Religious Intolerance in the Later Roman Empire: The evidence of the Theodosian Code.

Submitted by Philip Tilden to the University of Exeter as a thesis for the degree of Doctor of Philosophy in Classics. September 2006

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Philip Tilden

September 2006
For my parents.
Religious Intolerance in the Later Roman Empire: the evidence of the Theodosian Code.

Abstract

This thesis deals with one aspect of religious intolerance in the later Roman empire, that which was expressed by the Imperial government during the fourth century from the reign of Constantine to the death of Theodosius I. As such, all the sources used are Imperial letters and laws which have survived in the Theodosian and Justinianic Codes as well as other Imperial statements that have survived in other collections, such as that of Eusebius’ *Vita Constantini*.

The thesis attempts to gauge the amount of religious intolerance exhibited by each emperor in this period through an analysis of their laws and letters that were concerned with religious affairs. As such it is divided into four chapters: the first covers statements issued by Constantine and his immediate successors; the second focuses on Constantine’s involvement with the Donatist dispute of north Africa; the third examines the meagre record from Jovian’s short reign, before concentrating on the Valentiniani and the fourth and final chapter analyses Theodosius’ religious legislation. The analysis of laws and letters in each chapter is divided into sections that essentially follow the structure of the Theodosian Code itself; i.e. the first section will cover an individual emperor’s laws on the Church and Christianity, followed by his laws on heretics, followed by those on Judaism and finally those on paganism.

Whenever possible, the thesis attempts to seek some explanation for the laws issued, especially those that appear to be most intolerant. This is achieved through examination of political or other factors that may have been motivating factors behind the issuance of each law. Sometimes the individual *suggereor* and addressee are demonstrated to have influenced the nature and character of each law. As such, the style of the thesis takes the form of a historical and social commentary of the laws issued.

Throughout the thesis the argument is advanced that the Christian emperors and their administration were not necessarily as intolerant as ostensibly appears to have been the case and that as such, there is little evidence that the Christian state was, thereby, intolerant.
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Religious Intolerance in the Later Roman Empire: the evidence of the Theodosian Code.

Introduction

In his *Decline and Fall*, Edward Gibbon gave the five reasons to which he attributed the remarkable success of Christianity in the Roman Empire. His first reason was “the intolerant zeal of the Christians.” Ever since that conclusion it has often been assumed, both by scholars and non-specialists, that intolerance was, and perhaps remains, axiomatic to Christianity, and once Christianity became the preferred religion of the emperors during the fourth century, that intolerance, regarded as absent from paganism, entered into the business of state as it has been assumed to be present in the business of the Church in the three preceding centuries. In the past twenty years or so the subject has been revisited by scholars; however the conception that the fourth century state was religiously intolerant, for whatever reason and motive, has largely gone unchallenged.¹

This thesis will examine one aspect of religious intolerance in the fourth century: that displayed by the Imperial government from Constantine to Theodosius. It will attempt to gauge the amount of religious intolerance displayed by each emperor towards each religious group as listed in the Theodosian Code, (i.e. heretics, pagans, Jews and apostates), through an analysis of Imperial laws, that is statements, orders and rulings which were pertinent to each group. In order to conceptualise the overall attitude of each regime to religious groups, it is also necessary to examine laws issued by each emperor which affected Christianity and

¹ Gibbon, E. (1909-1914) 2.3, his other reasons were (2) “the Doctrine of a future life,” (3) “the miraculous powers ascribed to the primitive church,” (4) “the pure and austere morals of the Christians,” and (5) “the union and discipline of the Christian republic, which gradually formed an independent and increasing state in the heart of the Roman empire.” All at 2.57; for modern scholars who tend to follow this belief: Armstrong (1984); Garnsey (1984); Ando (1996); Stroumsa (1994); Stanton and Stroumsa (1998); most recently, Drake (1996) shifts the responsibility for intolerance away from organisations and theology to politics and individuals, believing that it is a phenomenon “found in every human group and organization.” quote at 5; his latest work (2000) expands this considerably, assigning intolerance to both Christians and pagans 74-75, Price (1993) convincingly goes against this trend and argues that the extent of intolerance in the fourth century, including Imperial intolerance was highly limited.
the Church. As such, the Theodosian Code is the main source, but also included are laws from Justinian’s code which are absent from that of Theodosius’ as well as other relevant Imperial correspondence or communications; in particular, Constantine’s correspondence in connection with the Donatist dispute as well as Valentinian’s in the Ursinian dispute.²

A scientific and precise definition of “intolerance” is not attempted here. King has attempted a definition of intolerance which “implies the conjunction of a negative disposition and a negative act, wherein the latter may range from smirks to insults, discrimination, physical abuse, or even extermination.” He goes on to argue that an act is an essential indication of intolerance, without an “act,” there is no intolerance.³ He argues that the opposite of intolerance is not tolerance, but rather indifference; if one is tolerant of a group, practice or belief then that tolerance presupposes that one has some objection to such phenomena, but is prepared to ignore or disregard that objection to a greater or lesser degree, but, crucially, without omitting it wholly from one’s thoughts or opinions, whether expressed or not. Consequently, according to King’s model, only by demonstrating indifference (if such is not an oxymoron) can intolerance be avoided. This model is highly theoretical, and in a strict and absolutist sense probably has considerable merit. However, it is not, I believe, particularly helpful for ancient historians. In this thesis, the “act” is almost always the law or statement issued by an emperor on a particular subject. Without that “act,” we would invariably be ignorant of the Imperial attitude towards particular religious groups (since almost no other source exists) and this model would force a conclusion that, because the “act” exists, each emperor would, thereby, be expressing intolerance whenever a law or statement was issued in his name which affected a particular religious group. Any recognition of difference or diversity hence becomes an indication of

² Translations of the Theodosian Code are all from Pharr (1952), except where indicated; those of Justinian’s Code are from Scott (1932), except where indicated; those from other sources are from Coleman-Norton (1962) except where indicated. There is a large bibliography on law in Late Antiquity and on the Code; the most useful are: Honoré (1986); Turpin (1987); the chapters edited by Harries and Wood (1993), particularly those by Harries, Matthews and Sirks; Honoré (1998), especially chapter 6; Harries (1998) (1999a) (1999b); Matthews (2000) and Honoré (2004).
³ King (1976) 189-195, quote at 190
intolerance; indeed, on this model, even laws expressing favourable sentiments towards certain groups would be classed as essentially intolerant and that which is normally called “evidence” would automatically become “proof of intolerance.”

A further objection to King’s model flows from this absolutism: it is unable to take account of differing degrees of intolerance, which is important when attempting to assess the overall and developing (or diminishing) extent of intolerance throughout the fourth century. Moreover, it would be misleading to apply such a model for this period and in particular, to the Theodosian Code. A number of laws or letters, which would have been included in this study, have most certainly been lost to us, either because they were overlooked by Theodosius II’s commissioners, or because they have been lost in the process of textual transmission; in other words, absence of evidence of intolerance does not necessarily indicate a lack of intolerance.\(^4\) As such and rather than this ‘blanket’ approach, I attempt to gauge the level of religious intolerance contained in Imperial statements on what I hope is an essentially practical basis. There are, it seems, a number of means through which to gauge intolerance; most important is the actual and practical penalties that each law contained. It seems self evident therefore that a penalty of death imposed on a group of religious dissidents for some perceived offence, indicates a level of intolerance towards such a group that is greater than, for instance, a penalty ordering confiscation of property or a fine, or, no penalty at all.\(^5\) Secondly, the comprehensiveness of the law is a factor in gauging intolerance; a long and detailed list prohibiting actions, beliefs or practices of a community is more intolerant than a law which prohibits only one or two actions. However, this is not an absolute rule; brevity could also, in certain circumstances, indicate intolerance. Finally, but to a lesser degree, any rhetoric contained in the law may also be an important tool with which to gauge intolerance. Referring to a religious group as impious, wild or criminal indicates a degree of intolerance of such a group. These criteria are not exhaustive or exclusive when assessing laws and they cannot

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\(^4\) Matthews (2000) 85-120 is the latest, and most comprehensive, on the state of the Code. 
\(^5\) Garnsey (1970) 104-178 on penalties. In the capital laws discussed below no distinction between _honestiores_ and _humiliores_ is apparent.
be used to gauge the intolerance of every Imperial law, letter or other statement which is analysed below; many laws do not lend themselves to such rigid categorizations. However these criteria serve as useful guides when considering the degree of religious intolerance in each law and also as exhibited by each emperor towards each particular religious group.

It should be noted that the concepts of tolerance and intolerance are products of the enlightenment and would have been alien to the fourth century; attitudes or actions that may appear to us as intolerant may well have appeared to contemporaries as entirely reasonable and sensible responses to real and pertinent problems. One difficulty is assessing the degree of intolerance in the laws is that they are edited versions of the originals, although the letters discussed below are in a better state of preservation. Consequently, much original material in the laws, which may have helped in any determination of intolerance, is lost. Theodosius II’s commissioners were to include the texts of the original laws, that is the actual words issued, but were also ordered to omit any superfluous sections of laws, the “empty copiousness of words,” leaving just the relevant sections, that is the legal substance of the issued laws as stated by the enabling law for the project, CTh. 1.1.5 of 26 March 429. The requirement to omit superfluous material has resulted in the loss of much of the original law; most crucially, the preamble which could have provided a reason for the issuing of the law, as most notably is shown in Const. Sirm. 1 of 5 May 333, a version of which is not given in the code. Extra rhetoric may also have helped in assessing intolerance. However, that which the editors excluded may not have been as useful (to modern historians) as might be thought; Const. Sirm. 4 of 4 March 336, (reproduced in edited versions as CTh. 16.9.1 and CTh. 16.8.5) and unlike Const. Sirm. 1, does not give any indication as to why it was issued. Equally, it may reasonably be suggested that the length of a law in the Code reflects its actual length at the time of issue, since if it contained only a short amount of legal material, then necessarily it would be rendered by the

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6 On this see MacMullen (1986) on the increasing severity of punishments under the law.
7 Inanem verborum copia recubat. On this law and the compilation of the Code see Honoré (1986) 161-168, Harries (1999a) 59-64, Matthews (2000 55-84 esp. 57-71
8 On the Sirmondian Constitutions see Matthews (2000) 121-167
commissioners in an equally short and edited form. Fortunately, removing superfluous material was as far as the editorial powers of the commissioners extended, they had no power to amend earlier laws in the light of later, revised legislation, but were to include such laws in order that the Code could be a compilation for scholars and lawyers; in many ways, it was an anthology of laws, rather than a supremely authoritative legal textbook.  

Also, the laws themselves would almost certainly have been the products of varying degrees of consideration and concern by the emperors and their officials which would have varied from only a few hours of debate in the consistory (or at some other level in the decision making process) to, conceivably, several days. Or alternatively, it can be more simply said that some laws were more important than others and were the results of more work by officials. Just because laws were later placed together in a compendium and, thereby, appear to share an equal presence and importance, does not necessarily mean that they were regarded as such at the time. In most cases, it is not possible to even speculate as to how much consideration may have preceded the issuing of a law. This is disadvantageous when considering intolerance; the degree of consideration, and the importance attached to it by contemporaries (like the degree of comprehensiveness mentioned above) would indicate the extent of a perceived problem which the law sought to address and hence give some indication of the degree of intolerance (or tolerance) with which officials viewed such a problem. Furthermore, there is no indication in the laws at to how controversial a measure may have been; the debate that undoubtedly surrounded each law is not recorded. However, despite these deficiencies of omission and loss, the Theodosian Code has advantages as a source, advantages which arguably make it more useful than other written sources, especially when considering Imperial attitudes. It may reasonably be said that the (albeit edited) laws are indeed the official Imperial decisions on perceived problems, or religious groups, or on whatever the subject of the law may have been, and as such, they are a more accurate guide for determining official attitudes of intolerance.

