

Conflicting Narratives in Late Antique Law Concerning Jews

Abstract It is often seen as a given that literature follows certain narratives that shape its form and the choice of content. The same is not naturally assumed for legislative or administrative texts because they are supposed to be hardly more than a slightly stylised collection of data, descriptions or arguments. This paper argues that, since legal decisions have to be justified to the recipients and the arguments used for that purpose have to be, to some degree, consistent, legislative texts are actually prone to recurring motives and standardised modes of explanation and affirmation that are, in fact, small narratives of their own. They suggest recurring problems and the actions and reactions of rulers to the reader, transcending the merely descriptive or argumentative. The aim of this paper is to provide an example of narratives in a non-literary late antique genre and to demonstrate how acknowledging these narratives can lead to a better understanding of the relation between form and content in the texts concerned. This investigation will focus on the handling of Jewish subjects by late antique Christian lawgivers.

Zusammenfassung Dass Literatur bestimmten Narrativen folgt, die deren Form und die Wahl des Inhalts prägen, wird in der Regel als selbstverständlich angesehen. Anders verhält es sich bei Rechts- und Verwaltungstexten, die als kaum mehr als leicht stilisierte Sammlungen von Daten, Beschreibungen oder Argumenten betrachtet werden. In diesem Aufsatz wird die These vertreten, dass auch Texte legislativ-juristischen Inhalts, da sie rechtliche Entscheidungen gegenüber den Empfängern rechtfertigen und zu diesem Zweck verwendete Argumente bis zu einem gewissen

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Grad kohärent sein müssen, zu wiederkehrenden Motiven und standardisierten Erklärungen und Bekräftigungen neigen, die in der Tat kleine eigene Narrative sind. Sie geben dem Leser Hinweise auf wiederkehrende Probleme und auf die Handlungen und Reaktionen der Regierenden, die über das rein Deskriptive oder Argumentative hinausgehen. Ziel dieser Arbeit ist es, ein Beispiel für Narrative in einer nicht-literarischen spätantiken Gattung zu geben und zu zeigen, wie die Anerkennung dieser Narrative zu einem besseren Verständnis des Verhältnisses von Form und Inhalt in den betreffenden Texten führen kann. Die Untersuchung konzentriert sich auf die Behandlung jüdischer Untertanen durch spätantike christliche Gesetzgeber und Herrscher.

The hypothesis of this paper is that the variation in the conclusions that modern historians reach after reading the exact same sources on the treatment of Jewish subjects by Roman emperors and the Gothic king Theoderic can be explained by using narratology and the concept of narratives as a tool. Both the letters of Theoderic in Cassiodorus' 'Variae' and the constitutions of the emperors preceding Theoderic, published in the 'Codex Theodosianus', can (and should on occasion) be read from a narratological perspective. Such a perspective allows the reader to see the potential for misunderstanding in both sets of texts. Narratological concepts offer terms to describe a discrepancy between message and form, as well as a conflict of narratives in a text, as we will see.

We will begin in the post-Roman Ostrogothic realm comprising the biggest part of Italy. By the end of the fifth and the beginning of the sixth century, considered a time of transition between Late Antiquity and the Early Middle Ages,¹ the West, broadly speaking, was lost for the emperors. However, imperial law was still alive and explicitly safeguarded by the Ostrogothic kings,² who used traditional means of imperial representation and narratives of good government to make their rule acceptable.³ In addition, Jewish communities existed in several Italian cities.⁴ If one

1 On Ostrogothic Italy in general see, e.g. Jonathan J. ARNOLD, M. Shane BJORNLI and Kristina SESSA (eds.), *A Companion to Ostrogothic Italy*, Leiden, Boston 2016.

2 Also, in Amalasantha's case, by a queen. We find Theoderic's promise to uphold Roman law in Anon. Vales. 66, prominently in Cass. Var. 1, 1 and passim all over the *Variae* of Cassiodorus.

3 See, e.g. Jonathan J. ARNOLD, *Theoderic and the Roman Imperial Restoration*, Cambridge 2014, especially pp. 57–115 and Christine RADTKI, *Rex Theodericus pius princeps invictus semper – Herrschaftsdarstellung in den Nachfolgereichen des Imperium Romanum* am Beispiel Theoderichs des Großen, in: Dietrich BOSCHUNG, Marcel DANNER and Christine RADTKI (eds.), *Politische Fragmentierung und kulturelle Kohärenz in der Spätantike*, Paderborn 2015, pp. 69–104 on Theoderic's *imitatio imperii*.

