprets aspects with a view to reconciling the anti-Chalcedonians to the Council of Chalcedon. Most significant is the attempt to align Cyril’s formula of “One nature of God the Word incarnate” to the “in two natures” formula of Chalcedon. Cyril had been the Patriarch of Alexandria from 412-444AD and had strongly opposed Nestorius and his views at the First Council of Ephesus in 431AD.¹³⁶ Cyril firmly believed in the idea of “one nature of God the Word incarnate”. But in 433AD in an attempt at reconciliation, Cyril wrote a letter to John of Antioch, which is often known as “The Formula of Union”, in which he declared that as long as the views of Nestorius were rejected, it was acceptable to say that Christ was “of two natures.”¹³⁷ One formula then stressed the unity of the nature of Christ, the other the distinction. The repercussions of Cyril’s apparent volte face would reverberate throughout the Age of Justinian.¹³⁸ The anti-Chalcedonians adhered to Cyril’s view of 431AD and refused to accept Chalcedon’s formula of “in two natures”.

In the *Edict on the True Faith* Justinian is attempting to reconcile the two sides by demonstrating that Cyril’s formula and the Council of Chalcedon were propounding the same Christology.¹³⁹ In Cyril’s formula, “he indicated the number of natures that have come together and proclaimed one Christ, but not one nature of Godhead and flesh.”¹⁴⁰ The *Edict*

¹³⁶ Millar, “Rome, Constantinople”, p. 62.

¹³⁷ Gray, “The Legacy of Chalcedon”, p. 219.

¹³⁸ *Ibid.*, pp. 219-20.

¹³⁹ Davis, *First Seven Ecumenical Councils*, p. 238.

¹⁴⁰ *On the Person of Christ*, p. 170.

states that when Cyril said “nature” he meant hypostasis or prosopon meaning person.¹⁴¹ This subtle reinterpretation transformed Cyril’s formula to one that coincided with the Christological interpretation of Chalcedon.¹⁴² The *Edict* supports this interpretation by giving examples from Cyril’s work. In the thirteenth chapter of his *Scholia*, Cyril declared that “we should not differentiate the one Lord Jesus Christ into man and God separately, but we speak of one and the same Lord Jesus Christ, recognizing the difference of natures and holding them together without confusion.”¹⁴³ This definition is strikingly similar to the Christology of Chalcedon, which declares that the two natures in Christ are “without confusion, change, division, or separation” and seems to give credence to this alignment of the Chalcedonian and Cyrillian formulae.¹⁴⁴ Moreover, the *Edict* explains the numeration of the natures of Christ stating that whilst there are two natures of Christ, they are not divided into two Christs or Sons.¹⁴⁵ This marks an explicit distancing from Nestorius who emphasised the division and separation of the natures of Christ. Asserting distance from Nestorianism is a thread which runs through the *Edict*. The *Edict* masterfully endeavours to align the Cyrillian formula of “one nature of God the Word incarnate” with the Chalcedonian belief. Whilst also explaining the numbering of the natures as opposed to the Nestorian view. All these factors emphasise the reconciliatory approach of the Christology in the *Edict* without compromising the decree of Chalcedon.

Indeed, there are many examples of the *Edict* upholding the statement of belief propounded in the Council of Chalcedon and Justinian’s *Codex*. Its adherence to the statement of faith propounded in the *Codex* that is discussed in Chapter One; most notably

¹⁴¹ *Ibid.*, p. 169.

¹⁴² *Acts of the Council of Chalcedon*, Volume 2, 34, p. 204.

¹⁴³ *On the Person of Christ*, p. 171.

¹⁴⁴ *Acts of the Council of Chalcedon*, Volume 2, 34, p. 204.

