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The Byzantine House (400–912): Rules and Representations

“There was in Constantinople a man called Zeno, a professional rhetorician, who besides his other distinctions was a close acquaintance of the Emperor. He was a next-door neighbour of Anthemios [*scil.* the famous engineer Anthemios of Tralles], their two houses being joined to one another and built on the same area of ground. In the course of time rather strained relations and a certain amount of ill will developed between them, either because of some possibly unprecedented piece of prying, or because of the construction of some abnormally high annexe which blocked the light or for some other of the many reasons that inevitably bring next-door neighbours into conflict. Now Anthemios outmanœuvred in argument by his opponent’s legal skill and finding himself no match for him when it came to a battle of words, retaliated in the following manner by availing himself of his own professional expertise. Zeno had a fine, spacious and sumptuously decorated upper room, in which he loved to pass the time of day and entertain his close friends. The ground-floor rooms underneath, however, belonged to Anthemios’ part of the house, so that the ceiling of the one was the floor of the other. Here Anthemios filled some huge cauldrons with water and placed them at intervals in various part of the building. (...) Having secretly set up this apparatus he laid a fire under the base of each cauldron and kindled a powerful flame. As the water grew hot and boiled a great head of steam began to rise. Unable to escape, it rose up the pipes, building up the pressure as it went and subjecting the roof to a series of shocks until it shook the whole structure with just enough force to make the woodwork creak and wobble slightly. Zeno and his friends were terrified and ran panic-stricken into the streets with cries of horror and alarm. (...)” (Agathias, *Historiai* V 6,7–7,5 [KEYDELL], translation by J. D. FRENDO [CFHB II A]. Berlin–New York, 141–2).

This terrific story informs us about the standard of housing of the Upper Class in Constantinople in Justinian’s Age. The houses (*oikoi*) are so close to one another that any modification in one of them has consequences for the other. Moreover, “close” is not exactly the right word: actually the dwellings of Anthemios and Zeno are interlinked, and we have to imagine them as two flats, or two groups of rooms, in the same building. In such a context, “relations with one’s neighbours” are very important for daily life and well being, especially of course, in towns and cities¹.

The aim of this paper is to study the image of the urban Byzantine house as given by the legal regulations concerning housing and neighbourhood, from the Age of Theodosius (408–450) to the Age of Leo VI the Wise (866–912), or in other words from the *Codex Theodosianus* to the *Basilics* (=B)². This covers the period from the urban prosperity of Late Antiquity to the beginning of the urban revival after the Dark Ages of the seventh to ninth centuries³.

In Classical Roman Law, the rights of the owner on his property are unlimited. However, in Roman private law a neighbour can have the right to make a certain use of another’s land or building. This right, which is attached to the land or building itself, regardless of the person who actually owns it, is called *servitus*. For

¹ See the examples quoted by Ch. BOURAS, Houses in Byzantium. *DChAE* IV 11 (1982–1983) 24–5.

² For useful introductions to the story of Byzantine Law, with reference to the available editions, see N. VAN DER WAL – J. H. A. LOKIN, *Historiae iuris graeco-romani delineatio*. Groningen 1982 and Sp. TROLANOS, *Οι πηγές του βυζαντινού δικαίου*. Athens 1986.

³ Cf. J. RUSSELL, Transformations in Early Byzantine Urban Life: the Contribution and Limitations of Archaeological Evidence, in: XVIIth International Byzantine Congress. Major papers. Washington, D.C. 1986, 137–54; C. MANGO, Transformations in Early Byzantine Urban Life: the Contribution and Limitations of Archaeological Evidence, in: XVIIth International Byzantine Congress. Major papers. Washington 1986, 117–36; IDEM, Le Développement urbain de Constantinople (IV^e–VII^e s.). Paris 1990; IDEM, La vita in città, in: La civiltà bizantina. Oggetti e messaggio. Architettura e ambiente di vita (*Università degli studi di Bari. Centro di studi bizantini. Corso di Studi* VI, 1981). Roma 1993, 229–73 (although for Constantinople P. MAGDALINO, Constantinople médiévale. Études sur l’évolution des structures urbaines. Paris 1996 is less pessimistic).

instance the *servitus oneris ferendi* allows me to use the building or wall of my neighbour to support my own building. Moreover in the various cities of the Empire local rules exist concerning the construction⁴. On these local rules we have very little information.