Against which see Turpin (1987) who argues that the Theodosian Code, as well as the Codes of Gregorian, Hermogenian and Justinian were intended for practical court-room purposes.
than, for instance, the opinions and verdicts of historians and other contemporary writers with whatever agendas and predilections they may have had. They speak directly and immediately, without extraneous influences, from the very heart of the government.

Whenever the evidence permits, and especially in the case of laws that appear to be particularly intolerant, an attempt is made to explain the nature of the law and to suggest reasons why such intolerance appears. Various explanations are suggested including external political considerations and at times the influence of the addressee of the law. In many cases, the addressee does appear to have been the suggerens and therefore to have affected the nature, subject matter and the degree of intolerance of a particular law. These considerations naturally impinge on an assessment of how intolerant a particular law actually was at the time of issue and indeed the degree to which such intolerance may be reflective of an individual emperor’s character.¹⁰

It should be remembered however, that the addressee may not always have been the suggerens. A proposal for a new law probably passed from local governor, (then possibly through the vicar) to the praetorian prefect to the emperor and his consistory and advisors for consideration; its issuance would, of course, have been in reverse.¹¹ As such, the commissioners may have taken laws from prefectorial, provincial or other archives with the consequence that the addressee, especially if it is the prefect, may have been only one link on the administrative ladder back to the original proposer.¹² Equally however, in cases in which laws have survived as being addressed to a provincial governor, the argument that he was also the suggerens can be more persuasively proposed. Although the possibility that the law may have been distributed more widely than within the jurisdiction of the original proposer

¹⁰ On this see especially Harries (1993) 8-15; (1999a) 47-53; Honoré (1998) 133-136; Matthews (2000) 133-145, 171-172; Ammianus Marcellinus 28.6.8-9 gives an example of how to extract a constitution from an emperor; on this particular example see Matthews (1989) 208. The clearest and most direct example of this in the laws discussed below is probably Sirm. Const. 1.

¹¹ Matthews (2000) 67-68; see also Honoré (1986) 135-145 for the potential stages which a law went through and at which points amendments and revisions would have been made.

¹² Harries (1999a) 21-24 esp. 23 on the business of travelling around the empire (or not) to collect the laws.
cannot be excluded, with the consequence therefore that, again, even if the addressee was a governor, he may not in fact have been the *suggerens*.

What follows therefore is an analysis of laws, letters and other types of Imperial statements in the style of a historical commentary, which, at the same time, attempts to establish the amount and degree of religious intolerance in this period.
Chapter : Constantine Constans and Constantius.

Constantine.

Constantine strove to earn affection which he sought from everyone both through his generosity and through his gentleness. (Eutrop. 10.7)

There are twenty laws of Constantine in the Theodosian Code that impinge on religious matters. Seven of them were related to the Church; two were concerned with heresy and we also have his letter to heretics preserved by Eusebius; four were concerned with paganism and five were concerned with Judaism.

Although Constantine converted to Christianity this did not, for him, mean that there should therefore be a programme of undermining or negating other faiths in a wholesale fashion. The legislation leaves little doubt as to where Constantine’s favour lay, but his attitude towards other religions almost approximates, with only two clear exceptions, that which he held of Christianity. This, perhaps is to be expected; Constantine was the first emperor since the Severans to rule a united empire and, perhaps more importantly, to die in his bed with the succession as secure as it was likely to be and in the hands of his three sons. Therefore, Constantine would have wanted to maintain a consensus within the empire and to have maintained the loyalty, or at least the acquiescence, of his subjects. As such, much of his legislation reflects the tricky situation of wishing to nourish and protect a new and favoured faith, but without offending the sensibilities of those who held different religious positions.

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1 CTh 16.2.1 of 31 October 313; CTh. 16.2.2 of 21 October 319; CTh. 16.2.10 of 26 May 320; CTh. 16.2.3 of 18 July 320; CTh. 16.2.5 of 25 December 323 May is given in the text of Mommsen, but see Corcoran (2000) 314, following Barnes (1981) 71 for the more likely date of December; CTh. 16.2.6 of 1 June 326; CTh. 16.5.1 of 1 September 326; CTh. 16.2.7 of 2 May 330
2 CTh. 16.5.1 of 1 September 326; 16.5.2 of 25 September 326
3 CTh. 9.16.3 of 23 May 318; CTh. 9.16.2 of 15 May 319; CTh. 9.16.1 of 1 February 320 and CTh. 16.10.1 of 17 December 320
4 CTh. 16.8.3 of 11 December 321; CTh. 16.8.1 of 18 October 329; CTh. 16.8.2 of 29 November 330; CTh. 16.8.4 of 1 December 330; Const. Sirm. 4 of 21 October 335 (reproduced in the Code as CTh. 16.8.5 and CTh. 16.9.1)
Constantine and the Church

CTh. 16.2.2 of 21 October 313, Constantine's first law on the church, was addressed to Octavianus, governor of Lucania and Bruttium. It ordered that persons who “devote themselves to the services of religion to divine worship, that is, clerics” were to be exempt from “all compulsory public services whatever, lest, through the sacrilegious malice of certain persons they should be called away from divine services.” Pharr suggests that the malicious persons were “pagans and heretics,” but, precisely who was a heretic may not have been certain to the government at this stage. Quite conceivably, since this law makes no mention of the religion of these persons, this law relates to very local and even personal problems in Lucania and Bruttium.

CTh. 16.2.1 of 31 October 313 does not have an addressee. Constantine stated that he had learnt that Catholic clerics were being “harassed by a faction of heretics” to perform liturgies, including tax collection duties “contrary to the privileges granted them.” Constantine ordered that the addressee, whom he addressed as “Your Gravity” to find substitutes for “any person thus harassed” and that in the future Catholic clerics should be “protected from such outrages.”

Constantine had evidently granted the clerics immunity from liturgies early in his reign, since this law was issued just one year, almost to the day, after the battle of the Milvian ridge and ten months after the joint issuing with Licinius of the “Edict of Milan.” Mommsen, following Gothofredus, indicates that the addressee could be the

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5 Corcoran (2000) 162 following Seeck (1919) 161
6 ni divino cultui ministeria religionis impendunt id est bi ni clerici appellantur ab omnibus omnino munere e curant ne sacrilego livore norandam a divinis obser uis avocentur. Exemption from liturgies was a common technique in the Later Roman empire of conferring status and favour to certain groups. For other groups granted exemptions see CTh. 6.26.1-7 and CTh. 6.35 for Imperial bureaucrats; veterans: CTh. 7.20.2, 8-9; partial exemption for post supervisors: CTh. 8.5.36; senior provincial bureaucrats: CTh. 8.7.8-9; Imperial estate supervisors: CTh. 10.4.2; doctors and teachers: CTh. 13.3; several categories of craftsmen: CTh. 13.4
7 Corcoran (2000) 162
8 haereticorum actione comperimus ecclesiae catholicae clericos ita ve rt nominatibus seu sucessionibus ali nibus nas publicus mose poscit contra indulta sibi privilegia praegraventur. ideo ne placet si nem tua gravitas inverterit ita ve atum eidem alium subrogari et deinceps a supra dictae religionis hominibus huiusmodi iniurias prohiberi.
proconsul of Africa Anullinus and that the anonymous heretics could be Donatists. There is nothing in the text to support that suggestion, indeed the Donatists did not become heretics until CTh 16.5.37 of 25 February 405 and at this point were still schismatics. Moreover, the north African situation, which was to become the Donatist controversy may have been just a few months old at this stage and Constantine was almost certainly ignorant of it, as will be argued below. However, the use of “heretics” in this law is interesting; as with CTh. 16.2.2, at this very early stage of his reign and his Christianity, Constantine was quite possibly ignorant of the existence and significance of heresy and so its important place in this law is probably indicative of influence from someone other than Constantine, possibly a cleric or possibly the unknown addressee.

CTh. 16.2.3 of 18 July 320 was issued to Junius Bassus, Prefect of the City.9 It referred to a (lost) “constitution” which had ordered that no decurion, or a descendant of a decurion or anyone with sufficient wealth to undertake liturgies should “take refuge in the name and service of the clergy” and that “in the place of deceased clerics thereafter only those persons shall be chosen as substitutes who have slender fortunes” and who were not obliged to perform liturgies.10 Then the law indicated the reason for its issuance which was that Constantine had learned that people who had become clerics before the “promulgation of the aforesaid law” were being “disturbed.” Constantine ordered that these clerics, who had become clerics before the “aforesaid law” were to be “freed from all annoyance” but that those who had joined since that law, “in evasion of public duties” should be “completely separated from that body restored to their orders and to the municipal councils and shall perform their municipal duties.”11

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9 Junius assus 14 PLRE I. 154-5; convincingly reckoned by Barnes (1995) 139-140 to be a Christian; although the degree of his Christianity may be questioned. See discussion below in connection with CTh 16.2.6; 9.16.3 and 16.5.2
10 cum constitutio emissa praecepiat nullum deinceps decurionem vel etiam de decurione progenitum vel etiam instructum idoneis acceitus ad ne ob eundem publicum muneribus opportunnem ad clericorum nomen obsoletum ne conuge sed eos de setero in de unctorum dumta at clericorum loca subrogari ne munera tenues ne ne muneribus civilibus teneantur obstriceti
11 cognovimus illos etiam in uietari ni ante legis promulgationem clericorum se consortio sociaverint. ideo ne praecipimus bis ab omni molestia liberatis illos ni post legem latam obse nia publica declinantes ad
CTh. 16.2.4 of 3 July 321 was addressed to “the People.” It allowed the people the “liberty” to leave, at death, any property “to the most holy and venerable council of the Catholic church.” Presumably however, by implication, it was not possible to leave property to a non-Catholic church, or at least, this law casts some legal uncertainty on such actions.

CTh 16.2.5 of 25 December 323 to Helpidius, who held an unknown office at Rome, was directed against people who were “compelling” the clergy to attend “lustral sacrifices” and was an attempt to deal with one problem that must have confronted clergy as they became persons of note within municipalities. Such persons would have been expected to attend civic festivals which on occasion would probably have still involved some sort of sacrifice. Therefore it was necessary for the emperor to grant them exemption from attendance and to reinforce that exemption with a threat of public beating (publice ustibus verberetur) for anyone who compelled or coerced the clergy to attend. Barnes believes that the law was a ‘warning shot’ to Licinius who was celebrating the fifteenth anniversary of his dies imperii in the month before the issuance of this law. Barnes conjectures that the celebrations could have involved compulsory sacrifice and hence CTh 16.2.5 was issued in order to protect Christians in the Eastern empire and as a threat to Licinius in a diplomatic war preceding actual conflict. Corcoran correctly doubts this, pointing out that the addressee Helpidius was present in Rome at the time and therefore could have had no jurisdiction in the east. Furthermore, Eusebius makes no mention of compulsory sacrifices, except in the army, or enforced attendance at sacrifices which involved

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12 Corcoran (2000) 196
13 habeat unus usis licentiam sanctissimo catholicae venerabilis concilio decedens bonorum quod optavit relin vere non sint cassa indicationi nihil est magis in imaginibus debetur nam ut suprema voluntatis post
14 Corcoran (2000) 194 n102, 314
15 Helpidius 1 PLRE I. 413
16 lustrorum sacriicia celebranda compelli
17 Barnes (1981) 71
18 Corcoran (2000) 314
Christians; military officers who refused to sacrifice were to be demoted to the ranks, but there is no mention of this requirement being extended to civilian officials and still less to the clerics who were the sole beneficiaries of this law of Constantine. Licinius expelled Christians from his court, but only certain bishops appear to have been actively persecuted, some of whom were executed, although there was a general prohibition against them assembling or discussing doctrinal issues (an understandable injunction, considering the problems Constantine had just had with the Donatists). Otherwise only a number of churches were closed and some were destroyed.  