¹⁴⁵ *On the Person of Christ*, p. 174.

the idea of Christ as consubstantial to both God and humans because of his two natures and that Mary is “Theotokos.”¹⁴⁶ More importantly, the Theopaschite formula is stressed in the *Edict*; that Christ, one of the Holy Trinity voluntarily bore the Passion for the Salvation of mankind.¹⁴⁷ As has been discussed in Chapter One, the Theopaschite formula was a previous reconciliation attempt employed in the reign of Justinian, which is expressed in several constitutions of Title One of Book One of the *Codex*.¹⁴⁸ The Theopaschite formula is stressed in the *Edict* but not to the detriment of the Council of Chalcedon.¹⁴⁹ It does not seek to undermine the decree of Chalcedon, but simply to reinterpret it, to distance the Council from its Nestorian accusations.

It is interesting that even in 551AD Justinian had not given up on the prospect of reconciling the anti-Chalcedonians to the Council of Chalcedon. The imperial ideology that underscored Justinian’s reign is crucial for understanding the emphasis on reconciliation between the anti-Chalcedonians and Chalcedonians. Justinian as the sole interpreter of the law and God’s viceregent took it upon himself to try and ensure harmony and unity in the Catholic Church.¹⁵⁰ A way of attempting to achieve this was by setting out orthodox statements of belief in his legislation. Justinian saw it as his right to legislate in both secular and ecclesiastical matters. Thus, the *Edict* is a further example of Justinian pursuing his imperial ideology through the merging law, imperial power and Christianity more closely than had ever been attempted by a previous emperor. In many ways this *Edict* represents a culmination of Justinian’s policy of reconciliation throughout his reign. It combines the

¹⁴⁶ *Ibid.*, p. 165 and *Codex of Justinian*, C.1.1.5.1, C.1.1.6.1, C.1.1.7.6 and C.1.1.8.12, pp. 21-35.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Codex of Justinian*, C.1.1.5.1, C.1.1.6.5, C.1.1.7.10, C.1.1.8.18, pp. 21-37.

¹⁴⁹ Davis, *First Seven Ecumenical Councils*, p. 238.

¹⁵⁰ Francis Dvornik, “Emperors, Popes and General Councils”, *Dumbarton Oaks Papers*, Vol. 6 (1951), p. 22.

fundamental elements of this policy like the subtle alignment to Chalcedon and the Theopaschite formula in an amalgam in this *Edict* condemning the “Three Chapters”.

However, it must be stressed that the *Edict on the True Faith*, whilst emphasising reconciliation, explicitly refers to Chalcedon’s controversial Christological formula “in two natures” in a way that the constitutions from the *Codex* do not.¹⁵¹ The *Codex* leaves more room for interpretation among the anti-Chalcedonians and the Chalcedonians. The explicit mention of the Chalcedonian formula in the *Edict* can be explained in two ways. Firstly, Justinian is trying to reconcile the anti-Chalcedonians to the Chalcedonian formula, as seen by the reinterpretation of Cyril; so, the orthodoxy of the Chalcedonian decree needs to be stressed. Secondly, since Justinian was aware of the backlash from the condemnation of the “Three Chapters”, he ensured that the *Edict* aligned with Chalcedon explicitly not only to confirm his view that he was the champion of orthodoxy, but so he was not viewed as entirely departing from the Council of Chalcedon. The *Edict* perfectly illustrates the complexities of the ecclesiastical policy of Justinian’s reign; both the desire for reconciliation between the anti-Chalcedonians and the Chalcedonians and adherence to the Council of Chalcedon.

It is noteworthy that the *Edict* is strikingly different in its manner of production from the *Codex* and the *Novels*. Justinian’s *Codex* and *Novels* are both responding to ecumenical councils in their legislation; most notably the Council of Chalcedon, as has been studied in the previous two chapters. *Novel* 42 was itself published in direct response to the Synod of Constantinople in 536AD.¹⁵² However, whilst the *Edict* of 551AD evidently does respond to

¹⁵¹ *On the Person of Christ*, p. 180.

