

Smell and the Engineering of Christian Atmospheres in the Theodosian Code: An Olfactory Approach to the Legislation on Public Festival

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I. Burning Flesh and Incense: The Atmospheric Politics of Sacrifice

Just as We have already abolished profane rites by a salutary law, so We do not allow the festal assemblies of citizens and the common pleasure of all to be abolished. Hence We decree that, according to ancient custom, amusements shall be furnished to the people, but without any sacrifice or any accursed superstition, and they shall be allowed to attend festal banquets, whenever public desires so demand.

—*Theodosian Code*, 438 CE¹

¹ *C. Th.*, XVI.10.17.

... [I]n a department store, the law is in the service of the atmosphere of excessive desire to consume, since what becomes dissimulated is law as *logos*, namely the oppressive nature of the law.

—*Andreas Philippopoulos-Mihalopoulos*,
2015 CE²

Enacted in 399CE and represented in the 438 *Theodosian Code* the above legislation is extracted from a now lost imperial rescript addressed to the Proconsul of Africa. That same year, violence broke out in the provincial African colony of Suffectum, resulting in the death of fifty Christians and a vandalised statue of Hercules. We know this through Augustine, who quickly wrote to the ‘magistrates and town-leaders’, accusing them of having ‘buried the laws of Rome in a dishonoured grave’ and for ‘rewarding the most active in the massacre ... with ... a high place in your Council.’³ While a clear link between the 399 legislation and the Sufes riot would be difficult to prove, it is evident that the stakes of public expressions of faith ran high in this period, pervading multiple levels of society and regional space. This they continued to do well beyond the publication of the *Theodosian Code*.

Statues and bodies, however, frozen in the vulnerability of their raw materials, are and were easy targets in religious warfare. Other materials are harder to pin down, becoming instead embroiled in more complex antagonisms and ambivalences. Among these are the airborne scents of burning flesh and incense which accompanied

² Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Landscape, Atmosphere* (Abingdon: Routledge, 2015), 108–9.

³ Augustine, *Ep.* 50.

the spectacular civic festivals that saturated the late Roman calendar. For centuries, these acrid-sweet smokes connected earthly with divine bodies, keeping order among things by physically transforming them: “altered” or “purified” by burning, incense travelled heavenward in a physical image of ascent that mirrored both polytheistic and Jewish cosmologies.⁴ The multiple possible cosmic connections enacted by ritual fumes, however, made smelling a site of visceral conflict and anxious confusion at both the level of the Empire and the individual. In early persecutions, suspected *Christiani* were forced to offer incense to the image of the emperor according to the customs which were felt to protect the Empire. Apostates earned the name of ‘incense-burners.’⁵ As Susan Ashbrook Harvey has shown in her illuminating study of Christian olfaction, both intentionally producing and accidentally sensing these scents was a major theme in early Christian literature.

Incense and sacrificial smoke, however, followed parting trajectories in the fourth century, an era characterised by a ‘legalisation’ of Christian practice. For the followers of Christ, as Ashbrook Harvey shows, traditional sacrificial practices were ‘superseded by the actions of Christ’ and could not be ritually recuperated.⁶ Christ’s actions had irreversibly reoriented sacrificial discourse toward martyrdom.⁷ The invasive fumes generated at public

⁴ Susan Ashbrook Harvey, *Scenting Salvation: Ancient Christianity and the Olfactory Imagination* (Berkeley: University of California Press, 2006), 14.

⁵ *Ibid.*, 19.

⁶ *Ibid.*, 20.

⁷ *Ibid.*, 21–27.

festivals had, for Christians, come to embody the abject sin of prohibited customs, clouding the path to salvation. But 'legalisation' and the associated rise of Christian actors to political prominence, according to Ashbrook Harvey, entailed also a kind of *romanisation* of Christian rite, radically transforming the liturgy into a 'feast for the senses' and, in a reappropriation of imperial ceremony, came to be 'drenched in the scent of incense'.⁸ Ashbrook Harvey centres on Christian authors' mystagogical debates over new meanings for smell and the strategies they found for normatively redeeming the senses for Roman Christians, but a closer look at the legal sources from this period reveals a further, more distinctly legal and governmental dimension to public ritual.