In the *Codex Theodosianus* (a. 438), there is no proper chapter about private buildings. However, there are some pointers about this in the sections concerning public works and water supply (C. Th. 15, 1–2). One century later, Justinian publishes the *Institutiones* (= Inst.), the *Digesta* (both in 533) and the *Codex* (= C., first edition 529, second edition 534). In contrast to the *Codex Theodosianus*, the *Digesta* (= D.) and the *Institutiones*, the *Codex Iustinianus* contains a section specifically concerning private building⁵.

Actually, in the fifth and sixth centuries, the central administration shows an increasing interest in private construction. Probably after the fire of Constantinople in 462, the Emperor Leo I enacted rules for the reconstruction of the city. The scope of this enactment is very limited in space and time. It is partly known through a number of allusions made to in the “Law of Zeno”⁶: some years after, between 476 and 479⁷, the emperor Zeno enacted a more ambitious law concerning urban construction in Constantinople, especially the protection of light and of “view”, and the construction of balconies, as well as the arrangement of the shops along the main streets. In this law, the rights of the owners are limited: for instance, an owner is not allowed to build up a house if in doing so he blocks up the view of sea for his neighbour. But if there is a fixed rule between neighbours, it has the function of a dispensation, which is applied to derogate the law⁸. The Emperor Justinian decides in the year 531 to implement this law in all the Empire⁹. Justinian, himself, promulgates two novels which are complementary to Zeno’s Law, and which concern the view¹⁰.

In the fifth and the sixth centuries some unofficial Law Books are also compiled. The *Liber Syro-Romanus* was written originally in Greek in the fifth century, probably in Beirut¹¹. The book of Julian of Ascalon (only partially conserved), was written in Palestine in the sixth century. As we read it today, it chiefly concerns private construction¹².

The publication of the *Institutiones*, *Digesta* and *Codex Iustinianus* paved the way for a very dynamic production of pedagogical writings¹³. About this production concerning neighbourship and building, we know very little. However, some of this production comes to us via later legislative books (*Prochiron* = Pr., *Eisagoge*) and, for instance, through the *Epitome*, a non official compilation from around 920.

The Law Books of the seventh and eighth centuries¹⁴ do not concern urban neighbourship. By contrast the legislative production from the reigns of Basil I and Leo VI testify to the interest of the jurists and legislators in this matter. The amplitude of the Macedonian project lay in its attempts to purify the law, by explicit abrogation of the null and void law; by drawing up official handbooks, which contain some legal innovations

⁴ For Rome, enactment of Nero after the Great Fire of 64 (Tacitus, *Annales* XV, 43); elsewhere in the Empire: cf. C. 8. 10. 1 (C. SALIOU, *Les Lois des bâtiments*. Beyrouth 1994, 213).

⁵ C. 8. 10: *De aedificiis priuatis*.

⁶ C. 8. 10. 12. See for instance C. 8. 10. 12. 1a (SALIOU, *op. cit.* 222–3).

⁷ Cf. SALIOU, *op. cit.* 283–284 and *passim*; M. F. CURSI, *Modus servitutis*. Napoli 1999, 346–57.

⁸ C. 8. 10. 12. 4.

⁹ C. 8. 10. 13.

¹⁰ Nov. 63 (538); nov. 165 (date unknown).

¹¹ Cf. W. SELB, *Zur Bedeutung des syrisch-römischen Rechtsbuches*. München 1964; IDEM, *Orientalisches Kirchenrecht, II: Die Geschichte des Kirchenrechts der Westsyrier von der Anfängen bis zur Mongolenzeit*. Wien 1989, 138–9; new edition by W. SELB † – H. KAUFHOLD, *Das Syrisch-Römische Rechtsbuch, I: Einleitung, II: Texte und Übersetzungen, III: Kommentar (Österr. Akad. Wissenschaften, phil.-hist. Kl., Denkschriften 295)*. Wien 2002.

¹² Commented edition by C. SALIOU, *Le Traité d’urbanisme de Julien d’Ascalon (VI^e s.)*. Droit et architecture en Palestine au VI^e s. Paris 1996. See also now C. G. PITSAKIS, Πόλεις και περιβάλλον στα βυζαντινά νομικά κείμενα, in: Sp. TROIANOS – C.F. PITSAKIS, Φυσικό και δομημένο περιβάλλον στις βυζαντινές νομικές πηγές. Athens 1998, 65–162; IDEM, Ο ιδιωτικός χώρος στη βυζαντινή νομική σκέψη, in: *Synantese ton byzantinologon tes Hellados kai tes Kyprou*. Ioannina 1999, 53–69; C. SALIOU, Julien d’Ascalon et la codification, in: *La Codification des lois dans l’Antiquité. Actes du Colloque de Strasbourg (novembre 1997)*. Paris 2000, 293–313; B.S. HAKIM, Julian of Ascalon Treatise of Construction and Design Rules from Sixth Century Palestine. *Journal of the Society of Architectural Historians*. March 2001, 4–25.