¹⁵² *The Novels of Justinian*, Novel 42, pp. 379-385.

the Council of Chalcedon and is highly influenced by it, it is also an example of Justinianic legislation informing ecclesiastical events. It undoubtedly influenced the Second Council of Constantinople of 553AD, later to be regarded as the Fifth Ecumenical Council. It was heavily drawn on by the bishops at the Council of Constantinople in formulating their condemnation of the “Three Chapters.”¹⁵³ Indeed, the anathemas produced at the Council of Constantinople are almost identical to those of the *Edict on the True Faith*.¹⁵⁴ Here then is an example of the inverse of the usual model; Justinianic legislation is now influencing an ecumenical council.

Therefore, the *Edict on the True Faith* of 551AD embodies well two major strands of Justinian’s ecclesiastical policy; the desire for reconciliation and adherence to the Council of Chalcedon. Although it is principally concerned with the condemnation of the “Three Chapters” it remains consistent to the policy of reconciliation enshrined within the *Codex* with its stress on the subtle alignment through language to the Council of Chalcedon and the Theopaschite formula. The condemnation of the “Three Chapters” further reflects Justinian’s ever-present desire to distance Chalcedon from accusations that it was Nestorian in sympathy. Thus, even in the latter half of Justinian’s reign, the rhetoric of Chalcedon continued to be deeply ingrained in Justinianic legislation.

¹⁵³ *On the Person of Christ*, p. 161.

¹⁵⁴ Gray, *In Defense of Chalcedon*, p. 69.

Conclusion

The study of the language relating to the Council of Chalcedon in Justinianic legislation charts the different phases of the policy of reconciliation between the anti-Chalcedonians and the Chalcedonians. It illuminates that across the chronological span of 527AD to 551AD and the different forms of legislation, the *Codex*, the *Novels* and the *Edict on the True Faith*, the policy of alignment to the Council of Chalcedon whilst simultaneously attempting to unify the opposing theological groups was a consistent concern in the reign of Justinian.

Language endeavouring to reconcile the Chalcedonians and the anti-Chalcedonians is more evident in the *Codex* and *Edict* than the *Novels*. They comprise of statements of faith, aligned to the Chalcedonian Definition. Constitutions 1.1.5-8 in Justinian's *Codex* emphasise the consubstantial nature of Christ to God and humans by employing similar rhetoric to that used at the Council of Chalcedon.¹⁵⁵ The *Edict* too utilises such language, evincing that it is possible to exploit the language of Chalcedon in a way that is both nuanced and effective. Justinian and his advisers employ it ingeniously to align the statements of belief to the Chalcedonian faith, without alienating the anti-Chalcedonian bishops and theologians.

To this end, the *Codex* and *Edict* furthered the policy of reconciliation. The *Edict* reinterpreted Cyril's "one nature of God the Word incarnate" formula, followed by the anti-Chalcedonians so it aligned with Chalcedon. This balance was achieved by declaring that when Cyril referred to "nature", he had meant "person."¹⁵⁶ Thus Cyril's formula was no different from the Christological formula expressed at Chalcedon, which had decreed that

¹⁵⁵ *Codex of Justinian*, C.1.1.5.2, C.1.1.6.6, C.1.1.7.5 and C.1.1.8.12, pp. 21-35.

¹⁵⁶ *On the Person of Christ*, p. 169.

there was one person of Christ, but that he was “in two natures.”¹⁵⁷ On the other hand, the constitutions of Title One, Book One of the *Codex* are significant for what they omit in their statements of faith. Most notably, none of the constitutions 1.1.5-8 makes any reference to Chalcedon’s controversial formula of Christ being “in two natures.”¹⁵⁸ Through these many and varied inclusions or omissions of Chalcedonian language in the statements of faith aligned to Chalcedon, Justinian and his advisers hoped to remove the anti-Chalcedonians’ opposition to the Council.