Within the *longue durée* of Christianity's permeation of the Roman imperial bureaucracy, the *Theodosian Code* offers us a legislative narrative of cultural change from the reign of Constantine up until that of the second Theodosius. But this is overlooked in the secondary literature. While scholars of ancient festival have mined the code for circumstantial evidence, none have questioned the means by which that evidence is structured and transmitted: by the compilers and copyists of the *Theodosian Code*. Each constitution has been carefully selected, manipulated and woven into a chronological timeline prepared for fifth century readers. Before being able to consider a singular constitution, therefore, we must firstly ask, how did the compilers of the code itself

⁸ *Ibid.*, 58.

choose to represent changes in the public festival within the period it attempts to cover, and to what effect? And what place do the sacred aerosols of incense and sacrificial smoke take in the atmospheric changes they purport to describe? As Honoré has amply demonstrated, law to the late antique Romans was the ‘*ars aequi et boni*, the just and the good in their technical aspect’,⁹ and so did they artistically, technically and highly creatively respond to the challenges brought up by religious conflicts taking place at all levels of society.¹⁰

In what follows, I propose to answer these questions within a ‘Sensory Studies’ framework. In defense of the academic transgression of comparing ancient festivals to modern department stores, I will argue that the law on public festival also serves atmospheres of pleasure. My thesis is that when we approach the legislation on festival as it appears in Books II and XVI of the *Code* from the perspective of the senses and from olfaction in particular, we can see a clear narrative emerge in which the lawgiver and the law itself engineer a sensual atmosphere imbued with religious meaning. As the protagonists of this atmosphere, however, the law and the lawgiver are represented as non-oppressive agents, guardians of pleasure and keepers of correct divine relations. This is clear in the 399 legislation as it calls upon the ‘ancient custom’ of civic euergetism, while subverting its established sacral significance. Indeed, by ‘not allowing the common

⁹ Tony Honoré, *Law in the Crisis of Empire 379–455 AD: The Theodosian Dynasty and Its Quaestors* (Oxford: Clarendon Press, 1998), viii.

¹⁰ J. D. Harries, ‘How To Make A Law-Code’, *Bulletin of the Institute of Classical Studies* 42, Issue Supplement 71 (1998), 67.

pleasure of all to be abolished', the law blocks the abolisher within, dissimulating its oppressive character.¹¹ As Andreas Philippopoulos-Mihalopoulos (hereafter A.P.M.) shows, atmospheric engineering responds to problems of public order by 'rendering inert any willful resistance', depending of course on how sincere this pleasure-giving is judged to be.¹² Atmospheric engineering in the *Theodosian Code*, therefore, is the effect of an artistic legislative narrative of public order through sensory discipline, constructed from constitutions promulgated spontaneously throughout the fourth century and into the fifth. It is no coincidence, therefore, that the permeating materials of sacrificial smoke and incense are frequently targeted in this legislation. This smoke gave material presence to the spiritual pollution of non-Christian rites, and according to the narrative portrayed in the *Theodosian Code*, the Christian emperors purified the very air with laws and codes.

In my first section, 'The Power of Sensation', I set my framework within wider intellectual efforts to affirm sensation as a genuine historical force and explicate the concept of atmospheric engineering. Secondly, in 'The Order of Law' I will discuss how the specific literary architecture of the *Theodosian Code* gives rise to narrative form, before unpacking the narrative of sensory engineering told by the legislation on festivals in my final section, 'Engineering Christian Atmosphere'.

¹¹ *C. Th.*, XVI.10.17.

¹² Philippopoulos-Mihalopoulos, *Spatial Justice*, 109.

II. The Power of Sensation

If there should be any temples in the country districts, they shall be torn down without disturbance or tumult. For when they are torn down and removed, the material basis for all superstition will be destroyed.¹³

The premise of any exercise in Sensory Studies is that there is an inherent power to sensation. As such, it is also an exercise in materialism, in that it emphasises the vitality and importance of matter. This involves a certain complicity with the idea of a ‘material basis for superstition,’ even if it may also involve a critical analysis of the rhetorical mechanics at work in such a statement. Indeed, what Rosi Braidotti has called ‘new materialism’ is a late twentieth century intellectual trend which both comes out of, and reacts against, textual approaches:

Neo-materialism emerges as a method, a conceptual frame and a political stand, which refuses the linguistic paradigm, stressing instead the concrete yet complex materiality of bodies immersed in social relations of power.¹⁴

In fact, Sensory Studies explicitly situated itself within this trend early on, calling the ‘sensual revolution’ a ‘revolution in thought’ against textual obsessions.¹⁵ Pioneering theorists such as David Howes cautioned against ‘playing

¹³ *Th.C.*, XVI.10.16.

¹⁴ Rosi Braidotti cited in Rick Dolphijn and Iris van der Tuin, *New Materialism: Interviews & Cartographies, New Metaphysics* (Ann Arbor: Open Humanities Press, 2012), 19.