CTh 16.2.6 of 1 June 326 to Flavius Ablabius, Praetorian Prefect and influential friend of Constantine, regulated the replacement of deceased Clerics: only one appointment should be made when a cleric died and the clergy should not be expanded “rashly and beyond measure.” Only persons unable to become decurions and unconnected with decurion families were allowed to become clerics. As such, the law ordered that any dispute between council and clergy concerning which organisation an individual should belong to, would always result in the individual returning to the council if he had the means to perform his duties. We know that Flavius Ablabius was a Christian and Barnes also lists Iunius Bassus as a Christian. However the veracity of Bassus’ Christianity, and the degree of conviction which he placed in the new faith should be called into question by two laws for which he was responsible, both of which were noticeably favourable to the non-Orthodox; one to paganism and the other to the schismatic Novatians (respectively, CTh 9.16.3 and 16.5.2). Despite the apparent Christianity of Ablabius and Bassus, they both place an

\[^{19}\text{Christians expelled from court: Eus. HE 10.8.10, VC 1.52; Compulsory sacrifices in the army: HE 10.8.10, VC 1.54.1; persecution of bishops: HE 10.8.14 and 16-17, VC 2.1.2 and 2.2.2; forbidden to discuss doctrine or to assemble: VC 1.51.1; church closures and demolitions: HE 10.8.15, VC 1.53.2, 2.2.1}\]

\[^{20}\text{Corcoran (2000) 285 n111}\]

\[^{21}\text{Flavius Ablabius 4 PLRE I. 3-4; Ablavius in text and in Pharr; a ‘new man’ and a Christian: Barnes (1994) VII 7; Salzman (2002) 100, 101, 302 n178, 243; influence over Constantine: Lib. Or. 42.23; Barnes (1992) 250-251;}\]

\[^{22}\text{neetemere et citra modum populi clericis conectantur}\]

\[^{23}\text{arnes (1995) 139 and 139 n33}\]
emphasis on local elites serving their council before their church. Ablabius was perhaps a little more strict with the clergy than Bassus since he was inclined to regulate their numbers more and Bassus was prepared to propose legislation protecting the clerics from being forced back into councils.

CTh. 16.2.7 of 5 February 330 to Valentinus, governor of Numidia was Constantine’s last law on the church. Again it was concerned with exemptions from liturgies and included among beneficiaries lesser clergy: “lectors of the divine scriptures, subdeacons, and the other clerics.” By the “injustice of heretics” they were being brought into the councils, but in the future, “according to the practice of the Orient” they were to be exempt from such service. Corcoran indicates that this law was related to the Donatist problem which is probably correct since it is addressed to the governor of Numidia, but as with CTh. 16.2.1, the Donatists were not yet heretics, so a Catholic cleric may well have influence its composition.

Most of the laws are therefore directed towards the establishment of the Catholic Church and the privileged position that it enjoyed. Therefore, in general, they were defensive and dealt with threats to the status of the Church that had come to the attention of the authorities, rather than being offensive attempts to prohibit or curtail the activities of other sects. The immunity for clerics from liturgies may possibly not have been confined to Constantine’s area of the empire; Corcoran indicates the fact that since clerics were later forced to perform liturgies in Licinius’ minor persecution of 322 then presumably, he reasons, there must have been a previous immunity which was then abolished by Licinius.

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24 Corcoran (2000) 169; Marcus Aurelianus Val. Valentinus 12 PLRE 1.936
25 divinorum apicum et h podiaconi ceteri ne clerici ni per iniuriam baeticorum ad curiam devocati sunt absolvantur et de cetero ad similitudinem orientis minime ad curias devocentur sed immunitate plenissima potiantur
Constantine and Paganism.

When referring to heretics or pagans the rhetoric of Constantine’s legislation was quite restrained and in marked contrast to the language of later laws. Indeed four laws issued by Constantine within a few years of each other that all specifically allowed pagan practices to continue.\(^{27}\) Barnes believes that these laws were “allowed as a relic of the past,” which tends to give the impression that Constantine had a quaint interest in antiquarianism; Barnes does not, unfortunately, elaborate on why the practices sanctioned by law should be regarded as just “ relics of the past.”\(^{28}\) It seems unlikely that Barnes is correct in his assessment of these laws; each of the three laws from book nine that relate to divination are of approximately the same length and appear to have the same structure of composition: the initial prohibition; then the punishment and then thirdly a deliberate divergence from the fundamental and initial reason for passing the law, (which was to prohibit or regulate the conduct of diviners) in order to specifically sanction (and even praise) existing pagan practices. If Constantine had desired the advance of Christianity to the detriment of paganism then such a programme may have been better served through (at least) ignoring, rather than sanctioning a long established pagan practice.\(^{29}\)

CTh 9.16.3\(^{30}\) issued to Bassus\(^{31}\) on 23 May 318 was Constantine’s first law affecting traditional religion. It began: “those men who are equipped with magic arts and who are revealed to have worked against the safety of men or to have turned virtuous minds to lust shall be punished and deservedly avenged by the most severe

\(^{27}\) CTh 16.10.1 of 17 December 320; 9.16.1 of 1 February 320, 9.16.2 of 15 May 319, 9.16.3 of 23 May 318; Eusebius refers to these laws at VC 4.25.1, but slightly disingenuously he speaks of the prohibition of practising divination rather than at worst their regulation as the laws actually indicate.

\(^{28}\) Barnes (1981) 52-3. The “relic of the past” is probably from CTh 9.16.2 praeteritae usurpationis

\(^{29}\) It should be noted that the ninth book of the Theodosian Code was concerned with criminal activities; Theodosius II’s commissioners possibly took a less charitable view of these three laws than appears to have been the case under Constantine.

\(^{30}\) Corcoran (2000) 281 n 87, 308

\(^{31}\) Bassus was also the recipient of CTh 16.2.3 and CTh. 16.5.2
laws.”\textsuperscript{32} Then the law changed its tone, rather than merely allowing pagans to continue to practice their own beliefs and customs, Constantine took time to spell out the benefits that flowed from traditional pagan worship and in this indicated a credence in the effects of traditional worship that would have been in perfect accord with any of his pagan predecessors. The law indicated that “remedies sought for human bodies” were not to be thought of as criminal and also allowed traditional rites in agriculture to continue in order that “rains may not be feared for the ripe grape harvests or that the harvests may not be shattered by the stones of ruinous hail.” Such rites do not injure “any person’s safety or reputation,” but rather the rites “bring it about that divine gifts and the labours of men are not destroyed.”\textsuperscript{33} So, ‘bad’ paganism which was harmful was to be banned and ‘good’ paganism which was beneficent to the world was allowed to continue; a traditional sentiment that would have been approved of by any pagan, although at the same time, it may have caused offence to many Christians.

In a similar fashion CTh 9.16.2\textsuperscript{34} was issued by Constantine to “the People” on 15 May 319. This law extended the prohibition on soothsayers entering houses to “priests and those persons who are accustomed to minister to such ceremonies;”\textsuperscript{35} priests were also not allowed to enter even as friends of the householder. The law did not specify any actual punishments, but indicated that they had already been laid down. Having comprehensively banned private visits by priests, and included a clause covering others who might not precisely have referred to themselves as priests, this law, again like CTh 9.16.1, went on to sanction traditional practices and allowed believers to go to “the public altars and shrines and celebrate the rites of your custom; for we do not prohibit the ceremonies of a bygone perversion to be conducted

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\textsuperscript{32} \textit{orum est scientia punienda et severissimis merito legibus vindicanda, \textit{ui magicis adiecti artibus aut contra hominum miliit salutem aut pudis ad libidinem de leisse animos detegentur}}

\textsuperscript{33} \textit{nullis vero criminationibus implicanda sunt remedias humanis \textit{uaeita corporibus aut in agris locis ne maturis vindemis metueruntur imbres aut ruentis grandinis lapidatione naterentur innocenter adhibita su regia uibus non cuini ne salus ant \textit{et iustatia laederetur sed suorum pro iiciens actus ne divina munera et laborum hominum sternerentur}}

\textsuperscript{34} Corcoran (2000) 15, 72 n199, 193-4
openly.”36 “Bygone perversion” is Pharr’s quite harsh translation of praeteria usurpatio; arbitrary, assumed or past usage may be better.37 This law again indicates the official and ancient abhorrence of private (and dubious) religious ceremonies, but again allows the continuance of traditional and acceptable forms of worship.

CTh 9.16.1 of 1 September 32038 was addressed to Valerius Maximus, Prefect of the City,39 and began with a prohibition against soothsayers entering the homes of others for any reason whatsoever, regardless of any longstanding relationships that may have existed between householder and soothsayer and this prohibition was to include any visit, including non-divinatory ones. The law then went on to order that anyone inviting a soothsayer into their home was to have their property confiscated and would be exiled to an island. The soothsayer was to be burnt alive. Then however, in the third part of the law Constantine went on to say that “persons who wish to serve their own superstition will be able to perform their own ceremonies publicly.”40 The law ends with a sentence that reads almost as an afterthought to the main body of the law and indicated that anyone who reported a violation of this injunction would be worthy of a reward, and should not be treated as an informer with all the contempt usually reserved for informers. This law was evidently an injunction against even the possibility of private divination involving soothsayers and, of course, there had long been an abhorrence of private and secretive ceremonies. ut at the same time, and quite unnecessarily, this law allowed the continuation of some pagan practices and reaffirmed the long established acceptance of religious rites that were performed in public and the equal rejection of rites that were performed in private. At best, the overall intention of the law may have been that by giving pagan

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35 *Harpocrates et sacerdotes et eos ne huic ritui ados nature ministrare ad privatum domum prohibemus accedere*
36 *adite aras publicas ad de lebra et consuetudinis vestrae celebrie sollemnium nec enim prohibemus praeteritae usurpatiónis o tua libera luce tractari*
37 Corcoran (2000) 194 prefers “past usage”
38 Corcoran (2000) 15, 72 n199, 173 n12, 193 n99, 194 n100, 251 n104, 311
39 Valerius Maximus *signo* asiliius 48 PLRE I. 590; Barnes (1994) VII 10 lists him as a pagan, as do the editors of the PLRE and Salzman (2002) 249
40 *superstitioni enim suae servire cupientes poterunt publice ritum proprium eercere*
supersitio an official stamp of approval, Constantine hoped that his prohibition against secretive worship would have been made unambiguously clear.