4 On Jewish communities in Italy during Late Antiquity see Leonard RUTGERS, *The Diaspora*, c. 235–638. I: *The Jews of Italy*, c. 235–638, in: Steven T. KATZ (ed.), *The Cambridge History of Judaism*, Cambridge 2006, pp. 492–508, e.g. p. 492: "In late antiquity, Jewish communities were a common occurrence throughout Italy." Attestations of Jewish communities specifically under

wants to understand the way in which the Ostrogothic regime treated its Jewish subjects, a comparison to the late Roman emperors is therefore not only possible but openly suggests itself. The focus of scholarly attention in this matter has been on the first and most successful Ostrogothic king, Theoderic the Great, whose decisions in Jewish matters are most accessible in the ‘*Variae*’ of Cassiodorus and whose deeds in general pique historians’ interest for reasons of his being Great with a capital G. Historians wanted to know whether Theoderic ruled over the Jews in his realm in the same way as the emperors or whether he was more tolerant and lenient, whether he followed Roman law or published new rules, or whether he, as a Homoian or “Arian” Christian among Catholic Romans, felt any close theological connection or at least some sympathy among minorities for the Jews. After all, the Homoian Goths themselves were a comparatively small, albeit politically powerful group of maybe a hundred thousand among millions of Catholic Romans, and they were considered heretics by their neighbours, so a Goth might have understood the Jews’ position.⁵

A glance over the relevant modern literature reveals that the answers to these questions vary widely, depending on the nationality, political inclination, and mindset of the respective scholar, but also on how he or she happened to understand the sources. Indeed, the spectrum of opinions is so vast that they are sometimes entirely incompatible. On the one hand, scholars like Hanns Christof BRENNECKE claim that the overall trend of fifth-century politics had already become increasingly anti-judaistic and would continue to grow more and more so, while only Theoderic eluded this general development and ruled with relative tolerance and compassion towards the Jews, even breaking existing law in their favour. He would have done so, BRENNECKE claims, explicitly in spite of the emperors, as a diplomatic manoeuvre to show his independence.⁶ On the other hand, Yitzhak HEN and Gerda HEYDEMANN state that Theoderic, both formally and with regard to content, always decided cases

Ostrogothic rule: Rome: Cass. Var. 4, 43; Genoa: Cass. Var. 2, 27 and 4, 33; Milan: Cass. Var. 5, 37; Ravenna: Anon. Vales. 81–83; Naples: Proc. BG 5 (1), 8; Venosa: David NOY, *Jewish Inscriptions of Western Europe*, vol. 1: Italy (excluding the City of Rome), Spain and Gaul, Cambridge et al. 1993, nos. 42–116; Bova Marina: RUTGERS, pp. 492–493. Cf. Hans-Ulrich WIEMER, *Theoderich der Große, König der Goten – Herrscher der Römer. Eine Biographie*, München 2018, pp. 532–533.

- 5 For a broader treatment of the numbers of Homoians, the connection between Homoian creed and Gothic identity and relations between the Goths and the Catholic Church in Italy see, e.g. WIEMER (note 4), pp. 473–512. Generally on the Goths’ so-called Arianism see Knut SCHÄFERDIEK, *Ulfila und der sogenannte gotische Arianismus*, in: Guido M. BERNDT and Roland STEINACHER, *Arianism. Roman Heresy and Barbarian Creed*, Farnham 2014, pp. 21–44.
- 6 See Hanns Christof BRENNECKE, *Imitatio – reparatio – continuatio. Die Judengesetzgebung im Ostgotenreich Theoderichs des Großen als reparatio imperii?*, in: *Journal of Ancient Christianity* 4, 1 (2000), pp. 133–148. Recently, BRENNECKE himself turned away from his older theory and came to the conclusion that adherence to Roman law is the more probable motive behind Theoderic’s behaviour towards his Jewish subjects. Hanns Christof BRENNECKE, *Ipse haereticus favens Iudaeis. Homöer und Juden als religiöse Minderheiten im Ostgotenreich*, in: Hans Ulrich WIEMER (ed.), *Theoderich der Große und das gotische Königreich in Italien. Gesellschaft, Siedlungen und Wirtschaft, Repräsentationen und Identitäten*, Berlin, Boston 2020, pp. 155–173, especially pp. 168–173.

concerning Jews with exact adherence to Roman legal tradition (and contemporary practice), never actually differing from the emperors at all. According to HEN and HEYDEMANN, only in his particularly stark expressions of devaluation of the Jewish faith was Theoderic special, because as a Homoian, he had to fear affiliation with the Jews and the loss of prestige connected with such an affiliation in the eyes of his many Catholic subjects.⁷ To add to the confusion, claims have been made by Friedrich LOTTER that late antique law did not in practice make any landslide moves towards anti-Judaism between Constantine and Justinian, whose rule might be considered a kind of landmark in this regard. That position, of course, does not harmonise well with BRENNECKE's trend of anti-Judaism in the fifth century.⁸ So how can one scholar look at the sources and see anti-judaistic emperors and a surprisingly, and for his time uncharacteristically, tolerant Theoderic, while the other scholar can find Theoderic to be explicitly anti-judaistic in his words and obedient to the Roman law in his deeds? And was there development of legal texts and decisions towards anti-Judaism or not?