Occasionally though, adherence to Chalcedon was more forcibly expressed in Justinianic legislation. The *Novels* studied are still aligned to the Chalcedonian faith, but due to the more practical nature of this type of legislation follow a different approach to the one employed in the *Codex* and the *Edict*. The *Novels* contain no lengthy statement of faith. Instead, these constitutions threatened sanctions for failing to uphold the Chalcedonian belief. For example, heretical women would be denied privileges over their dowries, and only orthodox descendants could inherit property.¹⁵⁹ However, it is difficult to determine how stringently the sanctions were enforced. Whilst the language of Chalcedon occurs continually in these constitutions; it is in the *Novels* that the lapse of the policy of reconciliation is perceived. Though it never departs from its alignment to Chalcedon.

From 536AD to at least 541AD there appears to have been a hardening of imperial policy in ecclesiastical matters. This is reflected primarily in *Novel* 42 produced in 536AD and to a lesser extent *Novel* 109, produced in 541AD. They ratify the condemnation of Severus of Antioch, a leading anti-Chalcedonian theologian.¹⁶⁰ *Novel* 42 went further and ratified the

¹⁵⁷ *Acts of the Council of Chalcedon*, Volume 2, 34, p. 204.

¹⁵⁸ *Ibid.*

¹⁵⁹ *The Novels of Justinian*, Novel 109.1, pp. 712-13 and Novel 115.3, p. 740.

¹⁶⁰ *Ibid.*, Novel 42.1, pp. 381-3 and Novel 109, Preamble, pp. 711-2.

anathematisation of bishop Anthimus.¹⁶¹ The political circumstance of the empire explains why the policy of reconciliation temporarily lapsed and was briefly replaced with a stricter pro-Chalcedonian policy. Pope Agapetus was in Constantinople in 535AD on the orders of the Ostrogothic King Theodahad in an attempt to dissuade Justinian from invading Italy.¹⁶² Justinian did indeed intend to invade Ostrogothic Italy but needed Rome's support to execute it. Consequently, Justinian had bowed to papal pressure and pursued a more staunchly pro-Chalcedonian policy. A Synod was convened in Constantinople in 536AD, anathematising Anthimus, Severus, bishop Peter of Apamea and a monk called Zooras, and *Novel* 42 ratified the decisions.¹⁶³ That political circumstances could influence ecclesiastical policy is evidence of the complexities underlying Justinian's reign. Significantly, the language of Chalcedon is still detectable in these constitutions; but is utilised to emphasise a more hard-line pro-Chalcedonian policy. However, by 544/5AD with the condemnation of the "Three Chapters", the imperial policy of reconciliation had been resumed, as is shown later in the *Edict on the True Faith*.

Justinian and his advisers were aware that these attempts at reconciliation between the anti-Chalcedonians and the Chalcedonians would not succeed if the Nestorian taint continued to haunt the Council of Chalcedon. Nestorian sympathy was the most significant criticism levelled at the Council by the anti-Chalcedonians. Thus, there is a deliberate attempt in Justinianic legislation to use the rhetoric of Chalcedon in a manner that aided its distancing from this Nestorian accusation. It is seen throughout the *Codex*, *Novels* and *Edict*, highlighting that it was a prominent concern of the reign. Indeed, Justinianic legislation

¹⁶¹ *Ibid.*, Novel 42, Preamble, pp. 379-81.

¹⁶² Barker, *Justinian*, p. 104.