It should be noted that there is a slight chronological uncertainty over the precise dates of the three laws in book nine. CTh 9.16.2 of 15 May 319 is dated nine months earlier than is CTh 9.16.1 of 1 February 320, but it seems likely that 9.16.2 was issued later than 9.16.1 since it appears to refer to that earlier law.\footnote{CTh 9.16.2 indicates that there are already punishments against soothsayers and priests entering private homes.} It should also be noted that all of the above four laws are addressed to officials in charge of Rome or to the people of Rome.\footnote{See Corcoran (2000) 171 on edicts \textit{ad populum} invariably being edicts issued to the people of Rome.}

CTh 16.10.1 of 17 December 320,\footnote{Corcoran (2000) 72 n199, 165, 194 n101, 312} was also addressed to Valerius Maximus, Prefect of the City. It stands apart from the others because it was the only one of the four laws whose provisions were directly relevant to, and impacted upon, Constantine himself and his government. It was also Constantine’s last law on paganism. The law ordered, following a lightening-strike on the Imperial Palace, that “the ancient custom shall be retained, and inquiry shall be made of the soothsayers as to the portent thereof.”\footnote{\textit{retento more veteris observantiae ntid portendat ab haruspicibus re uratur}} The law also allowed “all other persons also to appropriate this custom to themselves.”\footnote{\textit{ceteris etiam usurpaandae huin conjurandinis licentia tribuenda}} The soothsayers’ reports were to be forwarded to Constantine for his consideration. This particular investigation was not the only official inquiry into portents requiring the assistance of pagan priests; in the same law Constantine also mentions receipt of an official report into the lightening that had struck the amphitheatre. This attitude fits well with other evidence of Constantine’s attitude to paganism. We know that he allowed the erection of a new temple at Hispellum in Italy which was dedicated to the Imperial Family.\footnote{ILS 705} Also, as far as concerns practical politics, it would seem likely that Constantine had no desire to alienate important (and
predominately pagan) elements of the Roman Senate and particularly when Licinius, his fellow emperor and brother in law, was still in control of the Eastern Empire.

Other evidence for Constantine’s attitude to paganism, and Christian dissidents, may be found in Eusebius’ *Life of Constantine* and in particular Constantine’s letters to Eusebius and to other recipients. One of the most obvious difference between letters written to Eusebius and those to other recipients, is the manner in which Constantine referred to paganism. Evidently Constantine tailored his rhetoric to fit his audience, in order that, it must be presumed, he could appear to be ‘all things to all men.’ Therefore it is extremely difficult to reach any definite conclusion with regard to Constantine’s personal convictions; and indeed it may not, for the present purposes, actually matter. In his letter to *acarius and the other bishops o alestine* Constantine felt able to use strong language towards pagans and about paganism. The letter was a response to reports from his mother-in-law Eutropia that the shrine of Mamre in Palestine, which was sacred to Jews, pagans and Christians had been defiled. The pagans, “superstitious persons,” had erected idols which Constantine regarded as an abomination, and were also carrying out sacrifices. Therefore, Constantine wrote to the local *comes* Acacius and ordered him to destroy the idols and any pagan altars and also to build a church on the site. Constantine also gave advance permission for Macarius to write to him if any “accursed and foul people” attempted to re-enter the site. It would be “intolerable” if any “sacrilege” was to occur there, once a church had been built on the site.

In his letter to the *provincials o the ast*, late 324 or 325 pagans were also addressees, and therefore Constantine was obliged to refer to them in more measured

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47 For universalist tendencies in Constantine’s programme, although with an emphasis on his use and attitude to Christianity, see Fowden (1993) 80-99 esp 86-93
48 Eus VC 3.52-53.4  Corcoran (2000) 333, 335 e
49 tino~ deisidaimovwn
   tw`n ejnagw`n ejkeivwnn kai; mosarw`n ajnqrwvpwn
1 ajfovrtton
2 ajsebev~
53 VC 2.48-60  Corcoran (2000) 198 n123, 316 (for the earlier date); arnes (1989) for the later date.
tones; there was little room for favouritism or partisanship. There is no indication from the letter whether it was a response from an outside source, as was his letter to Acarius and the other bishops of Aeliste, or whether the emperor had composed it on his own initiative. Constantine presented himself as the loyal instrument of God, through whom God may heal the provincials (2.55.1) and with God’s blessing may defeat the (unspecified) enemy. The letter indicates, although never explicitly states, Constantine’s hope that people would adopt his faith, but force or violence was expressly forbidden (2.56.1, 2.60.1). Indeed the letter expressly allowed pagan worship to continue in peace: “May none molest another; may each retain what his soul desires, and practise it” and “let no one use what he has received by inner conviction as a means to harm his neighbour.” The letter does not even use any derogatory language against pagans.

The first half of the letter deals with the recent persecutions; Constantine carefully avoided blaming the persecutions on paganism or even on pagans in general, instead he blamed the emperors and in particular Diocletian, although without actually naming him and Apollo whose prophecy, through his priests, brought the empire to “ultimate disaster.” It is to Apollo that the only derogatory rhetoric relates. Apollo, according to Constantine spoke “from some cavern or dark recess and not from heaven” and his priests who interpreted his declarations were “driven on by madness.” Although this description of Apollo’s priests being inspired by manivamay have been seen to be derogatory by some of the letter’s readers, by pagans it would probably have recalled traditional images of the manner in which the god revealed himself to mankind. Virgil used a number of words and phrases to indicate

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54 Corcoran (2000) 316
55 VC 2.56.1 mhdei; to; n e; teron parenocleivtw: e;kasto– o;per hJ yuch; bouvletai katecervtw, touvtw/ katakecphvsqw.
56 VC.2.60.1 pih;n e;kasto– o;per peivsa– eJauto;n ajnadevdekai, touvtw/ to;n e;teron mh; katablaptevtw.
57 VC 2.50.1 tau’ta ei~ oJpoi’n tevlo– ejxwvkeile.
58 VC 2.50.1 ejx a[ntrou tino;– kai; skotivou mocou` oujci; d j ejx oujranou` crh’sai
59 VC 2.50.1 uJpo; maniva– t j ejlaunomevnh
the apparently abnormal mental state of the Sybil in Aeneid VI before, during and after she delivered Apollo’s verdict on Aeneas. Virgil described her condition before she spoke: “her heart swells with wild frenzy” (rabie era corda tument), she is described as “raging” (urenti) as she delivers her speech and afterwards the scene is described: “soon as the frenzy ceased and the raving lips were hushed” (ut primum cessit uror et rabida ora nierunt).61

Constantine and heretics.

Constantine was perfectly willing to use the strongest language and insults when it suited him. In his letter to heretics62 which appears to have been posted in public, Constantine fills the first two-thirds of the letter with insults against the doctrines and adherents of the many individual heresies he is condemning. These heretics bring “the living to everlasting death through you, i.e. the heretics”63 and they are “opponents of truth, enemies of life and counsellors of ruin. Everything about you is contrary to truth, in harmony with ugly deeds of evil.”64 Constantine admits that a whole day would be insufficient to list all their wickedness and deeds. However, despite this righteous rage which condemned both individual heretics and the beliefs of their churches, Constantine only went on to prohibit them from meeting and to order that their churches be confiscated and surrendered to the Catholics. The letter contained no provision for punishing heretics who may have continued to assemble and worship.

CTh. 16.5.1 of 1 September 326 is Constantine’s first surviving law on heretics and was addressed to Dracilianus, Vicar to the Praetorian Prefect of the East.65 It ordered that recent privileges that had been granted were only applicable to Catholics

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60 Vir. en 6.49
61 Vir. en 6.100 and 102
62 VC 4.64-65; Corcoran (2000) 22 n77
63 VC 4.64.1 zw`nta~ eij~ dihnekh` qavnaton ajpavgesqai di j uJmw`n.
64 w\ th`~ me;n ajl`egeiva~ ejcqroiv, th`~ de; zwh`~ polevmioi kai; ajpwleiva~ suvmbouloi: pavnta par j uJmi`n th`~ ajl`egeiva~ ejsti;n ejnantiva, aijscroi`~ ponthreuvmais sunav/donta.
and not to “herets and schismatics.”  Constantine also ordered that such should also be “bound and subjected to various compulsory public services.”

CTh. 16.5.2 of 25 of September 326 was addressed to Iunius Bassus, Prefect of the City. It concerned the Novatians, who had been one of the heretics addressed and condemned in Constantine’s *Letter to Eretics*, but his attitude towards the Novatians was more conciliatory in this law. The law stated that Constantine had “not found that the Novatians were precondemned to such an extent that we should suppose that those things which they sought ought not be granted to them.” Therefore they were allowed to retain churches and property which they had had since the schism (of 251), but anything which belonged to the Catholics since the schism and had come into the possession of the Novatians should be returned to them. Constantine ordered that they should “firmly possess without disquietude, their own Church buildings and places suitable for burial,” regardless of how such places were acquired. These provisions are evidently a direct repeal of those contained in the *Letter to Eretics* and are an effective statement of toleration.

**Constantine and Judaism**

When Constantinian legislation is concerned solely with Jews and not with Jewish-Christian relations, it almost gives the impression that the state valued both Christians and Jews equally. But Constantine's first law on Jews, CTh. 16.8.3 of 11 December 321 and issued to the decurions of Cologne may be seen as an exception to this impression and as evidence that there was a rise in intolerance under Constantine towards the Jews. This law allowed councils to nominate Jews to their councils. But Constantine allowed “two or three persons from each group the perpetual privilege” of

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65 Corcoran (2000) 155 n 147; Dracilianus PLRE 1.271
66 *haereticos atque schismaticos*
67 *sed etiam diversis muneribus constringi et subici*
68 Iunius Bassus 14, also the recipient of CTh 16.2.3
69 *novatianos non adeo conperimus praedamnatos ut his quae petiverunt crederemus minime largienda*
70 *ecclesiae suae domos et loca sepulcris apta sine in nietudine eos irtiter posuidere praecipimus*
71 Corcoran (2000) 104 n82, 166-7, 192 n93, 313
This exemption was provided as a “solace” to the Jews of the “former rule.” This “former rule” is probably a reference to exemptions granted to Jewish members of a council under Septimius Severus and again in the early third century, from the performance of a liturgy if that liturgy had forced a Jewish member to transgress his religious duties and observations. If this is the case, that this law of Constantine was a partial repeal of the late second and early third century exemptions for Jewish councillors, then it is evidence that Constantine was less favourable to Jews than his predecessors. Alternatively, it is possible that the earlier exemptions were make to enable Jewish councillors to absent themselves from any pagan proceedings; Constantine may have felt it impolitic to admit (albeit only by inference) the continuing existence of rituals from which the Jews had been exempted. As such, there would have been no need for the exemptions which this law now ended and therefore the clause allowing “perpetual” exemption for some Jews from liturgies may be seen as very conciliatory.