As Friedrich LOTTER has already observed, the message and the form of the emperors' laws regarding Jews often do not fit together.⁹ Constitutions published since the time of Constantine often have a distinct anti-judaistic flavour because of their rather pejorative language, while at the same time those constitutions confirm the legal status quo of Jewish communities or simply dispose of older legal exceptions and put the Jews inside the Empire on the same legal level as all other Roman citizens. Even in rulings in favour of the Jewish party, anti-judaistic phrasing can lead the reader to suspect discrimination. So, in a way, the position that an anti-judaistic trend existed in Roman legislation and the opposing premise of factual continuity of Jewish rights are both true and false at the same time. On the level of the message, the legal situation of Jewish inhabitants of the Roman Empire did not worsen significantly

7 See Yitzhak HEN and Gerda HEYDEMANN, *A Double-Edged Sword. Jews and the Rhetoric of Power in Ostrogothic Italy*, in: Yitzhak HEN and Thomas F.X. NOBLE (eds.), *Barbarians and Jews. Jews and Judaism in the Early Medieval West (Diaspora 4)*, Turnhout 2018, pp. 93–118. On Justinian's anti-Judaism see Steven BOWMAN, *Jews in Byzantium*, in: Steven T. KATZ (ed.), *The Cambridge History of Judaism*, Cambridge 2006, pp. 1035–1052 (here pp. 1048–1051) and Nicholas DE LANGE, *Jews in the Age of Justinian*, in: Michael MAAS (ed.), *The Cambridge Companion to the Age of Justinian*, Cambridge 2005, pp. 401–426 (here pp. 420–421).

8 See Friedrich LOTTER, *Die kaiserzeitliche Judengesetzgebung von Konstantin bis zur Veröffentlichung von Justinians Novelle 146 (553)*, in: *Aschkenas* 22, 1–2 (2012), pp. 247–390.

9 See LOTTER (note 8); Bernard S. BACHRACH, *The Jewish Community of the Later Roman Empire as Seen in the Codex Theodosianus*, in: Jacob NEUSNER and Ernest S. FRERICH (eds.), *“To see ourselves as others see us”. Christians, Jews, “Others” in Late Antiquity*, Chicago 1985, pp. 399–421 (here p. 401–403) already states that Jewish communities *de facto* had some privileges and autonomies in the later Roman Empire. “However [...], we find Judaism to be the subject of rhetorical abuse in governmental acts.” BACHRACH then concentrates on explaining the extratextual political reasons for emperors to tolerate the Jewish faith. See also Paula FREDRIKSEN and Oded IRSHAI, *Christian Anti-Judaism. Polemics and Policies*, in: Steven T. KATZ (ed.), *The Cambridge History of Judaism*, Cambridge 2006, pp. 977–1034 (here p. 1001): “Harsh rhetoric aside, though, Christian emperors through the fifth century by and large continued and arguably even extended the policies of their pagan predecessors, granting to Jewish communities a significant degree of autonomy, both religious and social.”

before Justinian (and in the post-Roman West, it remained stable until the end of the sixth century), but, on the level of form, a growing number of precedents and variations of insults aggregated into an overall grim impression of the imperial opinion on Jewish belief. A similar disharmony can be encountered in Theoderic's letters concerning Jews, which seem quite in line with this imperial tradition.

This coexistence of, all in all, consistently lenient rulings and a slowly escalating tendency to demeaning language is unsurprisingly a cause of confusion. And yet Roman emperors, King Theoderic and their respective advisers have decided to phrase their answers to legal queries and constitutions in such a fashion. The reason for this might lie in the need to adhere to two important narratives that both played a role in late antique lawgiving but were essentially incompatible: that of the just ruler, who protects tradition, public peace and (very importantly) traditional rights of ownership on the one hand, and that of the good Christian ruler, who propagates orthodoxy and smites its opponents on the other. Both of those narratives can be found by themselves in constitutions in Jewish matters, but wherever they meet they cause dissonance.¹⁰

Of course, it was difficult for Theoderic to show himself too clearly in the role of the defender of orthodoxy when it came to the two mutually exclusive forms of Christianity among his subjects, as he was a heretic in the eyes of many Romans. Usually, Theoderic avoided the topic of religion in his surviving letters. But even if Goths and Romans did not see eye to eye on the question of how to be a good Christian, all Christians of the time could, it seems, very much agree on not being Jewish. So events pertaining to Jews might even have been a rare opportunity for the king to don a dress he seldom wore and show himself to have a strong opinion in matters of faith, without giving up his carefully crafted neutrality concerning the different Christian confessions of his realm.¹¹

Before Late Antiquity, this problem does not arise because the narrative of the good Christian ruler is much younger than that of the keeper of tradition and law. The latter had always been part of the imperial image, designed to appeal especially to those who were well off and would not want things to change. With the rise of Christianity, however, comes the ideal of an actively orthodox emperor, attractive even to the socially or economically unsatisfied and those who want change in the form of the spread and implementation of Christian ideas around the whole world.¹²

10 See Rainer FORST, *Zum Begriff eines Rechtfertigungsnarrativs*, in: Andreas FAHRMEIER (ed.), *Rechtfertigungsnarrative. Zur Begründung normativer Ordnung durch Erzählung* (Normative Orders 7), Frankfurt, New York 2013, pp. 11–28 (here pp. 19–21), for the observation that narratives seldom appear in unadulterated form and that some narratives go more easily with others than the next.