¹⁵ David Howes, ed. *Empire of the Senses: The Sensual Culture Reader* (Oxford: Bloomsbury Academic, 2005), 4.

up the body and the senses through evocative accounts of corporeal life', in favour of extrapolating 'social ideologies conveyed through sensory values and practices'.¹⁶ Unfortunately, forays of Sensory Studies into late antiquity have stopped short of moving beyond 'playing up the body', finding little more than a novel prism through which to refract the laboured topic of Christian asceticism.¹⁷

There is, however, an important difference between Braidotti and Howes' materialisms, which perhaps reflects the 'new' in 'new materialism' and, I think, the value of Sensory Studies. While Howes is interested in revealing *ideologies* which may be latent in sensory forms,¹⁸ Braidotti, and A.P.M.'s radical materialism rejects ideology altogether on the basis of a 'common surface between material and the discursive'.¹⁹ Braidotti and A.P.M. move away from the more orthodox Marxist concept of transcendent *ideology* towards a functionalist conception of the material world in which both ideas and sensory stimulus have immanent force.

A.P.M.'s engineered atmospheres, therefore, are entirely material sensori-legal entities; they are vital networks of sensory connections, made possible by the way that bodies (in the widest possible sense) affect each other. A focus on the connections made between bodies through

¹⁶ Howes, 6.

¹⁷ A case in point is Susan Ashbrook Harvey, 'The Senses in Religion: Piety, Critique, Competition', in *A Cultural History of the Senses: In Antiquity*, ed. J. P. Toner (Bloomsbury Academic, 2014), 91–115.

¹⁸ For another more orthodox Marxist approach to sensory history, see Robert Jütte, *A History of the Senses: From Antiquity to Cyberspace* (Cambridge: Polity, 2005).

¹⁹ Philippopoulos-Mihalopoulos, *Spatial Justice*, 115.

sensation, therefore, moves from regarding the body to regarding the *intracorporeal*, giving both Christian asceticism and ideas concerning civic festival a social dimension. Atmosphere, then, attempts to detail Braidotti's 'bodies immersed in social relations of power' by looking closely at the way that bodies *move* each other. This could be the way that a body of law destroys the body of a temple, or the way that a cloud of airborne stimuli conceived as 'pagan' could repulse Christian bodies at a public festival, as Ambrose describes:

Can it be endured for a pagan to sacrifice in the presence of a Christian? Let them ... inhale the smoke through their eyes, even against their will, hear the sound of the music in their ears, feel the ash in their throats, the incense in their nostrils and let the ashes from our hearths scatter over their faces even though they turn their heads away.²⁰

In an appeal to the Emperor against public sacrifice, Ambrose the Bishop describes a corporeal revulsion to the legal recognition of 'pagan' festivals in atmospheric, synaesthetic terms. As Sara Ahmed states, 'to be disgusted after all is to be affected by what one has rejected',²¹ and Ambrose is protesting to the lawgiver about having to be continually affected by what he has already rejected. Here, then, Ambrose is entreating what A.P.M. sees as law's distinct capacity to engineer atmospheres by suppressing certain 'corridors of sensory direction' and allowing

²⁰ Ambrose, 'Ep.18' in *Religious Conflict in Fourth Century Rome: A Documentary Study*, ed. Brian Croke and Jill Harries (Sydney: Sydney University Press, 1982), 48.

²¹ Sarah Ahmed, quoted in Philipopoulos-Mihalopoulos, *Spatial Justice*, 113.

others to come forth.²² This illuminates the connection between ideas, sensation, and stimulus: ‘the emergence of atmospheres is based on the connection between senses, emotions and symbolic meaning’.²³

By placing law, emotion, sensory stimulus and signification on a common surface, this radically materialist sensory approach can account for the concern that clerics, legislators and emperors have with public festival. It can also account for the entanglement of certain smells and their possible meanings in the debate over sacrifice. The creation of atmosphere is both an expression and an effect of power, hence why Ambrose is physically disgusted by expressions of ‘pagan’ power through festal celebration. As we will see in my final section, spontaneous legislation managed stimulation in response to specific circumstances, but this is represented narratively in the *Theodosian Code* because of the specific way the code is constructed. As we move on to a discussion of its structure, we will bear in mind how this too has a vital function in this conception of atmosphere.

III. The Order of Law

A book itself is a little machine ... the only question is which other machine the literary machine can be plugged into, must be plugged into in order to work ...²⁴

In her article, ‘Ordering Divine Knowledge in Late Roman Legal Discourse’, Caroline Humfress persuasively

²² Ibid., 109.

²³ Ibid., 117.