CTh 16.8.1 of 18 October 329, issued to Evagrius Praetorian prefect of the East, contains strong language and harsh penalties. The law drew Constantine’s attention to incidents in which Jews who converted to Christianity were being stoned by their former co-religionists. This law ordered the assaults to stop, on pain of death by fire, and referred to Judaism as a “feral sect.” If secta can be taken as a ‘way of life’ then in this context era would mean uncivilised or barbarous. It can also have connotations of inhumanity, or of belonging to wild animals or even of disobedience. In the same law, Judaism is also referred to as a “nefarious sect.” e ariam sectam...
natural law. The law also refers to penalties directed against proselytes, those who were “from the people”\footnote{\textit{ex populo}} and who had deserted Christianity and joined “their nefarious sect and should join their assemblies.”\footnote{\textit{ad eorum ne ariam sectam accesserit et conciliabulis eorum se adplicaverit}} The “people” has a particular significance in this context; although it does have Christian connotations, in this context it has been taken to have a meaning that refers to the members of the empire in general. By providing a contrast between Jews and people therefore, the Jews may, in this law, not have been regarded as ‘full members’ of the empire in the same way that Christians were considered to be.\footnote{Linder (1987) 131 n15} As with CTh 16.2.5 of 25 December 323 against attendance at “lustral sacrifices” the implication is that Jews were somewhat foreign.\footnote{Constantine’s anti-Jewish position is well attested, most famously his letter to the Churches preserved by Eusebius, \textit{VC} 3.18-19 esp. 3.18.2-4}

CTh 16.8.2 of 29 November 330\footnote{Linder (1987) 132-138} addressed to Flavius Ablabius, Praetorian Prefect of the East,\footnote{Also the addressee of CTh 16.2.6 of 1 June 326} extended the privileges to the Jewish clergy and effectively placed them on a par with Christian clergy. The law ordered exemption from Curial obligations for “patriarchs and priests”\footnote{\textit{patriarchis vel presby teris}} of the Jews, i.e. those subject to the jurisdiction of the patriarchs and the Sanhedrin in Palestine.\footnote{According to Linder (1987) 133, although the law makes no actual reference to such institutions.} Such persons who were not already decurions were to be given “perpetual exemption from the decurionate,”\footnote{\textit{perpetua decurionatus immunitate potiantur}} but by context, this is probably only meant to refer to “patriarchs and priests” rather than to the whole Jewish community. Those who were already decurions at the time of the law were granted the privilege of not being “assigned to any duties as official escorts.”\footnote{\textit{ne navi am ad prosecutiones ali nas destinentur.}} The latter privilege was directed to the “patriarchs and priests” and was designed to allow the Jewish ‘cult’ to continue without interference from outside.\footnote{See Linder (1987) 136 n7 for earlier legislation allowing (pagan) cult practices to continue unaffected}
CTh 16.8.4 of 1 December 330 was addressed to “the Priests, Rulers of the Synagogues, Fathers of the Synagogues and all others who serve in the said place.”

This law effectively repeated the provisions of CTh 16.8.2 and may have originally been part of that law. Although CTh 16.8.4 of 1 December 330 exempted Jewish clergy from “every compulsory public service of a corporal nature,” the legislation exempting Christian clergy makes no mention of liturgies of a “corporal nature”, but CTh 16.2.10 of 26 May 320 did grant exemption for Christian clergy from liturgies “of a menial nature.” Perhaps it implied that clerics of both faiths could be expected to make financial contributions if required, but not to physically attend council meetings or to perform other physical labours: perhaps the law demanded that Jews performed the *munera patrimonalia*, that is paid money from their property as opposed to *munera personalia* the demand for personal service. The legislation giving Curial exemption to Jewish and Christian clergy do appear to grant a higher status to Christian clergy and thus to establish a hierarchy of clerics between the two faiths. The Christian clergy are persons who “devote the services of religion to divine worship” and perform “divine services” whereas the Jewish clergy only “preside over the administration of their law” or “serve the synagogues.” Whatever the Jewish clergy does is of benefit only to themselves whereas the Christian clergy benefit religion, that is true religion.

Sirmondian Constitution 4 of 8 May 336, was addressed to Felix, Praetorian Prefect of Africa, it was Constantine’s last law on the Jews, and was concerned with conversion to and from Judaism. The first part also survives fragmentarily as CTh. 16.9.1 and the second part as CTh. 16.8.5. CS4 states that its purpose was to renew an
existing (lost) law. The law prohibited Jews from circumcising, and presumably therefore converting, a “Christian slave or a slave of any other sect whatever” after purchase; if such happened then the slave would be freed. The second part of the law referred to Jewish converts to Christianity who had “unlocked for himself the door of eternal life” shall not “suffer any disquietude or molestation from the Jews.” Any Jew who “assailed with outrage” any such convert would be “subjected to avenging punishments in proportion to the nature of the crime which he has committed.”

Towards the end of the law Constantine expressed his hope that such converts would be safe and that “due reverence for Us will be observed.” Finally, Constantine urged Felix to have the law enforced “most earnestly” in his jurisdiction.99

The law contained no provision for the punishment of any slave owner nor for the doctor who had performed the circumcision. However it should be noticed that pagan slaves were also protected under this legislation, although not explicitly so. Also worthy of note is the penultimate sentence in which the expression “due reverence for us” is made; this could be taken to indicate that safety of such converts was axiomatic to either respect for Constantine himself, or at least, to his law.

This law should be compared with an earlier law against circumcision of slaves by their masters recorded by Paulus.100 This late third century law allowed the use of capital punishment for Jewish slave owners who circumcised their slaves, but also

98 Felix 2 PLRE I.331-2; arnes (1994) VII 8 lists him in the group “whose religious sympathies are unknown.” Linder (1987) 138-144; for conversion to and from Judaism, see also Linder (1987) 79-84
99 Iam dudum uidem constitutionis nostrae saluberrima sanctio promulgata est nam nostrae repetitae legis veneratione geminamns ac volumus ut si uispam iudaeorum christianum mancipium vel cuindlibet alterius sectae mercatus circumcidere non perboruerit circumcisus uidem ipsius statuti mensura libertatis compose eactus eiuidem privilegiis potiatur non as iudaeo sit ui circumciderit mancipium generis memorati in obse uiuin servitutis retinere. Illud etenim hac eadem sanctione praecipimus ut si uispam iudaeorum requeram sibi ianuam etaet perpetuae sanitatis cultibus mancipaverit et Christianus esse delegetur ne uid a iudaeis in iudicadis vel molestiae patiatur. nod si e iudaco christianum actum ali nis iudaeorum in iudicium potaverit esse palaendum volumus istiusmodi contumeliae machinatorem pro criminis nulitate commissi poenis ulterioribus subingari iai parens carissime. nare divinitati a eactu con idem spectum in omni orbe omano ui nostri debita veneratione servata ac volumus ut e cellens sublimitas tua litteris suis per diocestem sibi creditum comemtibns indices moneat instantissime huiuscemodi debitam reverentiam custodiri.
100 Paulus Sententiae 5.22.3-4 in Linder (1987) 117-120
provided the possibility of exile for owners: a range of punishments which would
address the differing social positions of the guilty had been devised. Paulus’ law also
prescribed permanent exile for Roman Citizens who circumcised either themselves or
their slaves as well as confiscation of property. The only executions allowed in cases
concerning Roman citizens were for the doctor who performed the circumcision.
Therefore, in terms of punishments, it is quite reasonable to see Paulus’ law as being
more intolerant than this later law of Felix.

Conclusion

Constantine’s religious legislation on balance, appears to favour Christianity,
but that did not necessarily entail favouritism to the detriment of paganism or Judaism
and not at all to that of the municipal councils. CTh 16.2.5 to Helpidius restricted the
clerical exemption from liturgies to the orthodox and specified the liability of heretics.
but the orthodox did not have everything their own way; CTh 16.2.6 and 16.2.3
imposed detailed regulations on the recruitment of curiales to the clergy and a liability
that they could be de-frocked and returned to the council if they had broken the rules.
At the same time CTh 16.8.2 and to substantially the same effect 16.8.4, granted to the
professional clerics of Judaism the same exemption from liturgies as their Orthodox
colleagues; although the latter law may be interpreted as having laid down a hierarchy
which granted precedence to the Christians. Constantine’s desire to be ‘all things to all
men’ did not, however, extend to granting exemption from liturgies to pagan priests;
but nevertheless, and possibly to allay any fears that pagan elites may have felt about
an emperor who had embraced a single and absolutist religion, CTh 16.10.1 and 9.16.1-3
all legislated for the continuance of pagan ceremonies and customs and in the case of
the latter law, espoused its utility and veracity.

The religion of the addressees of these laws appears to have been influential in
their composition and this factor is also influential the composition of the anti-pagan
letter to acarius and the other bishops of alestine and in the ‘peace-brokering’ and
conciliatory tones of the letter to the provincials of the east. The importance of the
addressee’s own sensibilities certainly seems to have been a factor in dealing with the harassment of Jewish converts to Christianity by their former co-religionists; CTh 16.8.1 is uncompromising in its treatment of such criminals whereas Sirmondian Constitution 4 (CTh 16.8.5 and 16.9.1) is considerably more tolerant of such offenders, although they were both issued within a relatively short time of one another. Similarly, Constantine’s attitude towards heretics contrasts sharply between that shown in CTh 16.5.2 and in his Letter to Heretics, and one factor that should be considered in determining the contrast should be the identity of the addressee or addressees.
Constans and Constantius

There are twenty surviving laws on religious affairs issued under Constantius, four of which are recorded as having been issued jointly with Constans. However Constantius is always the first emperor listed in the texts. We should expect to find the position of the Church legislatively enhanced in Constantius’ reign, the first reign of an emperor who was brought up as a Christian and whose religious identity has not been thought to be controversial, unlike that of his father. Indeed nine of the laws do reaffirm, clarify and provide new arrangements for clerics and their exemptions from liturgies and extraordinary taxation and one also allowed bishops the right of being tried only by fellow bishops. Two deal with proselytes from Christianity to Judaism while one deals with the question of Jewish slave owners purchasing non-Jewish slaves and converting them to Judaism. The remaining eight laws condemn and prohibit pagan practices. There is no surviving legislation that may have been directed against heretics. A number of the laws issued were very comprehensive and may be indicative of a growth in intolerance, in that the sugerens, or the drafter of the law at court, had thought carefully about the practices which were disapproved and therefore ensured that all possible variations and different descriptions of such practices were banned. This tendency is especially noticeable in some of the laws against paganism, particularly after 353 which is (probably a result of political factors) against Judaism and also, most curiously, in laws which were contrary to the interests of the Church. Four of the laws order capital punishment for offenders.

101 CTh 16.2.12; 16.2.13; 16.2.14 and 16.2.15. The latter was also issued with Julian. CTh 16.2.14 was issued by Constantius and Julian.
102 CTh 16.2.11 of 26 February 342; 16.2.8 of 27 August 343; 16.2.9 of 11 March 349; 16.2.12 of 7 October 355; 16.2.13 of 10 November 356; 16.2.14 of 28 December 356; 16.2.15 of 30 June 360; 16.2.16 of 14 February 361 and 12.1.49 of 29 August 361
103 CTh 16.8.6 of 13 August 339 and 16.8.7 of 3 July 352
104 CTh 16.9.2 of 13 August 339
105 CTh 16.10.2 of 341; 16.10.3 of 1 November 342; 16.10.5 of 23 November 353; 16.10.4 of 1 December 354; 16.10.6 of 20 February 356; 9.16.4 of 25 January 357; 9.16.5 of 4 December 357 and 9.16.6 of 5 July 358.
106 CTh 16.8.6 of 13 August 339; 16.10.4 of 1 December 354; 16.10.6 of 20 February 356 and 9.16.4 of 25 January 357
little to suggest that Constantius was as concerned as his father had been to present a
united front in which all, or as many as could be possible, modes of opinion may have
been accommodated within the state or at least unthreatened by it, indeed there is little
evidence of a consistent policy at all on religious issues under Constantius, but there is
evidence that, like Constantine, many of the laws reflect the particular concerns of the
addressees and the inconsistent results of this influence appears to be the only
consistent facet of the legislation.