11 On the cooperation between the Catholic Church of Italy and Ostrogothic kings see WIEMER (note 4), pp. 503–512.

12 See Jochen MARTIN, *Das Kaisertum in der Spätantike*, in: Francois PASCHOU and Joachim SZIDAT (eds.), *Usurpationen in der Spätantike. Akten des Kolloquiums ‚Staatsstreich und Staatlichkeit‘*, 6.–10. März 1996, Solothurn, Bern, pp. 47–62 (here pp. 49–52) and FREDRIKSEN and IRSHAI (note 9), pp. 999–1000.

Often, the two narratives about good rule can be fused without problem, but not when it comes to traditional rights of the Jews, and there was no time-honoured precedent for how to do this. Many constitutions concerning Jews read like the compromise their authors could come up with. A ruler can protect the rights of Jews because the protection of rights is considered the hallmark of a just ruler,¹³ or he can show disdain for the religious minority,¹⁴ but doing both at the same time leaves the text open to interpretation, both by contemporaries and by later historians, concerning which is the more important component: the message or the form.

One circumstance in which the aforementioned dissonance between form and message is often rather obvious is violence against synagogues, a problem that seems to have occurred regularly in Late Antiquity.¹⁵ There are seven texts dedicated to the matter in the Theodosian Code, and the essence of imperial rulings there is taken up in the ‘Codex Iustinianus’: the emperors and later King Theoderic always insist that the law cannot allow acts of theft or vandalism towards synagogues.¹⁶ But while

13 For Theoderic as keeper of traditional order see i.e. Cass. Var. 4, 33, 1 and 2: “Custody of the laws is the hallmark of civilized order” (*Custodia legum civilitatis est indicium*); “to which we gladly agree because we want the laws of the ancients to be guarded for our glory” (*quod nos libenter annuimus, qui iura veterum ad nostram cupimus reverentiam custodiri*). For an example of the ‘just ruler’ narrative used by emperors see CTh. 16, 8, 9: “It is well enough established that the sect of the Jews is forbidden by no law” (*Iudaeorum sectam nulla lege prohibitam satis constat*); “those, who under pretext of the Christian faith presume to illegal actions and try to destroy and plunder synagogues” (*eorum, qui sub christiana religionis nomine illicita quaeque praesumunt et destruere synagogas adque expoliare conantur*).

14 For the emperors’ demonstrative dislike of the Jewish religion see Roland DELMAIRE, Theodor MOMMSEN and Jean ROUGE (eds.), *Les lois religieuses des empereurs romains de Constantin à Théodose*, tome II/1: Code Théodosien livre XVI (312–438) (sources chrétiennes 497), Paris 2005, p. 95. Among the examples quoted are instances where the Jewish belief is called a *secta feralis* (CTh. 16, 8, 1), *sacrilegus coetus* (CTh. 16, 8, 7), *superstitio* (i.a. CTh. 16, 8, 8), or even *superstitio indigna* (CTh. 16, 8, 14) or *detestabilis* (CTh. 16, 9, 4), as well as *turpitude* and *flagitia* (CTh. 16, 8, 6) and *incredulitas et perversitas* (CTh. 16, 8, 19 and 24). See also FREDRIKSEN and IRSHAI (note 9), pp. 1000–1001 on pejorative language and legislation trying to prevent the spreading of the Jewish faith.

15 Another interesting field is that of building measures on synagogues. It was, technically, forbidden for Jews to build new synagogues or to enlarge old ones, but they were allowed to renovate them. Therefore, rulers were sometimes asked whether a particular project on a synagogue was legitimate and gave a renovation their blessing, although not without urgently recalling the prohibition on aggrandisement or beautification in harsh words. Cass. Var. 2, 27, which is often quoted for its conciliatory last sentence, actually ends in a not quite so conciliatory tone if one reads the whole paragraph: “Why do you search what you should flee? We may give our permission, but we laudably disagree with the creeds of the misguided: We cannot impose religion, because nobody can be forced to believe against his will” (*quid appetitis, quae refugere deberetis? damus quidem permissum, sed errantium votum laudabiliter improbamus: religionem imperare non possumus, quia nemo cogitur ut credat invitus*). In other words, if Theoderic could, he would.

16 For the emperors see CTh. 16, 8, 9, CTh. 16, 8, 12, CTh. 16, 8, 20, CTh. 16, 8, 21, CTh. 16, 8, 25, CTh. 16, 8, 26 and CTh. 16, 8, 27 or CJ 1, 9, 14. For Theoderic see Cass. Var. 4, 43 and Anon. Vales. 81–83.

demanding adherence to the law, they also sometimes sound strangely unwilling to appear protective. Let us have a look at an example:

CTh. 16, 8, 21

The same Augustuses to Philippus, praetorian prefect of Illyricum. No person shall be trampled upon when he is innocent, on the ground that he is a Jew, nor shall any religion cause any person to be exposed to contumely. Their synagogues and habitations shall not be burned indiscriminately, nor shall they be injured wrongfully without any reason, since, moreover, even if any person should be implicated in crimes, nevertheless, the vigor of Our courts and the protection of public law appear to have been established in Our midst for the purpose that no person should have the power to seek his own revenge. But just as it is Our will that the foregoing provision shall be made for the persons of the Jews, so We decree that the Jews also shall be admonished that they perchance shall not become insolent and, elated by their own security, commit any rash act in disrespect to the Christian religion.¹⁷

Nobody may be harmed, the text states, even if they happen to be Jewish, as long as they are innocent. One's faith does not expose one to insults. Jewish synagogues and quarters may not be burned. Up to this point, the constitution shows no sign of anti-Judaism. The middle part of the text is oddly specific about vigilantism being forbidden even if a Jew might have been implicated in a crime – in the concrete case underlying the constitution, someone must have defended themselves by pointing out the Jews' own actions as the original cause and justification for the act of violence that was committed, which is quite in character for this kind of perpetrator. Honorius and Theodosius II do not mind the shifting of blame; they merely point out that the Jews' offences should have been brought in front of a judge because – and this is very traditionally just of the emperors – nobody was allowed to take justice into their own hands. The laws and courts were, after all, there for a reason.