¹³ H. J. SCHELTEMA, *L’Enseignement de droit des antécédents*. Leiden 1970.

¹⁴ For instance *Nomos Georgikos* (ed. W. ASHBURNER in *JHS* 30) or *Ecloga legum*, ed. L. BURGMANN (About these texts, cf. J. HALDON, *Byzantium in the seventh century*. Cambridge 1997, 254–64).

(*Prochiron*, *Eisagoge*); by updating the law with the Novels of Leo VI;¹⁵ by translating and reorganizing the Justinianic works within the *Basilics*¹⁶. The existence of an unofficial production is also attested, for instance, by in a small book partly devoted to the neighbourhood, published some years ago¹⁷.

In the *Prochiron* and in the *Eisagoge*, there is a section with the heading *peri kainotomion*, concerning neighbourhood in urban and rural contexts. Excepting one chapter¹⁸, this section, in the *Prochiron* and in the *Eisagoge*, as published in Zezos' edition¹⁹, contain the same texts. They are mostly translations or summaries of the *Digesta*, *Codex*, or *Institutiones*. But in some cases, the difference between the text of the *Prochiron* or the *Eisagoge* and the supposed source²⁰, or the lack of any source in the codification of Justinian²¹ might either indicate an adaptation of Roman law, or an integration of custom in the law.

Leo VI promulgates two Novels concerning private housing. Nov. 71 prescribes a minimal distance between two buildings in rural context²². Nov. 113 prescribes a distance of ten feet between a balcony and whatever neighbouring building²³. The whole of Book 58 of the *Basilics* is devoted to neighbourhood and private building. In title 11, title 10 of Book 8 of the *Codex* is repeated, to which are added Nov. 63 and 165 of Justinian, and (as an unique example in the *Basilics*) the Nov. 71 of Leo VI.

As documents about the realities of housing, the value of these juridical sources is very unequal. The first and longest part of the book of Julian of Askalon (as conserved)²⁴, written in an unadorned style, contains numerous rules, most of which are settled in the locality of the Southern Levant. The author mentions building techniques, which are also mentioned in the Talmud²⁵. He uses also some Greek words which could belong to local speech²⁶. An actual case described in a letter of Prokopios of Gaza²⁷ is an illustration of chapters of the book concerning windows and light²⁸. Due to its local and technical features, the book of Julian of Askalon is a very informative source for housing in Palestine during Late Antiquity, and it complements the archaeo-

¹⁵ Cf. M.T. FÖGEN, Legislation und Kodifikation des Kaisers Leon VI. *Subseciva Groningana* 3 (1989) 23–35; J. H. A. LOKIN, The Novels of Leo and the Decisions of Justinian, in: *Forschungen zur byzantinischen Rechtsgeschichte. Athener Reihe = Analecta Atheniensia ad ius byzantinum spectantia* 1 (1997). Athens 1997, 131–40; Sp. TROIANOS, Die Novellen Leons VI., in: *op. cit.*, 141–54.

¹⁶ The *Prochiron* and *Eisagoge* are not firmly dated, and the date and the status of the text known as the *Basilics* is also under debate. This debate is not our point. See the useful introduction in T. E. VAN BOCHOVE, *To Date and not to Date: on the Date and Status of Byzantine Law Books*. Groningen 1996.

¹⁷ L. BURGMANN – D. SIMON, Ein unbekanntes Rechtsbuch. *FM* 1 (1976) 73–101.

¹⁸ *Eisagoge* 39. 33 = D. 19. 1. 13 pr.

¹⁹ *Jus Graco-Romanum (= JGR)*, ed. by J. and P. ZEPOS, II. Athens 1931 (in this edition the *Eisagoge* is entitled *Epanagoge*).