²⁴ Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (London: Athlone Press, 1988), 4.

argues that the *Theodosian Code* can be classified as ‘a specialist form of Imperial prose literature.’²⁵ Setting Book XVI within a Foucauldian framework, Humfress shows that the final, ‘ecclesiastical’, Book of the Code ‘was intended to showcase a new, imperial and Theodosian, ordering of knowledge concerning matters human and divine.’²⁶ Drawing our attention to the relationship between the architectonics of the Code and the ‘broader, socio-cultural, logic’, Humfress shows that the text ‘provides its elite, specialist readers with the tools – epistemological and material – to produce their own ‘valid’ legal knowledge *as defined by and through the Codex itself*’.²⁷ The Code as literary machine, then, is ‘plugged in’ to an orthodox machine responsible for the production of theological meaning. It is also plugged into an imperial machine responsible for public order, as well as ancient machines still reproducing ancient religious ideas:

If we survey the range and ordering of title-headings within Book XVI we can see how the time-honoured imperial duty of ensuring the *pax Romana* is now framed as a concern to maintain ‘correct’ relations exclusively with the Supreme God of the Christians.²⁸

Roman legal practice, thus, like Roman religious thinking, was deeply tied into a textuality which was ‘not

²⁵ Caroline Humfress, ‘Ordering Divine Knowledge in Late Roman Legal Discourse’, *Collegium* 20 (2016): 161.

²⁶ *Ibid.*, 162.

²⁷ *Ibid.*, 164.

²⁸ Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007), 171–72.

Scriptural or merely literate – but ... an object of writing and reading' which actively brought the divine and mundane together.²⁹ Roman law then, similarly to the transmission of scents to divine entities in ritual burnings, had a vital, material function in the workings of the ancient world, and this is reflected in the very ordering of material in the code.

The principles of this order are stated eloquently in the first Book of the Code. Firstly, the lawgiving power of the emperor is 'granted' to the compilers as lawmakers, whose subsequent role is to manipulate imperial enunciations into 'illuminated' constitutions:

In order that the law may be constrained by brevity and may be lucid with clarity, We grant to those men who are about to undertake this work the power to remove superfluous words, to add necessary words, to change ambiguities, and to emend incongruities. By these methods, of course, each constitution shall stand forth illuminated.³⁰

Honoré points out that 'the formal language which attributes these documents to the emperors in whose name they were issued is sometimes taken too seriously'.³¹ And yet, framing the body of the emperor as the source of law makes the emperor(s) the ultimate protagonist(s) of legal change and agents of the *Pax Romana*. So, whereas the compilers are given extensive creative control over the text of the *Code*, they never appear as political agents in their own right.

²⁹ Duncan MacRae, *Legible Religion* (Cambridge: Harvard University Press, 2016), 146.

³⁰ *C. Th.*, I.1.6ii.

³¹ Tony Honoré, *Emperors and Lawyers* (London: Duckworth, 1981), viii.

The second crucial aspect of the structure of the *Theodosian Code* is its chronological ordering, including even presenting earlier laws which are later overwritten, explicitly for their readership:

Although it would be simpler and more in accordance with law to omit those constitutions which were invalidated by later constitutions ... let us recognize that this code and the previous ones were composed for more diligent men, to whose scholarly efforts it is granted to know those laws also which have been consigned to silence and have passed into desuetude, since they were destined to be valid for the cases of their own time only.³²

As Humfress argues, what this structure actually gives rise to is an effective ‘re-archiving of the religious past.’³³ We therefore ‘cannot depend on the text for a “natural” or “accurate” reflection of realities on the ground’, because it offers ‘an imperial – and imperialist – ordering of late Roman law and religion.’³⁴ This is precisely the purpose, function and condition of existence of the narrative of atmospheric engineering in the legislation on the festival to which we now turn. In the following narrative, the form of the Code frames the emperor as the protagonist of a transformation in the atmospheric sensory matrix, and the past is ‘re-archived’ according to the Christian cosmic order, based on a manipulation of legal material by Theodosius II’s artful compilers.

³² *C. Th.*, I.1.5.

³³ Humfress, 175.

³⁴ Humfress, 174.

IV. Engineering Christian Atmosphere

Legislation concerning festivals is organised across two separate *tituli* (title-headings) in the *Theodosian Code*. The narrative of atmospheric engineering through sensory manipulation emerges across both, though they appear to be fulfilling very different legal duties. The first, 'Book II, Title 8: Holidays', is set among matters of court administration because the Roman legal calendar distinguishes court days from festival days, when court proceedings are suspended. Obviously, this court/festival binary already suggest self-dissimulation: these are legally-given days for the absence of law. The majority of the legislation, however, is organised into 'Book XVI, Title 10: Pagans, Sacrifices and Temples' which deals in detail with the reorientation of sanctified bodies, objects and space along Christianising lines. I will consider both simultaneously, demonstrating how they work together to commemorate the reign of each Christian lawgiving emperor, as well as attempt to forget that of Julian 'the apostate'. Moving through the legal evidence as it appears to close sensory channels while preserving the pleasure of public festival, we will bear in mind the *distinctly* olfactory significance of animal sacrifice and incense burning in earthly-divine relations.