At the end of the text, the emperors remind the Jews not to get carried away by safety and not to allow anything rash against the reverence for the Christian church. Here, again, one can guess at the guilty party's claim to have acted in defence of the Christian

17 Translation: Clyde PHARR, *The Theodosian Code and Novels and the Sirmonian Constitutions. Translation with Commentary, Glossary, and Bibliography*, Princeton 1952. CTh. 16, 8, 21: *Idem aa (Honorius, Theodosius II). Philippo praefecto praetorio per Illyricum. Nullus tamquam Iudaeus, cum sit innocens, obteratur nec expositum eum ad contumeliam religio qualiscumque perficiat. Non passim eorum synagogae vel habitacula concrementur vel perperam sine ulla ratione laedantur, cum alioquin, etiam si sit aliquis sceleribus implicatus, idcirco tamen iudiciorum vigor iurisque publici tutela videtur in medio constituta, ne quisquam sibi ipse permittere valeat ultionem. Sed ut hoc iudaeorum personis volumus esse provisum, ita illud quoque monendum esse censemus, ne iudaei forsitan insolescant elatique sui securitate quicquam praeceps in christianae reverentiam cultionis admittant.*

faith – it seems that Honorius and Theodosius did not want to rule out completely the possibility of a fundamentally justified overreaction. This admonition stayed in the ‘Theodosian Code’ and gained some degree of universal applicability. If the text is read like a general law, it might be interpreted in a way that is rather unfortunate for Jews, namely that the law guaranteed their safety, but not unconditionally. It certainly ends on a none-too-friendly note from a Jewish perspective if one considers the form of the text.

The idea that Jewish victims of violence must have done something to deserve or provoke it is not new in this text and remains a go-to point of defence for those who committed said violence, probably because it was often rewarded with success. We can find another instance of vigilantism with a religious connotation in the time of the Ostrogothic rule of Italy that pairs nicely with CTh. 16, 8, 21. The background to Cass. Var. 4, 43 goes something like this: some unnamed Jews in the city of Rome had filed a lawsuit with the influential *comes* Arigern concerning slaves who had murdered their master or masters. The slaves must have been Christian and the murder victim or victims Jewish.¹⁸ Arigern then proceeded to execute the slaves, as was customary in such cases. This execution caused a riot among some Roman Christians, presumably people from the slaves’ parish, during which the complainants’ synagogue was burnt down. Now let us look at the equilibrium between condemning arson and distancing the king from his Jewish subjects in Var. 4, 43:

King Theoderic to the Senate of Rome

[...] Indeed, it is not Roman to want the disorder of sedition and to invite arson in that very city. And therefore, discipline of deeds must be preserved among the authors of laws, lest the detestable appearance of arson compel the hearts of the common people to imitating what must be execrated.

And so we have learned from the report of the *illustris comes* Arigern that the complaint of the Jews was roused because the unruliness of slaves had erupted in the slaughter of masters. Although the deed could have been punished for the sake of public discipline, with the contention being immediately enflamed by the populace, they caused the synagogue to be utterly consumed in a reckless fire, punishing the faults of men with the ruin of buildings. If any Jew had been proven to transgress, he himself would have been subject to injury. However, it was not right to rush to the horrible act of rioting, or to hasten to the burning of buildings.

¹⁸ There had been occasions in the past when the execution of a particularly large number of slaves, as discussed in the ‘Senatus Consultum Silanianum’ (Digesta XXIX, 5) had caused riots without a religious motivation, see Tac. ann. XIV, 42–45 and Plin. ep. 8, 14. But considering that the violence in Cass. Var. 4, 43 is aimed specifically at a synagogue and accusations are made explicitly against “the Jews”, not Arigern or the executioners or even the state in general, a religious component is very likely.

But we, whose desire it is to correct wrongly committed acts, by the grace of God, have decided in the present dictate that you should become acquainted with the above-mentioned case by lawful inquiry, and that you should restrain with the accustomed punishment the few agents of this conflagration whom you are able to discover [...]