²⁰ Compare for instance D. 8. 2. 13 and *Prochiron* 38. 17: Οὔτε φοῦρνον οὔτε ἐστίαν ἐν τῷ ἐπικοίῳ τοίχῳ δύναται τις ποιεῖν, ἐν ᾧ τὸν ἐπικοῖνον τοίχον τὸ πῦρ καταβλάπτει (*Eisagoge* 39.14: Οὔτε φοῦρνον οὔτε ἐστίαν ἐν τῷ ἐπικοίῳ τοίχῳ δύναται τις ποιεῖν). The supposed source is D. 8. 2. 13: (...) *non licet autem autem tubulos habere admotos ad parietem communem, sicuti ne parietem quidem suum per parietem communem: de tubulis eo amplius hoc iuris est, quod per eos flamma torretur paries*. The *Epitome* (*JGR* IV) gives both a version of D. 8. 2. 13 much closer of the original one (39. 72), and the text of the *Prochiron* (39. 100). Cf. Sp. TROIANOS, Υπήρχε προστασία του περιβάλλοντος στο Βυζάντιο, in: IDEM – PITSAKIS, *op. cit.* 49.

²¹ Cf. *Prochiron* 38. 23–4 (= *Eisagoge* 39. 22–3): Ἐάν τις γένηται χρεία ὑπαλλαγῆς ὀστράκων σωληναρίων τῶν καθεδρίων, ἕκαστος ἀπὸ τοῦ ἰδίου καθεδρίου ἀρξόμενος διορθούσθω μέχρι ἂν φθάσῃ γείτονος καθέδριον. Τοὺς ὑπονομαίους καράβους οὕτως δεῖ καθαίρειν καὶ ἐπανορθοῦν ἀρξόμενος ἕκαστος ἀπὸ τῶν ἰδίων τόπων, μέχρι ἂν φθάσωσιν ἐτέρων ἐτεροδοεσπότην τόπων ἦγουν χρηστηρίων (...). Although the sewers are the thema of a section of the *Digesta* (D. 43. 23), the only parallel is a passage of Julian of Askalon (§ 45): Χρῆ δὲ ἐν τῶν ὑπονόμων ἐπισκευῇ καὶ διορθώσει δέχεσθαι τὴν κατασκευὴν ἀπ' ἀλλήλων εἰς τὰς αὐλάς τοὺς οἴκους. Cf. A. KARPOZELOS, Περὶ αποπάτων, βόθρων καὶ υπονόμων, in: *He kathemerine zoe sto Byzantio*. Athens 1989, 339–41.

²² A. DAIN – P. NOAILLES, *Les Nouvelles de Léon le Sage*. Paris 1944, 256–7.

²³ DAIN – NOAILLES, *op. cit.* 372–5.

²⁴ § 1–51 (SALIOU).

²⁵ For instance SALIOU, *Traité d'urbanisme* 107–8, 111.

²⁶ For instance he uses the word ψήφωσις (mosaic; § 32), which is attested by the epigraphy above all in a Levantine context (SALIOU, *Traité d'urbanisme* 110). He uses also the very rare word ἱμάντωμα (§ 22–23) instead of the word ἱμάντωσις, as does the Gazaeian monk Dorotheus (VIth century; *Œuvres Spirituelles*, ed. by L. REGNAULT – J. DE FRÉVILLE. Paris 1963, *Instructions*, XIV, § 151, I. 31).

²⁷ *Ep.* 137 (GARZYA – LOENERTZ), quoted in SALIOU, *lois* 226–7.

²⁸ § 28–29 (SALIOU).

logical data²⁹. It gives us an image of multi-storeyed apartment-houses (which are shared property) arranged around a central courtyard, and built with a timber framework.

In Imperial juridical literature, most features are inherited from Classical Antiquity³⁰. However, some of our texts are laws enacted during the Byzantine period; in some cases they specifically concern Constantinople. They could be useful for our knowledge of the urban housing in Constantinople, about which we have very little archaeological data, although the literary sources let us know about groups of multi-storeyed buildings around a central court, including luxurious residences, flats, workshops, some amenities like a well, and even sometimes a little sanctuary³¹. Flats and workshops are often rented³².

The richest evidence supplied by the juridical source texts concerns the elevation of the houses, more precisely the windows and the balconies, but we have to be cautious in using this evidence.

Leo, and after him Zeno, draw a distinction between two types of windows,³³ the “panoramic” window, from which one can hang out (*parakryptike thyris*) and the light hole, which is a high level window, six feet above the floor (*photagogos thyris*). The word *parakryptikon* appears to be very rare³⁴. Moreover, in the literary sources, the word *photagogos* is used to refer to all kinds of windows³⁵. In this case, the making of the rule may be accompanied by the creation of a new typological vocabulary. We can suppose that in Constantinople, already before the law, there existed panoramic windows and high level windows, but we have to wonder whether the definition of each type was as precise as in the law of Zeno.