As is customary in the *Theodosian Code*, both *tituli* begin with a law of Constantine that signals an exaggerated orientation towards the Christian God. A Constantinian constitution from 321 reaffirms the distaste of sanctity towards court:

... it appears to Us most unseemly that the Day of the Sun (*Dies Solis*), which is celebrated on account

of its own veneration, should be occupied with legal altercations and with noxious controversies of the litigation of contending parties.³⁵

Before going on to permit emancipation and manumission on these days, exempting them from the contaminated category of law. While this may well have been a step towards the liberationist discourse of Christian literature, *dies solis* is kept ambiguous, and no mention of the Christian God is made. The accompanying medieval commentary translates the *dies solis* as ‘the holy day of the Lord’, however, and this Christianising translation is repeated throughout the Code, despite the carefully worded admission that the day is ‘celebrated on account of its own veneration.’³⁶

The memory of Constantine is even less convincingly Christianised in the opening constitution of ‘XVI. 10’. An excerpt from an imperial rescript states that in the event of a lightning-strike, ‘the observance of the ancient custom [*haruspexy*] shall be retained, and inquiry shall be made of the soothsayers as to the portent thereof’ and, further, that anyone may ‘appropriate this custom to themselves’ provided it be public. As we shall see, all sacrifice, including the ancestral tradition of consulting the entrails of a sacrificial animal on the fortune of the Empire, will later be firmly outlawed by numerous constitutions under the same title. While Pharr points out that the prohibition on domestic sacrifice was on account of their being ‘secret and antisocial; they might be used

³⁵ C. Th., II.8.1.

³⁶ C. Th., II.8.1.

against the Emperor,³⁷ it is clear from the second constitution in the title from Constantine's more zealous son, Constantius, that some Constantinian hostility towards sacrifice had to be shown. Constantius refers to 'the law of the sainted Emperor, Our father' as it abolishes 'the madness of sacrifices', hence the latter could hardly be codified without the former.³⁸ That Constantius' legislation refers to a Constantinian law which Pharr points out to be 'not extant' is of little consequence when the compilers have clearly tried to present it as the preceding law – evidently Pharr did not fall for their trick.³⁹ Indeed, it does not follow that there ever was a genuine Constantinian sacrifice abolition. That the compilers felt the need to retain the permission of *haruspexy* is certainly suspect, since they quote the rescript at length. Perhaps they wanted to set a low bar from which later emperors could be shown to progress. So much for the laws of Constantine, and 'II.8: Holidays' stays quiet until the reign of the first Theodosius in 386.

As we might expect, there is quite a jump from Constantine to Constantius, who holds the next four constitutions in XVI.10 in his name, and a claim to a new severity towards traditional ritual. His constitutions also include the first genuine use of explicit Christian thematics and terminology such as the notion that certain stimuli create 'opportunities for sin.' The law discussed above begins with the fervent promise that 'the madness of superstition

³⁷ *C. Th.*, II.8.1.

³⁸ *C. Th.*, XVI.10.20.

³⁹ *C. Th.*, XVI.10.2.

shall cease,⁴⁰ deploying the Christian discourse of insanity usually reserved for heretics.⁴¹ But bold first steps are followed by awkward footing: the next year a qualification is added that temples *beyond* the city walls 'shall remain untouched and uninjured'.⁴² This apparent protection of 'long established amusements of the Roman people' is then quickly revoked in the following constitution when Constantius announces with 'pleasure' the closure of temples 'in all places and in all cities,' 'so as to deny to all abandoned men the opportunity to commit sin'.⁴³ Capital punishment is also decreed both to sacrificers and to governors neglecting to enforce such laws. The next constitution repeats the sacrifice abolition, and the sixth adds that the worshipper of images will also be 'struck by the avenging sword'.⁴⁴ The legislation in Constantius' name remembers his reign as having begun the earnest destruction of both 'pagan' bodies and buildings, though not without hesitation.

Though the chronology of the *tituli* glosses over the short and controversial reign of Julian (361–3), the constitutions of Theodosius I are clearly aggravated by tensions refreshed in its wake. It is quite possible that this legislation revolves around events known as the 'Altar of Victory controversy', though scholarly debate is still vigorous on

⁴⁰ *C. Th.*, XVI.10.2.

⁴¹ For a detailed study of this discourse, see Ferdinando Zuccotti, *Furor haereticorum: studi sul trattamento giuridico della follia e sulla persecuzione della eterodossia religiosa nella legislazione del tardo impero romano* (Milan: Giuffrè, 1992).

⁴² *C. Th.*, XVI.10.2.

⁴³ *C. Th.*, XVI.10.5.

