

**Charles PAZDERNIK**

***Libertas* and “Mixed Marriages” in Late Antiquity: Law, Labor, and Politics in Justinianic Reform Legislation**

Justinian’s rejection of the rule that the offspring of a male *adscripticius* (or “tied” *colonus*) and a free woman should follow the quasi-servile condition of their father (*CJ* 11.48.24) forms a curious chapter in the legal and social history of the later Roman colonate.<sup>1</sup> The emperor acted, as he claims in his legislation, to preserve the liberty not merely of the children of such “mixed marriages,” but also of the freeborn or freed female partner herself. Hence the change is to be closely coordinated with Justinian’s formal abrogation of the *sc. Claudianum* (*CJ* 7.24; *Inst.* 3.12.1), an act which mitigated the threat of *capitis deminutio* attendant upon the perpetuation of women’s relationships with status-inferiors. Though the emperor disapproved of such unions, he pronounced it unworthy of his reign that *libertas* should be thus compromised.

The imperial consistory soon had to contend with the political consequences of these changes, which elicited a storm of protest from provincial landowners. In a subsequent ruling Justinian was obliged, while affirming his commitment to freedom, to deny that his measures were retroactive (*Nov.* 54 pr., 1 [537]). Still later, in response to complaints from the province of Illyricum, he held that the children of such relationships, though indeed free, were nonetheless attached to the place of their birth (*Nov.* 162.2 [539]; cf. *Nov. App.* 1). The issue remained a live one even after Justinian’s death: both Justin II and Tiberius Constantine were pressed to extend to Africa the concession granted to Illyricum (*Just. II Nov.* 6; *Tib. Nov.* 13).

What motives prompted the emperor to slight the interests of landowners in the first place? The suggestion offered by Jones,<sup>2</sup> that “mere legal purism” gave rise to the strict application of the rule that the offspring of a free woman was free, is unsatisfying. Such a view attributes to the emperor and his ministers not only an uncharacteristic rigidity, but also a misplaced sense of priorities. Justinian preferred to portray his initiatives as a return to old values, but he viewed legislation as an extension of his will to effect social and political change. A spirit of imperial activism, rather than juristic conservatism, lies behind this controversial policy.

No explanation of Justinian’s intentions should overlook the fact that, in the 530s, Justinian declared the expansion of *libertas* to be one of the defining themes of his reign. Through his laws the emperor sought to accomplish at home what his triumphal arms were achieving abroad. Giving voice to the idea that his western conquests were restoring liberty to Roman citizens formerly subjected to an alien sway (e.g. *CJ* 1.27.1.1-8; *Nov.* 1 pr. [535]), and thus associating his victories with the emancipation of slaves, Justinian declared the expansion of freedom to be an overriding purpose of his rule (*Nov.* 78.4.1 [539]; 89 pr. [539]; *CJ* 7.24, cited above). The emperor’s vindication of the status of free women and their children by *adscripticii* supplied one among many proofs of this determination.

Close examination of the reforming enactments and Justinian's subsequent efforts to clarify and to circumscribe his policy in the face of protest testifies to the difficulty of applying Roman private law doctrines respecting domestic relations to situations arising out of the complex socioeconomic organization of agricultural labor in late antiquity. In struggling to demarcate the legal boundary which distinguished between the free and the unfree, the emperor and his ministers were obliged not only to confront entrenched interests, but also to come to grips with the meaning of personal status and the substantive value of the *libertas* they proposed to defend. Much was at stake both for Justinian and for the humble people touched by his initiatives. To the extent that the emperor succeeded in expanding the circle of persons entitled to his protection under the law, he enlarged the sphere of his own jurisdiction, and with it the scope of his larger program of social and political reorganization.

1 See, e.g., P. Collinet, *Atti del V. Congresso Internazionale di Studi Bizantini*, i (Rome, 1939) 600-11; A.H.M. Jones, *Past and Present* 13 (1958) 10f; idem, *LRE* (1964) 800f; M. de Dominicis, *Studi Betti* III (Milan, 1962) 85-99; idem, *Iura* 14 (1963) 139-58; D. Eibach, *Untersuchungen zum spätantiken Kolonat* (Köln 1980) esp. 162-191; M. Bianchini, *Studi Sanfilippo* (Milan, 1984) 61-107; W. Schmitz, *Historia* 35 (1986) 381-86; A. V. Koptev, *Ot prav grazhdanstva k pravu kolonata* (Vologda, 1995) 177-210.

2 Jones (1958) 10; reiterated in idem (1964) 801.