Balconies are well attested during the whole of Classical and Late Antiquity. In a law of Honorius and Theodosius³⁶ the term *exostes* is explicitly used as a translation of Latin *maenianum* (= balcony): “*Maeniana, quae Graece “exostas” appellant (...)*”. Actually, in the *Basilics*, the word is a translation of the Latin words *suggrunda*³⁷ or *maenianum*³⁸. The form *exostes*, which is well attested in Classical Greek in other senses, might otherwise be attested with this meaning only in the juridical literature³⁹, or in the lexicographical tradition⁴⁰. The closest form to refer to a balcony attested in current language is *exostrā*⁴¹. The use of the term *exostes* in our sources may be precious evidence of the everyday language of Constantinople, or no less precious evidence of the lexicographical inventiveness of Imperial jurists.

In the Law of Zeno, the word *exostes* alternates with the word *solarion*. This word is a transcription of the Latin *solarium*⁴², whose equivalent *eliakon* is well attested during the whole of the Byzantine period⁴³, and it refers here to a terrace or open balcony. In his law, Zeno attempts to regulate the construction of such balconies⁴⁴: through the norm appears the reality. The balconies should be ten feet distant one from another

²⁹ The archaeological and Talmudic data are collected by Y. HIRSCHFELD, *The Palestinian Dwelling in the Roman-Byzantine Period*. Jerusalem 1995. Cf. J.-P. SODINI, *Habitat de l’Antiquité Tardive*, 2. *Topoi* 7/2 (1997) 435–577.

³⁰ For instance, in the *Prochiron* mention is made of a cheese maker (38. 18), an inheritance of classical juridical literature. Actually this cheese maker was active in Italy, in Minturno, during the Augustean period (D. 8. 5. 8. 5). The reference is of no value for the Byzantine period.

³¹ G. DAGRON, *Naissance d’une capitale. Constantinople et ses institutions de 330 à 451*. Paris 1974, 503–4, 525–8; MANGO, *Development 126–7*. The important study of P. SCHREINER, *Das Haus in Byzanz nach den schriftlichen Quellen (Mit einem Exkurs über Häuserpreise)*, in: *Haus und Hof in ur- und frühgeschichtlicher Zeit (Gedenkschrift für H. Jankuhn)*. Göttingen 1997, 277–320 focuses on later periods.

³² Cf. E. PATLAGEAN, *Pauvreté économique et pauvreté sociale à Byzance*. Paris 1977, 53 seqq.

³³ C. 8. 10. 12. 3: (...) θυρίδας κατασκευάζειν τὰς καλουμένας παρακρυπτικὰς καὶ φωταγωγούς κατὰ τὴν θείαν νομοθεσίαν (...).

³⁴ Actually, I was able to find it solely in the juridical literature later than Zeno’s law (e. g. Julian of Askalon, § 26. 1–2; *Prochiron* 38. 4, 38. 10) and in the *De Cerimoniis* (numerous occurrences in Vogt’s edition. Paris 1935–1939, vol. I, 96, 11; 144, 7, etc.).

³⁵ Cf. for instance, Lucian, *Symposium* 20; *Hippias* 7; Theodoret, *Historia religiosa* 3. 6. 5 (PARMENTIER).

³⁶ C. 8. 10. 11 (423).

³⁷ B. 60. 4. 5. 6 = D. 9. 3. 5. 6.

³⁸ B. 58. 8. 5. 6 = D. 43. 8. 2. 6; compare D. 50. 16. 242. 1 and B. 2. 2. 233.

³⁹ See also C. 8. 10. 12. 5, Julian of Askalon § 25, and *Lexikon zur byzantinischen Gräzität*, I. Wien 2001, s.v.

⁴⁰ See the index of the *Corpus Glossariorum Latinarum*, ed. by G. GOETZ. Leipzig, 1901, vol. 7.

⁴¹ Symmachus, *IV Kings* I, 2; transcriptions of the Greek world in Talmudic literature (cf. HIRSCHFELD, *op. cit.* 266–7). The word ἐξώστρα appears in a papyrus from Petra (cf. L. KOENEN in *Journal of Roman Archaeology* 9 [1996] 186). The word ἐξωστᾶριον is also attested in Middle Byzantine sources (cf. *Lexikon zur byzantinischen Gräzität*, s. v.).