⁴⁴ *C. Th.*, XVI.10.6.

the political significance of this matter. Tensions, known to us through Ambrose, concern the removal by Gratian in 382 of a prominent sacrificial altar in the Roman Senate House which had already been removed once by Constantius I and then restored, probably by Julian. Chenault writes that the historiographical ‘custom’ has been to treat the events ‘as a defining moment in a longer conflict between paganism and Christianity, symbolised by the “debate” in 384CE between the pagan prefect, Symmachus and Ambrose, Bishop of Milan.’⁴⁵ This custom, however, reproduces Ambrose’s presentation of events, which Chenault suggests deliberately frames him in a position of power against Christian competitors, under a pretended interest in the altar.⁴⁶ In the same vein, Alan Cameron has problematised the assumption that powerful ‘pagans’ at the time were producing reams of ‘covert anti-Christian polemic,’⁴⁷ emphasising that though ecclesiastics ‘might thunder against paganism in all its forms’, ‘the real world government turned to those with influence, whatever their religious beliefs.’⁴⁸ The influence of Ambrose aside, however, the need for ‘real world

⁴⁵ Robert R. Chenault, ‘Beyond Pagans and Christians: Politics and Intra-Christian Conflict in the Controversy over the Altar of Victory’, in *Pagans and Christians in Late Antique Rome: Conflict, Competition, and Coexistence in the Fourth Century*, ed. Michele Renee Salzman (New York: Cambridge University Press, 2016), 46.

⁴⁶ *Ibid.*, 61.

⁴⁷ Alan Cameron, ‘Were Pagans Afraid to Speak Their Minds in a Christian World? The Correspondance of Symmachus’, in *Pagans and Christians in Late Antique Rome: Conflict, Competition, and Coexistence in the Fourth Century*, ed. Michele Renee Salzman, Marianne Sághy, and Rita Lizzi Testa (New York: Cambridge University Press, 2015), 64.

⁴⁸ *Ibid.*, 108.

government' to negotiate complicated power struggles between elite traditionalism towards sacred architecture and rites on the one hand, and new Christian understandings of them on the other, certainly characterises the legislation of this period. This is made clear through frequent statements of universal application, qualifying subjects 'of any class or order whatsoever', and against 'favoritism'.⁴⁹ The resulting constitutions are eventually remembered in the *Theodosian Code* for their thoroughness towards influential traditionalists on the one hand, and on the other, for not having gone far enough.

Their thoroughness is manifested in the attention they give to bodily practices, intra-corporeal rituals, and the use of artifacts and edifices. Among many other corporeal-material behaviours listed and repeated, punishment is promised to those who 'devote their attention to sacrifices'; the 'worship of images'; 'immerse themselves in sacrifices'; pronounce 'dire incantations'; 'approach' or 'revere shrines'; 'wander through' or 'go around' temples; 'venerate his lar with fire, his genius with wine, his penates with fragrant odors ... burn lights to them, place incense before them, or suspend wreaths for them' or even 'bind a tree with fillets; or erect an altar of turf that he himself has dug up'.⁵⁰ Not only are these behaviours outlawed, so too are the emotional relations to ritual artifacts and the meanings given:

[I]f any person should venerate, by placing incense before them, images made by the work of mortals and destined to suffer the ravages of time, and if, in

⁴⁹ *C. Th.*, XVI.10.12.

⁵⁰ *C. Th.*, XVI.10.12.

a ridiculous manner, he should suddenly fear the effigies which he himself has formed, or ... should attempt to honor vain images with the offering of a gift, which even though it is humble, still is a complete outrage against religion.⁵¹

This precocious mocking gives the lie to the ironic legislative subversion of the persecutory practice of forcing Christians to offer incense to the emperor's image which we saw in my introduction. Language here is dominated by Christian normative ideas over which divinities should be revered and exactly how. But the specificity also points towards the perceived power of sensation. Again, atmospheric impurity is perceived as a real threat to the *Pax Romana* – right relations with the divine. This impurity is even posed as a lingering one: 'all places shall be annexed to our fisc, if it is proved that they have reeked with the vapor of incense.'⁵² Clearly some forms of stimulation are insurmountably impure and cannot have their meanings subverted along Christian lines. Imperial air had to be cleansed of 'pagan' incense.

It is worth noting that while a building can be marred by the smell of incense, attitudes towards architecture framed as the 'work of mortals' – buildings and devotional art – are treated with ambivalence. Caught between hope in recalibration of use and meaning and all out ban on entering temples, the compilers fail to restore coherence to this part of the story. A 382 rescript to the Duke of Osrhoene refers to a specific temple and perhaps surprisingly decrees that it should remain open. In fact, 'all

⁵¹ *C. Th.*, XVI.10.12.