Evaluating the case with equal measure, so that, if anyone will reasonably believe something supports him against the Jews, let him come to be heard at our court, so that whomever the offense will have implicated may be condemned with censure¹⁹

The letter begins with a statement that being seditious and setting fire to one's own city is un-Roman and must be punished in order to avoid imitation.²⁰ It then goes on to claim that one cannot burn synagogues, even if a Jew had done something wrong, because the Jew's alleged crime should have been brought to the attention of a court.²¹ So the senate is asked to rein in vigilantism with appropriate strictness. If, however, something could be brought forward against the Jews in question, that too must be subject to judgment.²² So for one, the letter makes it clear that Theoderic is all about avoiding public unrest, not about protecting the Jewish community as such. Second, Theoderic shows much willingness to accept the shifting of blame onto the Jewish community, despite the fact that only individual Jews can have been involved in the lawsuit and execution originally causing the riot and despite the fact that this execution was legal. Third, the ultimate reference point to which Theoderic keeps returning is what Roman law and custom dictate.

The phrasing that creates distance between the ruler and his Jewish subjects can be more or less subtle. It can appear in the form of open disdain or in the expression of a patronising hope that the Jews might still see reason and convert. For example, in C.Th. 16, 8, 26, the Emperors Honorius and Theodosius II grant the Jews (when asked explicitly by a Jewish community to confirm their rights) safety from attacks on or compulsory acquisition of their synagogues *sub praetextu venerandae christianitatis*, but they also stress that their laws were meant to suppress the audacity of the damnable pagans, Jews and heretics. In Cass. Var. 5, 37, the Jews of Milan receive protection from encroachments on their rights and properties by the local church, given that

19 Translation: Shane BJORNLI, Cassiodorus. *The Variae. The Complete Translation*, Oakland 2019, pp. 194–195.

20 Cass. Var. 4, 43, 1: *levitates quippe seditionum et ambire propriae civitatis incendium non est velle Romanum [...] ne detestabilis aspectus incendii ad imitationem nefandam vulgi pectora comprehendat.*

21 Cass. Var. 4, 43, 2: *culpae hominum fabricarum excidio vindicantes, dum, si quis Iudaeorum probaretur excedere, ipse debuisset iniuriae subiacere, non autem iustum fuit ad seditionum foeda concurrere aut ad fabricarum incendia festinari.*

22 Cass. Var. 4, 43, 4: *si aliquid sibi contra Iudaeos rationabiliter quispiam crediderit suffragari.*

they themselves keep their distance from the Christians and do not intermingle. The initial explanation of the letter is interestingly phrased:

Cass. Var. 5, 37, 1:

We have gladly assented to that which is requested without injury to the laws, especially since, for the sake of preserving civic harmony, the benefits of justice must not be denied to those who thus far have been known to err in faith. And in this way may they learn the sweet taste of good conduct, so that those who strive to attain human justice may begin more eagerly to consider divine justice.²³

The letter states that, first of all, the Jews are of course erring in their faith, and secondly, are to be granted the benefits of worldly law so that they can see divine justice – and convert.

As already stated above, the emperors repeatedly forbade violence against Jewish property and specifically against synagogues. Officials who knew of any such crime were explicitly not allowed to ignore it. And yet, attacks seem to have kept happening. Maybe the fact that, on the level of form, governmental constitutions kept reinforcing anti-judaistic bias played a role in that. If the emperors or the king called the Jewish faith wrong or associated it with paganism and heresy, if the rulers made sure not to express any sympathy or affiliation with the Jews, surely some people felt their actions against Jews were justified and expected the rulers not to react. Would it not have been clearer and easier to understand, then, if rulers had not insisted on distancing themselves from the people they claimed to protect in the very same text? This must have been confusing not just for modern scholars but for contemporaries as well. Why did the authors of governmental constitutions go to the trouble of forcing together two narratives that could not fit?

That rulers could not always enforce legislation concerning Jewish subjects becomes apparent in the affair around Callinicon, where a bishop had incited the masses to burn down a synagogue and should therefore have paid for repairs, while the arsonists were supposed to have been punished accordingly. This did not happen because emperor Theodosius was browbeaten into pardoning the bishop of Callinicon and his flock of rather aggressive sheep by Ambrosius of Milan, not because Ambrosius denied the deed as such but because he saw it justified in the need to win the religious conflict between Christianity and Judaism.²⁴ Here we have an example of a contemporary quite openly calling out the emperor for serving the narrative

23 Translation: BJORNLIÉ (note 19), p. 233. Cass. Var. 5, 37, 1: *Libenter annuimus quae sine legum iniuria postulantur, maxime cum pro servanda civilitate nec illis sunt neganda beneficia iustitiae, qui adhuc in fide noscuntur errare, atque ideo discant rerum bonarum suavissimum saporem, ut, qui humanam iustitiam nituntur quaerere, sollicitius incipiant divina iudicia cogitare.*

24 Ambr. ep. 74 (Maur. 40). Ambrosius criticised Theodosius publicly in his sermons and denied the communion to the emperor until he gave in.

of traditionally just ruler and neglecting – at least in his eyes – to be a properly Christian ruler.