⁴² The latin word has various meanings (cf. *Oxford Latin Dictionary*. Oxford 2000, s.v.).

⁴³ Cf. Ph. KOUKOULES, *Βυζαντινὸν βίος καὶ πολιτισμὸς*, IV. Athens 1951, 290; C. GIROS, *Remarques sur l’architecture monastique en Macédoine orientale*. *BCH* 116 (1992) 441, note 20.

⁴⁴ C. 8. 10. 12. 5.

and be built of good masonry. Exterior stairs giving access from the street to the balconies are prohibited. We may infer that the real balconies are very close to one another, made mostly of wood, connected to the street by stairs⁴⁵.

Zeno also mentions another type of overhang, referred to by the word *basternion*: *ha kalousim hoi polloi basternia*⁴⁶. This term is a transcription of the Latin word *basterna*, which means “litter” (as means of transport). Actually, when used in Greek the word refers mostly to a litter⁴⁷. But in the *Basilics*⁴⁸, using sources that go back to the sixth century, and in the *Epitome*⁴⁹, it is used to translate the Latin *ius protegendi* (right to build on an overhang). In this sense *basternion* is synonymous with *exostes*. The word occurs also in Zeno’s law, as an everyday word, in a list of rooms (kitchen, toilets, stairways, passages), which are not concerned with the protection of the view⁵⁰. In a chapter of the *Prochiron* which repeats Zeno’s Law⁵¹, the word *basternion* is explained with the words *parodos* and *diabatika* (passages). In the *Miracula Artemii*, *basternion* refers to a gallery connecting in some way a house to a street portico⁵². The word *basternion* refers, in everyday speech of Constantinople, to an overhang, probably closed, used as a gallery or passage. To imagine the urban landscape of Constantinople (at least from the fifth to seventh centuries), we have to take into account two types of overhang: on the one hand the open balconies, on the other hand some kind of closed exterior galleries.

Thus, the law can be used as a source for details about some features of Constantinopolitan houses. However, far richer is the evidence given by our sources concerning, not the realities of the housing, but the ideology of the notion of Well-Being in housing.

The idea of the view was already protected long before the beginning of the fifth century A.D., perhaps even from the time of the Republican period onwards. Roman Law took into account a taste for the view, well attested by literary sources and archaeology⁵³. The importance of the view, above all a view of the sea, as part of comfort and luxury, is attested by the *Anthologia*, in some epigrams about houses in Constantinople⁵⁴. A story in the *Patria*⁵⁵ indicates the great importance of the view for the identity of the house: when Constantine decided to rebuild in his new capital the residences of the Roman senators, he sent out architects whose charge was first to draw up the layout of their houses, but then also to examine their natural and urban context, so that the senators should have in Constantinople the same view as they would have enjoyed in Rome.

The ruling power takes an interest in this aspect of Well-Being⁵⁶. In any case, Zeno prescribes a distance of ten or twelve feet between two buildings, unless one building blocks up the view on the sea for the other: the view on the sea is automatically protected by law, and it is prohibited to block it up, except if there is between the two buildings a distance of a hundred feet, or if there is some dispensation, or if the view concerns only service-rooms of the house⁵⁷. Nov. 63 of Justinian shows that Zeno’s law, and especially the hun-

⁴⁵ SALIOU, lois 260–1.

⁴⁶ C. 8. 10. 12. 4a.

⁴⁷ Passio S. Pelagiae (*BHG* 1480), ed. H. USENER, *Legenden der Pelagia*. Bonn 1879, 19, 1; Vita S. Matronae (*BHG* 1221), *AASS Nov.* III 801c and 807e; John Chrysostomus, In Acta Apost. 45 (*PG* 60, 320, 7); the meaning of the word is less obvious in *Catalogus Codicum Astrologorum*, ed. by Fr. CUMONT, I. Bruxelles 1898, 103.

⁴⁸ B. 58. 2. 2. = D. 8. 2. 2.

⁴⁹ *Epitome* 38. 48.

⁵⁰ C. 8. 10. 12. 4.

⁵¹ *Prochiron* 38.6 = *Eisagoge* 39.4.