⁵² *C. Th.*, XVI.10.12.

celebrations of festivities' should be preserved so that the temple may 'be seen by the assemblages of the city and by frequent crowds, and so should the images 'reported to have been placed' therein remain but be 'measured by the value of their art rather than by their divinity'.⁵³ Nevertheless the proceeding 391 constitution from the same *Augustus* states that no person shall enter temples, enacting a special fine upon any judge exploiting 'the privilege of his power' in entering 'polluted places'.⁵⁴ The polluting power of incense ultimately trumps the possibility of secularising sanctified space.

Renee-Salzman has illuminated the ambivalence towards the social, political and divine function of temples by comparing it to the relative ease with which the calendar was drastically reorganised under Theodosius I in 'Book II, Title 8: Holidays'. In a single law of 389, Theodosius clears the calendar of all non-Christian holidays, excepting the 'respite from toil' in summer, the harvest, the new year's celebrations redefined as a 'rest day', and the 'natal days of the greatest cities, Rome and Constantinople, to which the law ought to defer, since it also was born of them'.⁵⁵ To this is added a ban on circuses during Sundays, on the familiar grounds 'that no concourse of people to the spectacles may divert men from the reverend mysteries of the Christian law'.⁵⁶ The apparent Christianisation of the legal calendar has attracted much of

⁵³ *C. Th.*, XVI.10.8.

⁵⁴ *C. Th.*, XVI.10.9.

⁵⁵ Fritz Graf, *Roman Festivals in the Greek East: From the Early Empire to the Middle Byzantine Era* (Cambridge: Cambridge University Press, 2015).

⁵⁶ *C. Th.*, II.8.20.

the work on festivals in this era, though its significance is debated. Pointing to a backlog in court business, Graf frames this as a strategic action by an emperor eager to show his diligent maintenance of smooth-running courts, downplaying the religious intent.⁵⁷ Conversely, Renee-Salzman insists on the social importance of the construction of rhythmic time in this period:

To redefine the basic way a society and a people mark time is to alter profoundly the rules and rhythms of life. It is not surprising, then, that changing the organization of time and space in Rome was of particular interest to popes and emperors alike.⁵⁸

Referring to their implanting of Christian celebrations on the same dates as ‘pagan’ holidays, Renee-Salzman argues that ‘by the mid C4th, bishops and emperors were aggressive in their appropriation of sacred time’, whereas public space had to be handled carefully as it was invested with much greater elite interest.⁵⁹ Temples and temple artworks, though imperial property, also belonged to an ancient euergetic culture whereby the elite sponsored its production, to whom it symbolised a material connection to their historic ‘role as civic leaders’.⁶⁰ At the same time, changing the calendar was theologically more permissible than destroying temples, because the temples literally

⁵⁷ Fritz Graf, ‘Laying Down the Law in Ferragosto: The Roman Visit of Theodosius in Summer 389’, *Journal of Early Christian Studies* 22, no. 2 (2014): 219–42.

⁵⁸ Michele Renee Salzman, ‘The Christianization of Sacred Time and Sacred Space in Late Antique Rome’, ed. W. V. Harris, *Journal of Roman Archaeology*, Supplementary Series, 33 (1999): 123.

⁵⁹ *Ibid.*, 123.

⁶⁰ *Ibid.*, 123.

housed deities, who resided in their statues, and who in contemporary Christian discourses had become powerful demons.⁶¹ At the level of sensation, ‘from a pagan perspective, to ignore the Christian celebration of the birth of Jesus was easier than to ignore a Christian church built on a pagan temple.’⁶² Compared with the lightness of incense and sacrificial smoke, and the ethereality of time, sacred buildings proved heavier on multiple levels. Nevertheless, according to ‘Book XVI: Title 10’, the Christianisation of public ritual is practically complete by the time of Theodosius II.

The constitutions within the reign of the second Theodosius (commissioner of the *Code* in his name) present the final scene in the narrative, an image of an atmosphere engineered. The legislation is victorious: ‘the regulations of constitutions formerly promulgated shall suppress any pagans who survive, although We now believe that there are none.’⁶³ Punishments are to be ‘executed more vigorously’,⁶⁴ civic religious professions are outlawed entirely,⁶⁵ and after an abortive revival of traditionalism in the letter which opened this essay, the emperors withdraw all funding from temples and grant bishops ‘the right to use *ecclesiastica manus*’ in intervening in pagan ceremonial.⁶⁶ In 415 it is affirmed that all sacred spaces will be handed to the Orthodox Church, and any object which ‘has ever been consecrated to sacrifices and

⁶¹ *Ibid.*, 130.

⁶² *Ibid.*, 132.