**Constantius and Judaism**

Constantius’ legislation directed against offending Jews and the punishments
prescribed continues the dichotomy found in his father’s legislation to a considerable
extent. There is one law, addressed to the same Evagrius who received CTh 16.8.1 of
18 October 329, which was later divided into two laws by Theodosius II’s
commissioners (CTh 16.8.6 and 16.9.2 both of 13 August 339). Whereas
Constantine’s law addressed to Evagrius on assaults carried out by Jews (CTh 16.8.1)
could conceivably have been viewed as at least partly concerned with public order, the
law issued to Evagrius under Constantius was concerned with offences that appear to
be purely religious, or at least have been presented as purely religious. The first half of
this law (CTh 16.8.6), was the first of Constantius’ laws to prescribe the death penalty.
It dealt with one offence in which a number of Christian women from “our Imperial
weaving establishment” had been converted by an unspecified number of Jews. The
women were to be “restored” to the weaving establishment. The law went on to say
that “Jews shall not hereafter unite Christian women to their villainy” anyone who
ignored this would suffer “capital punishment,” no lesser punishment was given.
This may indicate that any Jews in the empire, who hereafter converted Christian
women to Judaism would have been committing a capital offence.

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107 See above
108 *g naecce nostro*
109 *restitui g naecce*
110 *ne Christianas mulieres misiungant lagitiis vel si hoc ecerint capitali periculo subingentur*
However, the specifics of this case which are dealt with in this law may be peculiar to this actual circumstance, that is to a particular problem that had occurred in the Imperial weaving establishment and therefore its implication with regards to any overall change in Imperial attitudes to Jews may be limited. But this law does allow for similar action against Jewish proselytisers to be taken in the future, at least in relation to the “Imperial weaving establishment.” In Valentinian’s CTh 10.20.3 of 28 June 365 it is indicated that Imperial weavers were slaves, or at least the law says that they belonged to a contubernia, a slave union. If the Imperial weavers of Constantine’s reign were slaves, then this law may have been more pertinent to the issue of Imperial control over its personnel and therefore property in this establishment and ensuring that it’s production of cloth was not disrupted, than it was to religion per se. But if the status of the workers was the same under Constantius as we know it was under Valentinian thirty years later, then this law would be a good indication of the opprobrium which could be directed against a religion for what were essentially non-religious reasons.

The second half of the law issued to Evagrius in 339 and preserved in the code at CTh 16.9.2, concerned slavery and the purchase of slaves by Jews. Any slave who was a member of “another sect or people”¹¹¹ (i.e. not a Jew) and was bought by a Jew was to become the property of the Treasury. The punishment for a Jew buying and then circumcising a slave was that the owner would be “penalised not only with the loss of the slave, but he shall also be visited with capital punishment.”¹¹² A Jew would lose all his Christian slaves if he bought a slave who was a member of the “venerable faith”¹¹³ i.e. a Christian. The details included in this law seem to suggest that every possibility has been considered and future action for each possibility laid down, leaving no scope for ambiguity. This law could simply have said that a Jew may only have Jewish slaves who were already Jews when the owner bought them (which is what it

¹¹¹ mancipium sectae alterius seu nationis crediderit
¹¹² si vero emptum circumciderit non solum mancipii damno multetur verum etiam capitali sententia puniatur
¹¹³ venerandae idei
does say in simpler terms). But what the law actually did was to lay down a hierarchy: purchase of a non-Jewish and non-Christian slave resulted in the slave being appropriated to the Treasury; purchase of a Christian slave resulted in all Christian slaves being appropriated to the Treasury. The circumstances of Christian slaves are therefore judged to be more important than those of pagan slaves. Forced conversion is the gravest of all offences, resulting in the execution of the owner. In such circumstances no differentiation is made between pagan and Christian slaves, but this is probably more a reflection of long-standing Roman abhorrence of circumcision than of any positive appreciation that pagan and Christian slaves should enjoy equal status.

CTh. 16.8.7 of 3 July 352, the third law on Jews by Constantius, was addressed to Thalassius, Praetorian Prefect of the East.\textsuperscript{114} The law ordered that any person who converted from Christianity to Judaism and “should join their sacrilegious gatherings”\textsuperscript{115} would, when the accusation had been proved, have his property confiscated to the Treasury. The law did not mention circumcision and made no provision for punishing any Jew who may have facilitated any conversion. Nor does the law give any indication that Christians may have been forced or coerced into converting to Judaism. Apart from mentioning “sacrilegious gatherings” the law has no strong or derogatory language. \textit{Sacrilegium}, sacrilege or impiety, again associates the Jewish religion with connotations of at best inappropriateness, or at worst of criminality and sacrilege.

We know that Thalassius was a \textit{comes} of Constantius\textsuperscript{116} and that he was entrusted by the emperor to serve on the commission in the spring of 351 which witnessed the hearing (in order to guarantee the accuracy of the transcript) between basil of Ancyra and the heretic Photinus.\textsuperscript{117} Although his presence in Constantinople at the time doubtless facilitated his appointment to the commission, the fact that he

\textsuperscript{114} Thalassius 1 PLRE I.886; “attested as Christian” by \textit{arnes} (1994) VII 7; Linder (1987) 151-154
\textsuperscript{115} \textit{sacrilegis coetibus adgeregur}
\textsuperscript{116} Athanasius \textit{istoria rianorum} 22.1
was appointed Praetorian Prefect by Constantius in order to accompany the Caesar Gallus is further evidence of the trust that Constantius had for him.\textsuperscript{118} Ammianus indicates that Thalassius sent reports back to Constantius on Gallus’ unstable behaviour. Ammianus does not say whether these reports were expected by Constantius or whether Thalassius simply produced them on his own initiative, but the fact that Ammianus also indicates that Thalassius made no secret (even to Gallus) of sending the exaggerated and highly unflattering reports, is evidence that Thalassius felt himself to be secure in his relations with the emperor, even to the extent of criticising members of his immediate family.\textsuperscript{119} It seems unlikely that Thalassius’ belief would have been unfounded. Despite his Christian background however, and the fact that he may have been in a position to ask Constantius for almost anything he desired, Thalassius did not feel moved to the same levels of anti-Semitism as those which Evagrius had reached in his legislation. Indeed Libanius posthumously noted Thalassius for his mildness.\textsuperscript{120} Thalassius therefore appears to stand in clear distinction to Evagrius in terms of anti-Semitism and intolerance, as borne out in his legislation.

The harshness of the law addressed to Evagrius during Constantius’ reign, shown through its comprehensiveness, indicates that Evagrius may fairly be considered an anti-Semite who was attempting to gain the severest punishments possible against Jews whose behaviour he regarded as wrong. The three laws for which he petitioned all bear a common concern: that of a threat to Christians, and Christianity as a whole, from Jewish proselytisers. As well as a desire to see Jewish ‘offenders’ suffer the highest penalty. In particular, his concern at forced conversion (of slaves) and the manner in which he presents the conversion of Christian women at the weaving establishment (who in his account appear to have had no say in their conversion to Judaism, like slaves) may be evidence that he feared Jewish proselytisers were able to

\textsuperscript{118} Barnes (1992) 251, 255-6;
\textsuperscript{119} Amm. Marc. 14.1.10, 7.9; Ammianus calls Thalassius “Praetorian Prefect at Court” \textit{b}alassius \textit{vero} \textit{ea tempestate praetorii praesens}. Barnes (1998) 129-130 that Thalassius was the real power in the East and that Gallus would be a “mere figurehead.”
\textsuperscript{120} Lib. Ep. 1404
exercise an undue influence, or power over the weak and powerless, an influence which had to be curbed. Even if the more pertinent concern at the time was the necessity of securing enough people to run and work in the factory, the fact that the law chose to dwell on religious concerns rather than on manpower concerns would indicate an even greater degree of anti-Jewish intolerance.

Evagrius may well have decided to submit his suggestio to Constantius in the hope that he and his concilium would reply more favourably than Constans either because Constantius was regarded as a bigger anti-Semite than Constans or because he would have been more indulgent to the requests of an official who was not absolutely a member of his own area of rule. Agreement to the request favoured both emperor and official: Evagrius could be fairly certain that the Eastern emperor could not resist the opportunity to display his power in the West and to extend or strengthen his network of potential allies. At the same time, Evagrius was able to indulge his anti-Semitic prejudices as well as allying himself with the leading emperor.\footnote{121 Linder (1987) 146-7 maintains that the law was issued by Constantine II, emperor of Britain, Gaul and Spain. With the date seemingly secure, however his argument seems to rest on the understanding that Eastern emperors were only able to issue laws while resident in Constantinople.}

The section of this law preserved at 16.9.2, which deals with the purchase and conversion of non-Jewish slaves by Jewish owners is restrained in its rhetoric. The section that deals with the women of the weaving establishment (CTh 16.8.6) has greater rhetorical bluster. It speaks of women being “led by Jews into the association of their turpitude”.\footnote{122 CTh 16.8.6 \textit{n}as \textit{Indaei in turpitudinis suae du} \textit{ere consortium}}\footnote{123 Linder (1987) 150} Consortium is used in the code to indicate marriage or a fellowship of like-minded individuals, either religious or secular.\footnote{124 \textit{suis iungant flagitiis}} Turpitude is therefore perhaps not the best translation to give to consorium; in this context fellowship or community may be better. More importantly, the law does talk of Jews uniting Christian women to “their villainy”.\footnote{124 \textit{Flagitium} means disgraceful or shameful and is synonymous with \textit{ne as or crimen}. Although the law is not actually}
calling the Jews *ne as* as Constantine’s CTh16.8.1 of 329 did, and so is perhaps not as offensive, the law is nevertheless on a par in terms of derogatory rhetoric with Constantine’s earlier enactment.

**Constantius and Paganism**

Whereas Constantine had little to say against the pagan gods, the legislation of Constantius indicates a growth of intolerance towards pagans and paganism. There are eight surviving laws on traditional practices dating from Constantius’ reign and in particular the legislation indicates a noticeable growth in intolerance when Constantius came into possession of the Western empire after 353. Six of Constantius’ eight anti-pagan laws are directed towards Italy, although one may have been directed towards Africa. Two, CTh 9.16.4 and 5 were only addressed “to the People;” both were issued in Milan. Constantius’ first law on paganism, CTh 16.10.2 of 341 is recorded as being issued by Constantius to Madalianus, but may in fact have been issued by Constans. The law addresses Madalianus as vice Praetorian Prefect (*agentum vice praefectorum*), presumably he was Vicar of Italy. Most of Madalianus’ offices were held in Africa and Italy. He only appears to have held one office in the East, that of *legato pro praetore prov. Asiae*. As such he was probably Vicar in the west, probably Italy or Africa, when he received this law and therefore the first emperor mentioned should probably have been Constans and not Constantius.

This law was short and to the point: “Superstition shall cease; the madness of sacrifices shall be abolished.” Although *insania* is derogatory, the other terms of the law were quite reasonable: offenders were to “suffer the infliction of a suitable punishment and the effect of an immediate sentence.”