⁵² *Miracle* 21, ed. A. PAPAIOPOULOS-KERAMEUS, *Varia Graeca Sacra*. St-Peterburg 1909 (Reprint Leipzig 1975) 27, 6 and now V. S. CRISAFULLI – J. W. NESBITT, *The Miracles of St Artemios*. Leiden–New York–Köln 1997, 128, 6: (...) τὸ βαστέρνιον τὸ ἀπ<ὸ> τῶν Βιβιανοῦ εἰς τὸν ἀντικρυς ἔμβολον ἀπάγον. The translation given by Crisafulli (“litter-facility”) is unconvincing.

⁵³ SALIOU, lois 232–5.

⁵⁴ *Anthologia Palatina* IX 808 (by Cyros, consul in 441): Τρισσόθεν εισορώ πολυτερπέα νῶτα θαλάσσης, παντόθεν ἡματίῳ φέγγει βαλλόμενος; *Anth.* IX 651 (by Paulos Silentarios); *Anth.* IX 653 (by Agathias Scholastikos).

⁵⁵ *Patria* I, § 63–66, in: *Scriptores originum Constantinopolitanarum*, ed. by Th. PREGGER. Leipzig 1901, 146–7.

⁵⁶ Cf. TROIANOS, *προστασία* 42–3.

⁵⁷ C. 8. 10. 12. 2–4.

dred-foot rule, was enforced in the sixth century. This part of the law is repeated in the *Prochiron*⁵⁸, the *Eisagoge*⁵⁹ and the *Basilics*⁶⁰.

Nevertheless, on closer examination, some hesitation in the rules can be discerned. In the law of Zeno, the only view to be protected is the view of the sea⁶¹. However, in a text of unknown origin transmitted with the extracts of Julian of Askalon⁶², three views are mentioned: those of the sea (§ 52); of gardens and trees (§ 53); and of urban monuments (§ 54). Moreover, Zeno specifies that the view of the trees was not protected by the law of Leo, is not protected and has not to be protected⁶³. It is perhaps much too hazardous to hypothesise that this sentence of Zeno is a denial of a rule enacted between the law of Leo and his own law, for instance by the usurper Basiliskos (January 475–Summer 476), and to suppose that the text we read in the book of Julian of Askalon might be attributed to Basiliskos⁶⁴. Nevertheless, the comparison between these texts shows that a debate on the type of view to be protected may have existed. This debate (at least as an intellectual debate), did not end with Zeno's law: another text transmitted in the book of Julian of Askalon (§ 56), which contains a reference to Zeno's Law, concerns the view over mountains⁶⁵.

Our texts distinguish between three types of view: the front view (*eutheia*); the oblique view (*plagia*); and the forced view (*bebiasmene*). However, for Zeno, the oblique and the forced view are one and the same thing⁶⁶. For Zeno, as in the text already mentioned transmitted with the extracts of Julian of Askalon (§ 52), only the front view is protected. For Justinian in Novel 165, protection is afforded to not only the front view, but also the oblique view. The text of the *Basilics* may testify to an attempt to conciliate Zeno's Law and Justinian's novel. Here the protection afforded concerns the front and the oblique, but not constraint, view⁶⁷.

Another debate centres on the area of implementation of the sea-view rule. Zeno's Law is addressed to the Prefect of Constantinople. In 531, Justinian decides to implement the Law in all the Empire. Nov. 165, which concerns the protection of the view of the sea, is addressed at Dominicus. Dominicus was Prefect of Illyricum from 535 up to 540. Due to the conditions of transmission of the Novel, we have to surmise that it was originally in Latin⁶⁸. One can infer that the Novel was addressed to Dominicus as Prefect of Illyricum, and by the way that the view on the sea was to be protected in all the Empire. But in the *Prochiron*, as in the *Basilics*, this part of the Law of Zeno concerns only Constantinople⁶⁹. Sometime between the sixth century and the end of the ninth century, it was decided that the view of the sea had to be protected only in the capital⁷⁰. In the middle of the eleventh century, Eustathios Rhomaïos will explain this restriction by pointing out the uniqueness of Constantinople in the Byzantine Empire⁷¹.

The taste for the view, as we have seen, has deep roots in Classical Antiquity. By contrast, the importance given to the privacy could be a novelty. The need for privacy by the people of Late Antiquity is shown by a text transmitted with the extracts of Julian of Askalon (§ 55). This is similar in style to the texts dealing with views already mentioned. The author of this text criticises bitterly the attempt made by some people to protect their privacy by prohibiting their neighbours to build close to their houses, and it points out the newness of this type of consideration. There is a large contrast between this text and the Law of Zeno, where, for instance,

⁵⁸ Pr. 38. 4, 38. 8.