While the arson of Callinicon did not enter the ‘Theodosian Code’, the phrasing of related constitutions hints at similar occasions for repeating the reminder that the burning of synagogues was, as a matter of fact, not allowed. We can assume that emperors or their judicial advisors knew very well that they might be criticised for not propagating Christianity aggressively enough when Christian attackers of Jewish property, or those sympathising with them, felt unjustly incriminated. That might be the reason the constitutions pertaining to violence against synagogues have to combine the narrative of the keeper of traditional order and the narrative of the defender of orthodoxy in the first place. As long as the emperors wanted to keep the populace from taking the law into their own hands through arson, they had to base their prohibition of vigilantism on the rationale of law, order, and tradition. And in doing so, they had to apply the ‘just ruler’ narrative. But, probably in order to avoid the impression of favouring Jews over Christians, they often also stressed the point that they did not approve of Judaism in general while announcing the penalties for attacking Jews and synagogues. And by this they reinforced the ‘defender of orthodoxy’ narrative.

The assumption that there were two conflicting narratives at play in governmental communication with the public helps us understand both why such texts and their implications for the late antique governmental stance towards the Jews have been debated for so long, and why the message of late antique rulers was not always heard. Perhaps mixing those narratives was impossible without also sending mixed signals. This new perspective means that the position of Jews in the Roman Empire and the Ostrogothic realm must be revised, insofar as it was not worsening significantly in legal terms – neither under the last Western emperors nor under Theoderic and his contemporaries – but as it was socially precarious. The constant repetition of a narrative of exclusion and animosity, a narrative wherein a good emperor had to be against his Jewish subjects, must have contributed to an overall sense of religious contention that led to frequent discrimination against Jews.

With this example, I hope to have shown the possibility and indeed value of applying narratological concepts to legal texts. Late antique legal decisions concerning Jews become more accessible by identifying narratives and by discerning the message and form of governmental constitutions and letters. These interpretative tools might help clear the confusion and end the debate about the exact nature and extent of anti-Judaism in Late Antiquity.

The conflict I am postulating here could probably also be described as a conflict of images of self-representation, which is much better established among scholars writing on late antique government. I do think, however, that the term narrative has something new to offer to this field. It might be mostly a matter of perspective, but the term self-representation implies both a strong initiative on the part of the ruler, and a manipulative intention. Self-representation is something the ruler does, on his own account, to the subjects. It is also something that creates an image, and therefore

something associated with a certain static nature. A narrative, on the other hand, is something that creates expectations for and connections between the actions of people, so it is in its nature not static; it is not just about what picture is shown, but about what people actually do because it fits the narrative. Besides, it is not something necessarily directed from the ruler at the ruled, but something the whole culture, including the ruler, is subject to or influenced by.

This is not a widespread way to interpret legal texts so far, but it is no longer new to historians in general. A narratological approach to both literary sources and modern literature has become, if not common, then at least widely accepted.²⁵ That narratives can structure the telling and therefore the interpretation of not only fictional texts but also of historiography and other non-fiction is an established concept. Legal historians, though, do not seem to use this approach a lot because their main (and legitimate) interest is in reconstructing the state of the law at a certain point in history. The legal texts I discussed in this paper might not seem to easily lend themselves to such a narratological approach because they are expected to prohibit and order instead of telling a story. However, Roman legal constitutions are, at a closer look, not limited to stating a conflict and proposing a solution - they also contain glimpses of narrations, of storytelling, because Roman law leans heavily on the concepts of precedent and concrete cases.²⁶ Cases, if they are verbally presented, basically are short non-fictional stories. And where there is narration, narratives are seldom far away.

25 Thus we find narratological approaches to ancient historians like Alfred LINDL, *Narrative Technik und Leseraktivierung. Tacitus' Annalen XII–XVI* (Hermes Einzelschriften 117), Stuttgart 2020 on Tacitus (see especially pp. 29–42 on his take of narratology and ancient historiography) or expositions of narratives underlying modern interpretations of history like Guy HALSALL, *Review article: Movers and Shakers: the Barbarians and the Fall of Rome*, in: *Early Medieval Europe* 8 (1999), pp. 131–145.

on the master narratives concerning the fall of Rome. See Ruben ZIMMERMANN, *Verschlungenheit und Verschiedenheit von Text und Geschichte. Eine hinführende Skizze*, in: Christoph LANDMESSER and Ruben ZIMMERMANN (eds.), *Text und Geschichte. Geschichtswissenschaftliche und literaturwissenschaftliche Beiträge zum Faktizitäts-Fiktionalitäts-Geflecht in antiken Texten*, Leipzig 2017, pp. 9–51, especially pp. 13–18, and Albrecht KOSCHORKE, *Fact and Fiction. Elements of a General Theory of Narrative* (Literature and the Human Sciences 6), Berlin, Boston 2018, especially pp. 10–14 on broader application of narratological concepts.

26 This is especially true for Late Antiquity because imperial legal habit consisted of more reactive constitutions than edicts; all imperial reactions were decisions in a particular case presented to the emperor, although they could contain generalist measures to be applied in similar cases. See Dario MONTOVANI, *More than Codes. Roman Ways of Organising and Giving Access to Legal Information*, in: Paul J. DU PLESSIS, Clifford ANDO and Kaius TUORI, *The Oxford Handbook of Roman Law and Society*, Oxford 2016, pp. 23–42 (here pp. 34–36) on the statutory nature of imperial constitutions and on legal codes as collections of exemplary governmental acts, Wolfgang KUNDEL and Martin SCHERMAIER (eds.), *Römische Rechtsgeschichte*, 13th ed., Köln 2013, pp. 198–200, as well as Heinrich HONSELL, *Römisches Recht*, 7th ed., Berlin, Heidelberg 2010, pp. 7–9 on the tradition of precedence before codification, and Frederik J. VERVAET, *Magistrates who Made and Applied the Law*, in: Paul J. DU PLESSIS, Clifford ANDO and Kaius TUORI, *The Oxford Handbook of Roman Law and Society*, Oxford 2016, pp. 219–233 (here p. 231) on emperors taking over the function of praetors in setting legal precedence.