125 Lucius Creperius Madalianus. PLRE I. 530
126 CIL 14.4449 Ostia (Supplement)
127 *Cesset superstitio sacri iciorum aboleatur insania*
128 *sacri ici celebrare competens in eum vindicata et praesens sententia e orator*
valued moderation in law. An inscription of his from Numidia begins: “Mirae iustitiae atq ue eximiae moderationis”.\textsuperscript{129}

One feature of CTh 16.10.2 which has attracted interest is that it appears to provide evidence that Constantine had legislated to abolish sacrifice: “for if any man in violation of the law of the sainted Emperor, our father, i.e. Constantine and in violation of this command of our clemency, should dare to perform sacrifices”\textsuperscript{130}

This apparent law of Constantine is unfortunately not preserved with certainty in the Code. Barnes has linked this reference with a law of Constantine that is paraphrased by Eusebius in his \textit{i e o Constantine},\textsuperscript{131} and views it as one element in a general anti-pagan campaign in the aftermath of his victory over Licinius in 324.\textsuperscript{132} A campaign which, however, appears to have been directed exclusively towards the east.\textsuperscript{133} The ongoing debate on whether Constantine did or did not ban sacrifice appears to be an irresolvable question,\textsuperscript{134} but whatever reliance is placed on Eusebius, should be balanced with evidence that Eusebius was not always an accurate paraphraser of Imperial legislation.\textsuperscript{135} Also, it should be noted that Sozomen, when referring to the laws passed by Constantine in favour of the Church and Christianity, only refers to legislation on celibacy and on privileges granted to the Church\textsuperscript{136} and deliberately omits any mention of laws which he regarded as unimportant.\textsuperscript{137} He makes no mention of a comprehensive ban on sacrifice and his only reference to a ban on sacrifice was restricted solely to a shrine in Palestine venerated by pagans, Jews and

\textsuperscript{129} CIL 8.5348
\textsuperscript{130} nam quicumque contra legem divi principis parentis nostri et hanc nostrae mansuetudinis iussionem ansum nerit sacr icia celebrare
\textsuperscript{131} arnes (1984) 69-72, Eus. VC 2.45.1 See also the detained criticism of arnes interpretation of this alleged law by Drake (1982) 465-6; and also Errington (1988) 309-318, again disagreeing with arnes, and his persuasive suggestion (315) that Constantine’s letter at VC 2.48-60, \textit{o the astern rovincials was a tacit repeal of any anti-sacrifice law that had been issued.}
\textsuperscript{132} arnes (1981) 210
\textsuperscript{133} Drake (1982) 465
\textsuperscript{134} Recently added to by radbury (1994)
\textsuperscript{135} Warmington (1993) for evidence that Eusebius was “a careless and perhaps tendentious reporter of recent legislation” and therefore should be treated with caution.
\textsuperscript{136} Soz. 1.9
\textsuperscript{137} Soz. 1.8
Christians. This would be the shrine which is the subject of Constantine’s *Letter to Macarius* and the other bishops of Palestine in Eusebius’ life. Furthermore, the reference in CTh 16.10.2 should not be divorced from other surviving evidence concerning Constantine’s religious policy. We know that at least four of his laws sanctioned, either specifically or generally, traditional pagan practices. Only one law opposed any form of traditional religious practice. Therefore on balance, there is more material from Constantine (at least in the Code) that supports traditional (and pagan) practices, than opposes it.

Furthermore, there is a possibility that the reference may be to Constantine’s CTh 16.10.1 in which “domestic sacrifices, are specifically prohibited.” CTh 16.10.1 was addressed to Maximus, Prefect of Rome. CTh 16.10.2 was addressed to Madalianus, who, as discussed above, held all but one of his appointments in the west and was therefore probably vicar of Africa or Italy when he received this law. Therefore the purpose of CTh 16.10.2 may have been to reinforce the prohibition against “domestic sacrifices” that was already understood to be operative in Rome. This possibility should be taken into consideration, especially if Corcoran is right in suggesting that there was a regional aspect to the issuing of at least a part of Constantine’s religious legislation. Furthermore the possibility that legislation was not designed to be timeless, but rather was issued to meet an occasional problem or concern would lend support to the possibility that CTh 16.10.2 was indeed dealing with the same issue as 16.10.1 and hence referred to it and to its regional applicability. Unfortunately however, the surviving evidence does not allow us to reach a definite conclusion as to whether this reference in CTh 16.10.2 does indeed refer to the earlier law CTh 16.10.1. Equally however, there is no indication in CTh

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138 Soz. 2.4; Eusebius VC 3.52-53.4
139 Constantinian laws sanctioning pagan practices: CTh 9.16.1-3, 16.10.1
140 *sacrificiis domesticis abstineant, quae specialiter prohibita sunt*
141 Valerius Maximus signo asilius 48. PLRE I. 590
142 Corcoran (2000) 155. Although, and admittedly, Corcoran suggests this practice within the context of the laws granting exemption from liturgies to clerics.
143 Harries (1999) 77-88 on repetition (with a purpose) in the Imperial laws.
16.10.2 that the earlier prohibition referred to is indeed that which an often unreliable Eusebius is apparently paraphrasing.

CTh 16.10.3 of 1 November 342 was addressed by Constantius to Catullinus the Prefect of Rome¹⁴⁴ and identified traditional abhorrence at superstition with paganism itself. The law maintained that “although all superstitions must be completely eradicated”¹⁴⁵ the “temples outside the walls should remain untouched and uninjured”¹⁴⁶ and the “structures shall not be torn down”¹⁴⁷. This was because some “plays or spectacles of the circus or contests derive their origin from some of these temples”.¹⁴⁸ Although the religious structures of paganism were to be maintained, the law provided no punishment for those who may have failed to leave them “untouched and uninjured”. Neither does the law direct any strong language against such people. From a surviving inscription in Asturica (Gallaecia), we know that Catullinus was a pagan,¹⁴⁹ and indeed a pagan of some note. His daughter married the renowned pagan Vettius Agorius Praetextatus in 344 and remained married to Praetextatus until his death in late 384.¹⁵⁰ Catullinus had had a successful career himself: he was praeses of Gallaecia, Vicar of Africa, Praetorian prefect of Italy, Africa and Illyricum, Prefect of Rome and finally consul in 349.

Constantius would not have been keen to alienate a successful and leading member of the elite, but at the same time in order to maintain his antipathy to paganism, Constantius, or the drafter of the law, doubly emphasised the official antipathy to paganism by employing a gerundive (eruenda) with a subjunctive (sit). Of equal force is the fact that eruere tends to imply that superstition (and therefore in this context paganism) is almost a physical object that should be removed by hand and may

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¹⁴⁵ nam omnibus superstitione penitus eruenda sit
¹⁴⁶ templo rum naves et triumviri sunt postae intactae incorruptae ne consinant
¹⁴⁷ non convenit ea convelli
¹⁴⁸ e nonnullis vel ludorum vel circenanum vel agonum origo neri et orta
¹⁴⁹ CIL 2.2635. The inscription is dedicated to IO M
¹⁵⁰ CIL 6.1779, 1780
have been interpreted as an active campaign to rid the empire of superstitio.
Conversely, there is no equally strong imperative for preserving the temples; they are only to remain (consistant) undamaged and untouched. The emperor has drawn a careful distinction between paganism and the buildings of pagan worship, and he has done his best to try and ensure that readers would not see any softening of the official religious policy with regards to paganism itself. However, the strong imperative maybe indicates that many contemporaries would still have appreciated the religious element contained within spectacles and pagans may have viewed the law with at least a little favour.

After these two initial laws of 341 and 342, there were no more laws on paganism for over eleven years until 353 at which point the remaining six anti-pagan laws of Constantius were issued within a relatively short period of just over four years. This distortion in the record was likely to have been a response to the usurpation of Magnentius, a Germanic officer in Constans’ army and Marcellinus, the comes rei privatae in the west in 350. As such these six laws, that is of course the majority, are markedly different in tone and in effect from Constantius’ earlier two laws on paganism. Also, the addressees of the (three) named laws were both close companions and allies of Constantius.

Magnetius had been proclaimed emperor and Constans was executed in 350. Constantius mobilised to restore his family’s rule over the west, but was only able to do so finally in 353 when Magnentius was defeated in Gaul and committed suicide. At the same time Constantius was able to establish himself as sole ruler of the empire. The account of the usurpation in Ammianus Marcellinus is lost, but there is a chapter on the aftermath of its suppression which indicates that even people suspected of supporting Magnentius were executed, often on the word of courtiers in order to ingratiate themselves with the emperor. From one of Constantius’ laws it appears

151 Marcellinus 8 PLRE 1.546
152 os. 2.43-55
153 Amm. Marc. 14.5; Matthews (1989) 18
that Magnentius was favourable to paganism; possibly to gain favour with the pagan establishment of Rome, or even to differentiate himself ideologically from Constantine’s sons.

The atmosphere recorded in Ammianus is reflected in the legislation issued at the time. While in control of Rome, Magnentius had permitted the renewal of “nocturnal sacrifices”\(^\text{154}\) which Constantius repealed within a few months of the usurper’s death with CTh 16.10.5 of 23 November 353 to Cerealis, Prefect of Rome.\(^\text{155}\) This law referred to the “nocturnal sacrifices” as “nefarious license which shall be destroyed”.\(^\text{156}\) It should be noted that this was the first use of \textit{ne as} in a pagan context. Hitherto it had only been used to describe the Jewish faith (in CTh 16.8.1 of Constantine), so this law indicates an increase in rhetorical invective against pagans. However, in this law, the allegation of \textit{ne as} applies, strictly speaking, only to the licence, that is to say, the freedom of action, of Magnentius in allowing sacrifices to take place, rather than to the sacrifice itself. As such, Constantius appears to have been more concerned at the impudence of a usurper, and his apparent ability to reinstate practices that had been forbidden, than by the return of such forbidden practices themselves. Zosimus indicates that Magnentius was popular and was thought to have done some good during his reign although this was only possible because he was so adept at hiding his true and naturally bad character.\(^\text{157}\) If Magnentius was indeed popular, then Constantius may have thought it best to reserve his vitriol for Magnentius’ questionable legitimacy than for his actual, and possibly popular, policies.