⁶³ *C. Th.*, XVI.10.13.

⁶⁴ *C. Th.*, XVI.10.13.

⁶⁵ *C. Th.*, XVI.10.14.

⁶⁶ *C. Th.*, XVI.10.19.3.

thus served as a means of deception for men' should be removed from the 'favorite haunts of the public'.⁶⁷ Again, to hinder their very material, sensory pull: 'that it may not furnish allurements to the erring'.⁶⁸ Another intensifying constitution prohibits from imperial service 'those persons who are polluted by the profane false doctrine of crime of pagan rites, that is, the pagans'.⁶⁹

The final constitutions, therefore, appear already immersed in a pacified, purified, Christian atmosphere. Here incense, which had now been recuperated into lavish Christian liturgies, no longer needs mentioning. The effort turns towards maintaining that atmosphere and tidying up unwanted 'pagan' remnants. This entails compelling 'those persons who are truly Christians or who are said to be' not to 'dare lay violent hands on Jews and pagans who are living quietly and attempting nothing disorderly or contrary to law'.⁷⁰ While implicitly recognising and authorising a public conflict between the constructed categories of 'Christian', 'pagan' and 'Jew', the ritual material, behaviour and space is tucked away into a quiet corner of this atmosphere. The final resounding image of 'XVI:10', however, is a 453 law concluding the complicated struggle with sacred space by calling for the destruction of all 'fanés, temples, and shrines' belonging to those of 'criminal pagan mind ... if even now any remain entire'.⁷¹ This space was then to be 'purified by the erection of the sign of the venerable Christian

⁶⁷ *C. Th.*, XVI.10.20.3.

⁶⁸ *C. Th.*, XVI.10.20.3.

⁶⁹ *C. Th.*, XVI.10.21.

⁷⁰ *C. Th.*, XVI.10.24.

⁷¹ *C. Th.*, XVI.10.25.

religion' – so that while the material basis of superstition is destroyed, a material world of Christian law and solemn order is constructed in its stead.⁷²

V. Conclusion

Sensory Studies is always a materialist exercise, but getting the most out of new forms of materialism means moving on from ideology and into a conception of matter as vital and functional in itself. From this perspective, sensation has its own inherent power, and the materialities of complex religious systems are given a new dimension: an atmospheric dimension. Atmospheres connect bodies through organising ideas, emotions and objects of all kinds, all working together to create a specific kind of *mood*. As we have seen in the case of Roman sacrificial ceremonies, moods may become particularly pervasive and intrusive when directed along airborne sensory channels such as the olfactory. As with incense and burning flesh, material traversing these routes appears to be almost inherently transgressive in its disregard for spatio-socio-political boundaries, forcing Christians to smell the lingering injustice of the world from which they emerged. Although atmospheres emerge spontaneously and frequently antagonistically, it is characteristic of law, which is also immersed in them, to try to engineer them from within. This engineering is both an expression and an effect of power, and as is the case with Roman public festivals, is an effort to maintain public order.

⁷² C. Th., XVI.10.25.

The *Theodosian Code*, which has its own unique materiality as a constructed text, is a specific kind of technical literature, a kind of 'literary machine' that has to be plugged into other social machines in order to work. In the text of the *Code*, the Roman emperors themselves are framed as the protagonists of law, the drivers of the legal machine. The text is formed according to this narrative principle, which is then reinforced by a chronological ordering that allows it literally to tell the story of atmospheric changes made by the legislative actions of Christian emperors.

Changes in this period of Christian emperors are thus presented to the reader as a disciplining narrative. A story of atmospheric engineering through sensory management is told by chronological legislation looking back from the reign of Theodosius II on the laws of previous emperors. This story remembers Constantine's reign as having begun an orientation towards Jove, and the reign of Constantius as having intensified this orientation through a series of dramatic ritual prohibitions. The reign of Theodosius I is remembered as having been more thorough still, transforming the sacred calendar though failing to overcome the temples which still housed the old gods. But these temples, reeking with the lingering effect of incense burning and animal sacrifice, could not be defended. Theodosius II would clear up this problem by issuing a law that would have all temples replaced by a 'purifying' crucifix. With this, the atmosphere surrounding the *Theodosian Code* is engineered into a Christian one, where the 'material basis for superstition' has been replaced by a new matrix of divine-terrestrial relations.

As I discussed at the very beginning of this chapter, it is hard to imagine that the legal machine alone could have managed the emerging atmospheric shifts in this fraught period. We have seen, however, that the team of compilers of the fourth century lawbook, the *Theodosian Code* may have wished to present the Christian emperors as givers of both pleasure and order, overseers of air and atmosphere who replace the stench of sacrifice with an offering of sweet incense to the new Christian and Roman body.

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