A constitution by an emperor usually concerns one single actual case, reacts to concrete legal queries, and is supposed to be adapted to similar cases later on. If the document comes down to us complete, it might contain a short introduction to said case. There might also be a description of the subjects' actions and the emperor's reactions, hints to who complained and who is going to be responsible for solving the problem, broader thoughts on the moral and political principles violated, arguments proving the justness, reason and applicability of the verdict and so forth.²⁷ Unfortunately, hardly any constitutions outside the *novellae* and the Sirmondian constitutions survive unabridged, because at some point of the compilation or tradition of the 'Codex Theodosianus' and the 'Codex Iustinianus' editors deleted what they deemed superfluous. Still, there is enough left of this special kind of communication between the rulers and subjects to recognise narratological potential.²⁸ Although the texts are not complete, it is not to be expected that the main body of a constitution would contain anything completely contrary to the lost parts, creating inconsistencies. The use of concrete examples in imperial constitutions integrates a narrating element in these texts. Values are not simply recalled collectively, nor are rules simply stated; rather, they are embedded in a myriad of tiny stories in which, naturally, justice always plays a role. As long as the decisions and argumentative points of the emperors stay more or less consistent, the combinations of agents, actions and correlations in those small narrations should repeat and turn into commonly expected patterns. Certain actions are typically linked with matching reactions and justified with specific values, thus creating expectations in the reader of what an action's outcome is going to be and for what reason.²⁹ These expectations transcend single narrations of cases and apply to the whole genre – structure it – like narratives are known to do in literary (and other) texts. If we can allow ourselves to speak of this as a narrative, we might even go so far as to detect master narratives in the legal codes, main themes recurring throughout the constitutions in many different but still related versions. Examples of such recurring themes would be “a good ruler defends the law even against the

27 So Dirk SCHLINKERT, *Ordo senatorius und nobilitas. Die Konstitution des Senatsadels in der Spätantike* (Hermes Einzelschriften 72), Stuttgart 1996, pp. 57–58 argues when pointing out that legal codes would be perfect sources for a picture of the social standing and essential traits of the senatorial aristocracy. See also KOSCHORKE (note 25), p. 23 on legal decisions as narrative communication.

28 “[L]aw and literature were practices that, despite different functions and conceptualisations, shared a similar toolkit”: Michèle LOWRIE, *Roman Law and Latin Literature*, in: Paul J. DU PLESSIS, Clifford ANDO and Kaius TUORI, *The Oxford Handbook of Roman Law and Society*, Oxford 2016, pp. 70–82 (here p. 70). Also “the importance of smaller and larger stories within politics and law is striking. [...] Social conflicts are choreographed along narrative field-lines”: KOSCHORKE (note 25), p. 10.

29 See KOSCHORKE (note 25), pp. 17–24 on narratives and their role in forming expectations and memories. On the connection between the phrasing of legal decisions and moral education, especially the tradition of the *mos maiorum*, see LOWRIE (note 28), pp. 75–78.

rich and mighty”³⁰ or “a good subject seeks justice in court instead of disturbing the peace by excessive vigilantism”.³¹

Contemplating legal texts through a narrative-driven approach leads to more questions. What kind of narrative can a legal text even use? What is unspeakable in this genre? Is the repetition of a law a mistake by the editors, a sign of the subjects’ non-compliance, a literary trick? It also leads to new explanations of texts that have so far proven difficult to interpret. In this paper I have tried to show how this approach can clarify the perspective of those working with late antique Roman law.

30 The emperors’ image in their legal texts does not differ much from traditional motives of panegyric, although legal texts cannot of course stress military victories and must put emphasis on an emperor’s peace-time qualities: lawfulness, moderation, accessibility, sense of justice, liberality, clemency. See Oswyn MURRAY, *The Classical Traditions of Panegyric and Advice to Princes*, in: Geert ROSKAM and Stefan SCHORN (eds.), *Concepts of Ideal Rulership from Antiquity to the Renaissance (Studies in the Transmission of Texts & Ideas 7)*, Turnhout 2018, pp. 217–254 (here p. 221) and Karen PIEPENBRINK, *Zur ‘Christianisierung’ des ‘Fürstenspiegels’ in der Spätantike: Überlieferungen zur Ekthesis des Agapetos*, in: Geert ROSKAM and Stefan SCHORN (eds.), *Concepts of Ideal Rulership from Antiquity to the Renaissance (Studies in the Transmission of Texts & Ideas 7)*, Turnhout 2018, pp. 329–354.

31 Narratives are not only used to transport a certain image of the emperor, but also to justify social order and the law that define it. See Rainer FORST (note 10), pp. 11–15.