¹⁶³ *The Novels of Justinian*, Novel 42, pp. 379-85.

illuminates the multifaceted approach taken by Justinian and his advisers to implement this policy. The most direct approach is the explicit condemnation of Nestorius in the legislation, which is employed by all three. There are some further similarities between the *Codex* and the *Edict* in the approach to distance Chalcedon from the label of Nestorianism. They both ensure that they call the Virgin Mary “Theotokos” (Mother of God), in direct opposition to what Nestorius believed.¹⁶⁴ Moreover, in their utilisation of the Theopaschite formula (that one of the Trinity suffered), they reinterpreted the language of Chalcedon to more fully emphasise the unity of the person of Christ after the Incarnation, not the separation, as Nestorius believed.¹⁶⁵ The *Edict* is the most focused on distancing Chalcedon from the label of Nestorianism, with the condemnation of the “Three Chapters”. The figures of Theodore Mopsuestia, Theodoret of Cyrrhus and Ibas of Edessa all had Nestorian associations. However, Theodore had died in communion with the Catholic Church, and Chalcedon had exonerated Theodoret and Ibas.¹⁶⁶ Thus, aligning the condemnation of the “Three Chapters” to the language of Chalcedon, whilst distancing it from Nestorian accusations presented a significant challenge. A precedent from Chalcedon of Domnus of Antioch was exploited to justify Theodore’s posthumous condemnation.¹⁶⁷ Most notable is the claim of the *Edict* that the letter written by Ibas to Maris the Persian was not the one read at Chalcedon.¹⁶⁸ This reinterpretation allowed for the condemnation of the letter, whilst distancing Chalcedon from the Nestorian label. Therefore, Justinianic legislation employs the language of Chalcedon in numerous ways to distance it from its most serious accusation; that of

¹⁶⁴ *Codex of Justinian*, C.1.1.5.1, C.1.1.6.1, C.1.1.7.6, C.1.1.8.12, pp. 21-35 and *On the Person of Christ*, p. 165.

¹⁶⁵ *Ibid.*, C.1.1.5.1, C.1.1.6.5, C.1.1.7.10 and C.1.1.8.18, pp. 21-37 and *On the Person of Christ*, p. 165.

¹⁶⁶ Price, “The Council of Chalcedon”, p. 85.

¹⁶⁷ *On the Person of Christ*, p. 194.

¹⁶⁸ *Ibid.*, p. 189.

Nestorianism. It marks continued endeavours to formulate an interpretation of Chalcedon that would be acceptable to the anti-Chalcedonians.

The research of this dissertation uncovered that the ideology of Justinian's reign played a fundamental part in why Justinian so determinedly sought this policy of reconciliation between the opposing sides and why language from Chalcedon was used to facilitate it. It underpinned all aspects of his reign. In the sixth century, the emperor was regarded as God's deputy on earth.¹⁶⁹ To receive divine favour and retain the throne, Justinian had a duty to rule well. A way of achieving this was for the emperor to ensure adherence to the correct faith, the Chalcedonian creed, which the last ecumenical council decreed as orthodox. Justinian thus believed he had a right to legislate in ecclesiastical, as well as secular matters and so reinforced the orthodox faith in his legislation through the language of Chalcedon. The legislations studied are examples of the merging of law, imperial power and Christianity more closely than had ever been previously attempted by an emperor. They utilised the rhetoric of Chalcedon in a multiplicity of ways to emphasise the orthodoxy of Chalcedon and to remove the taint of Nestorianism from it. However, Justinian and his advisers skilfully employed the language in a way that did not alienate the anti-Chalcedonians. Justinian desired the restoration of the unity of the Catholic Church. Although with hindsight historians are aware that these Christological disputes proved unreconcilable and the Church did indeed separate, this outcome was inconceivable to Justinian and his advisers in the sixth century.¹⁷⁰ When viewed in this light, the recurrent use of the language of Chalcedon in Justinianic legislation to try and facilitate the reconciliation

¹⁶⁹ Michael Maas, "Roman History and Christian Ideology in Justinianic Reform Legislation", *Dumbarton Oaks Papers*, Vol. 40 (1986), p. 25.

¹⁷⁰ Gray, "The Legacy of Chalcedon", p. 215.

between the anti-Chalcedonians and the Chalcedonians assumes a lasting importance for a deeper understanding of Justinian's ideology throughout his reign.

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