⁵⁹ *Eisagoge* 39. 2, 39. 5.

⁶⁰ B. 58. 11. 11. 2–4.

⁶¹ C. 8. 10. 12. 2a.

⁶² The second part of the book of Julian of Askalon (§ 52–56) contains texts of very different style, much more pretentious than the first part (§ 1–51), and concerning the themes of “view” and “privacy”. About this group of texts, see SALIOU, traité d'urbanisme 27–8. For a first study of their content, see EADEM, lois 239–47 and 250–1.

⁶³ C. 8. 10. 12. 2b.

⁶⁴ H. J. SCHELTEMA, The Nomoi of Iulianos of Ascalon, in: Symbolae ad ius et historiam antiquitatis pertinentes Julio Christiano van Oven dicatae. Leiden 1946, 352–6.

⁶⁵ Full discussion of this text in PITSAKIS, Πόλεις και περιβάλλον, in: TROIANOS – PITSAKES, *op. cit.* 145–8 (with bibliography).

⁶⁶ C. 8. 10. 12. 2a.

⁶⁷ B. 58. 11. 11. 2.

⁶⁸ Cf. P. NOAILLES, Les Collections de nouvelles de l'empereur Justinien, I. Paris 1912, 131–2, 179–81; IDEM, Les Collections de nouvelles de l'empereur Justinien, II. Paris 1914, 35, 118.

⁶⁹ Pr. 38. 4 ; B. 58. 11. 12.

⁷⁰ See also the comment of PITSAKIS, Πόλεις και περιβάλλον 148–50.

⁷¹ *Peira* 18. 5 (*JGR* V 69). Cf. TROIANOS, Προστασία του περιβάλλοντος 43.

the protection of privacy is the reason for the prohibition about opening up panoramic windows where the distance from the neighbour is less than twelve feet. In the same way, the protection of privacy is more or less explicit in some prescriptions of the book of Julian of Askalon (§ 26.2; § 30.1). The very importance of privacy in Late Antiquity and in Byzantium is well attested also by literary sources⁷².

We do not know in Classical Roman law of any type of *servitus* affecting privacy, either by prohibiting or by giving the right to look into the neighbour's house. In Late Antiquity, the prescriptions of Zeno's Law could explain the development of a new type of fixed rule. This perhaps appears in Justinian's *Institutiones*⁷³ (*ius prospiciendi*), but much more surely in the Greek translation of the *Institutiones* by Theophilos⁷⁴. Theophilos mentions a *servitus* (*douleia*) giving the right to look out onto the neighbour's property (*dikaion moi prosesti tou katopteuein me se*). Such *servitus* is a dispensation. On the one hand, there is a systematic protection of privacy by way of prescription of a minimal distance between two buildings. On the other hand, this dispensation allows one to build a house or to open up windows, even if the distance away from the neighbour is less than twelve feet.

Nov. 113 of Leo concerns the balconies. Its explicit aim is to give precision to and to correct the law already cited, of Honorius and Theodosius⁷⁵, and the Law of Zeno, by defining a minimal distance, not between two balconies as in the existing laws, but between a balcony and whatever other building. The prescription of nov. 113 is built into B. 58. 11. 10. This chapter of the *Basilics* is more an adaptation than a translation of C. 8. 10. 11. The very focus of the novel is the necessity to protect privacy. In fact, the balconies are very ambiguous: on the one hand, provided to enjoy the sun and the view, they are essential for a nice daily life; on the other hand, they are a menace in regard to protecting the privacy of the neighbour. In this way they are a good example of the need for a neighbourhood relationship regulation.

“Rien ne se perd, rien ne se crée, tout se transforme”. This sentence might conclude this paper. Nevertheless, in matters of neighbourship, Zeno's Law appears to be really the beginning of a new era. Moreover, despite the importance of tradition and inheritance in Byzantine law, the norms concerning housing and neighbourhood give us an image of some features of the houses, and include a representation of what might or perhaps even should be considered as “Well-Being” at home.

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⁷² BOURAS, Houses 24–5; TROIANOS, *op. cit.* 59 (with further bibliography).

⁷³ Inst. IV, 6, 2.

⁷⁴ Inst. Theoph. IV, 6, 2 (*JGR* III 227).

⁷⁵ C. 8. 10. 11.