The addressee of CTh 16.10.5, Cerealis was quickly installed as Prefect of Rome by Constantius following Magnentius’ flight to Gaul. Cerialis may well have been quite close and trusted by the emperor. With eight others, Cerialis was commissioned

\(^{154}\) CTh 16.10.5 \textit{sacricia nocturna}  
\(^{155}\) Naeratius Cerealis 2 PLRE I. 197-199  
\(^{156}\) \textit{ne ari a deinceps licentia repellatur}  
\(^{157}\) os. 2.54; Sozomen 4.7, thought the opposite and blamed Magnantius for murdering large numbers of Senators. Aurelius Victor \textit{Caes} 41.23 also records that Magnentius was unpopular.
by Constantius to judge Photius and his heresy at Serdica.\textsuperscript{158} When he became Prefect, Cerealis worked to ensure the loyalty of the Roman plebs by diverting to them the state corn dole that had been provided for various Campanian cities. The issue was still a grievance under Gratian and Symmachus was obliged to ask Valentinian II to resolve it.\textsuperscript{159} Cerealis is also reported to have abolished the use of safe deposit boxes\textsuperscript{160} by Senators in Trajan’s forum.\textsuperscript{161}

Another trusted and long standing colleague of Constantius was Flavius Taurus who was made Praetorian prefect of Italy and Africa in 355.\textsuperscript{162} Taurus was the recipient of CTh 16.10.4 of 1 December 354 which, although only slightly longer than the other laws on paganism at this time, had greater detail and range of applicability than previous legislation against pagans, both in practical prohibitions, punishments and, potentially, in laying down precedents. The law ordered that “temples shall be immediately closed in all places and in all cities and access to them forbidden, so as to deny to all abandoned men the opportunity to commit sin.”\textsuperscript{163} All men were also required to “abstain from sacrifices”\textsuperscript{164} any who were to “perpetrate such criminality, shall be struck down with the avenging sword.”\textsuperscript{165} The property of the executed was to go to the treasury and governors were to be “similarly punished if they should neglect to avenge such crimes.”\textsuperscript{166} The only documented law previously issued against sacrifice CTh 16.10.2 of 341, laid down a “suitable punishment,” which presumably gave the court hearing such a case the greatest possible discretion in matching the punishment to fit the crime. By contrast this comprehensive law prescribed the death penalty and made no allowance for a lesser penalty; it was the first of Constantius’ laws to prescribe capital punishment for a religious offence since CTh 16.8.6 of 13

\textsuperscript{158} Epiphanius \textit{Contra aereses} 70.5
\textsuperscript{159} Sym. Rel. 40
\textsuperscript{160} arcae positae
\textsuperscript{161} Scholia in iuvenalem vetustiora 10.24
\textsuperscript{162} Flavius Taurus 3 PLRE I. 879-880; Barnes (1992) 258
\textsuperscript{163} Placuit omnibus locis ad ne urbibus universis claudi protinus templa et accessu vetito omnibus licentiam delin uendi perditis abnegri
\textsuperscript{164} cunctos sacri iicii abstinere
\textsuperscript{165} nod si nisali uid orte husiismodi perpetraverint gladio ultore sternatur
August 339. The language of the law is not as vitriolic as previous laws although the phrase “avenging sword” (\textit{gladio ultore}) is somewhat dramatic and may indicate that the punishment is in revenge for an insult against the true god.

However, and more importantly, CTh 16.10.4 indicates a depth of intolerance through what it implied as well as through what it did actually say. The law seems to take it for granted that the mere presence of temples was a danger to public welfare since they were an opportunity (\textit{licentia}) for the morally depraved (\textit{perditis}) to commit an offence (\textit{delin uendi}). The law does not mention whether any sinful religious activity was actually taking place and therefore the law was taking the stance it did in order to curtail the possibility of any activity taking place in the future, which would at least be possible because the temples were still in existence. As such the law was unusually proactive, not so much by specifying what people were to do or were not to do in the future, but simply by closing the means through which they would be able to ‘commit sin’. The law also took an unprecedented step in implicating governors in any offence that took place in their province by prescribing the same punishment for them as for the actual offenders, if, that is, the governors had failed to deliver a punishment. Effectively the law said that failure to punish a crime was as wrong as committing the original offence itself. The law did not make the proviso often found in later legislation which provided for collective culpability, that is, in order to be liable, the governor had to know that the offence was being committed and had wilfully ignored it.

The particularly severe injunction against governors may be due to the fact that Constantius had only recently taken control of Italy from the usurper Magnentius after a fairly long civil war, and therefore as a new, albeit legitimate emperor, Constantius had to firmly stamp his authority on his new territory and to demand obedience from officials who may still have been attached to the old regime or even to that of Constans. We know that the addressee of CTh 16.10.4, Taurus, was a

\textsuperscript{166} \textit{similiter ad ligi rectores provinciarum si acinora vindicare negle erint}
Christian and was probably regarded as a committed Christian since he was trusted enough to serve on the council that tried Photinus at Sirmium in 351 (along with Cerialis), he was also placed in charge of convening, supervising and ensuring a correct outcome from, the Ariminum council of 359 in Italy. Ammianus Marcellinus indicates that Constantius was oversensitive to any rumours or evidence of sedition, a condition which his courtiers apparently inflated. Consequently, he was not inclined to commute death sentences. Eutropius states that Constantius was “too trusting of his friends and companions”. As such CTh 16.10.4 perhaps shows the influence which one of Constantius’ committed and trusted Christian comes could exercise over the emperor and the nature of policies which could be obtained from an insecure emperor who had recently gained insecure possession of a territory.

CTh 16.10.6 of 20 February 356 was Constantius’ next law on paganism and was issued within the same political context as the previous two. The text indicates no addressee, but since the law was issued in Milan it seems reasonable to assume that it was originally addressed to the Praetorian Prefect of Italy and Africa, or to one of his respective vicars or governors. As it survives, the law is short and to the point and ordered that anyone who is “proved to devote their attention to sacrifices or to worship images, we command that they shall be subjected to capital punishment.” This was the third law prescribing capital punishment, and, as with the previous two, no allowance was made for a lesser punishment. Of course, performing sacrifices had already been made a capital offence by CTh 16.10.4 of 1 December 354 and this law extended the punishment to idolatry. It was written with a sense of style similar to CTh 16.10.4 and therefore it may have been drafted by the same hand. The first words of CTh 16.10.6 are somewhat dramatic and state the penalty which is to be applied:

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168 Amm. Marc. 14.5
169 Eutropius 10.15.2 *nimium amicis et amiliaribus credens.* Aurelius Victor *Caes* 42 also indicated that Constantius spent too little time and attention when appointing officials and that he surrounded himself with deficient advisors.
It is tempting to believe that Taurus, recipient of 16.10.4 was also the addressee of CTh 16.10.6; unfortunately there is no evidence other than that the punishments in the two laws are the same, the geographical focus of both is likely to have been the same and they were issued at about the same time. If Taurus was indeed the addressee of this law, then he would have been responsible for (probably) three out of the four laws of Constantius prescribing the death penalty (see CTh 9.16.4 below for another possible law of Taurus prescribing the death penalty). However, at best it can only be said that this law should probably be viewed in the same manner as CTh 16.10.4 as overturning the apparently pagan-friendly approach of Magnentius and enforcing the rule of Constantius and with that, his religion.

Constantius’ antipathy towards traditional forms of belief continued however, in the years following the immediate aftermath of Magnentius’ usurpation. He evidently felt no desire to end or even to mitigate his anti-pagan policy introduced in the exceptional circumstances of four to seven years previously.

CTh 9.16.4 of 25 January 357 was addressed to “the People.” It delivered a comprehensive prohibition backed by capital punishment for all types of divination. It ordered that “no person shall consult a soothsayer or an astrologer or a diviner. The wicked doctrines of augurs and seers shall become silent.” Furthermore “Chaldeans and wizards and magicians, because of the magnitude of their crimes” were not to practice their arts. “The inquisitiveness of all men for divination shall cease forever.” Anyone disobeying any part of this law was to be executed, “felled by the avenging

\[^{170}\text{In full the law reads: poena capitis subiugari principum nos operam sacri dare vel colere simulacra constiterit}\]
sword." This law may have been seen as a revocation of Constantine’s CTh 16.10.1 of 17 December 320 in which divinatory practices were expressly allowed.

In terms of thoroughness and style CTh 9.16.4 is similar to both 16.10.2 and especially with 16.10.4, although 9.16.4 was the most thorough of them all. Other CTh 16.10.4 (Taurus being the named addressee) and 9.16.4 indicate that all the orders in each law were to be obeyed by all men, but the most striking similarity between these two laws was in their use of the phrase “avenging sword” to be deployed against offenders of each law. As with CTh 16.10.4 and 16.10.6 the only punishment laid down is that of death, but 9.16.4 was the fourth and last of Constantius’ laws on religion to prescribe capital punishment. A further similarity between this law and CTh 16.10.4 is in the lack of vitriolic language. “Augurs and seers” are described as having “wicked doctrines” prava con essio, but prava is not an especially derogative adjective and means deviating from correct behaviour, or implies an impurity. Similarly, calling the practices of “Chaldeans, magi and the others great crimes” male icos ob acinorum magnitudinem at best simply indicated the existence of criminal behaviour, although at worst it equally implied the practice of black magic. The authorities had always had a long standing horror and fear at the activities of those at the fringes of religious belief and practices and the level of language used here is probably the least that could be reasonably expected. Nevertheless application of the death penalty possibly compensated for the lack of rhetorical invective. The similarities of punishment, extent and rhetoric between CTh 16.10.4 and 9.16.4 indicate that both laws were probably drafted by the same individual and indeed it is likely that Taurus, the addressee of 16.10.4, was at least highly influential in the composition of 9.16.4, if not instrumental.

171 emo haruspicem consulat aut mathematicum nemo bariolum. Augurem et vatum prava con essio conticescat. Chaldaei ac magi et ceteri nos male icos ob acinorum magnitudinem vulgus appellat nec ad bane partem ali uid moliantur. Sileat omnibus perpetuo divinandi curiositas. t enim supplicium capitis eret gladio ultore prostratus nicum ne insis obse nium denegaverit
172 gladio ultore in both
CTh 9.16.5 of 4 December 357, which, like CTh 9.16.4 was also addressed to “the People,” was issued in Milan and therefore it is reasonable to suggest that it was directed towards the West and may have been a further response to Magnentius’ usurpation. It was directed against necromants, and, like CTh 16.10.5 and 16.10.6 was short, but also less specific; the law reads more like a clerical rant against one aspect of ‘fringe’ religious activity which had always been beyond the pale, and in contrast to other laws issued at this time, it ordered no specific punishment, although it possibly compensates for this dearth with harsh rhetoric. As such, it appears, superficially at least, that Constantius was more intolerant of soothsayers, diviners and astrologers (in CTh 9.16.4) than of necromants. The law complained of “Many persons” who were “disturbing the elements by magic arts” and “jeopardize the lives of innocent persons by summoning the spirits of the dead.” This enabled them to destroy their enemies by “evil arts.” Although the offence is apparently quite clear, there is no correspondingly clear punishment: the law simply prescribes “A deadly curse shall annihilate such persons since they are foreign to nature.”

One reason for the unwillingness of the legislators to prescribe a specific punishment against necromants may have arisen from a longstanding belief that magic should not be dealt with in courts, essentially because the accused was potentially a dangerous person and therefore, for reasons of security, he should not be publicly challenged; hence he should be dealt with from afar and preferably by use of his own practices, that is through a curse as CTh 9.16.5 effectively does. However, if this was the preferred method of dealing with necromants in 357, it was not a method that appears to have either proved lasting or which was possibly not widespread. Writing of events just two years later during the treason trials at Scythopolis in 359, Ammianus indicates that necromants, and others, were rounded up by the notary Paul ‘the chain’

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and tried by Domitius Modestus the count of the East. Ammianus, as often, is vague in this passage and fails to give any names of the accused or how many were tried and executed; but such details are irrelevant here, what is reasonably certain is that within a very short time, the danger that necromants posed to the security of the state and emperor could be considered greater than the possibility that they were too dangerous to be tried in court, at least during the trial in Scythopolis.

It seems highly unlikely that the Scythopolis trials were dealing with events of such magnitude that it was considered necessary to reverse Imperial policy and to begin trials of necromantics: Ammianus names only four who were accused and stood trial for crimes committed; two were acquitted and two exiled. Matthews has indicated that the trials, as far as can be ascertained, were conducted properly and quite normally by contemporary standards. At the same time, it has been argued recently that magic and divination (as practised by the targets of CTh 9.16.4) were considered to be virtually identical phenomena by the fourth century; as such it may have been considered that necromancy, being a form of magic, was already covered by CTh 9.16.4. If so, then it would probably be a mistake to view this law as being more tolerant than other laws issued at the same time; rather, under these considerations, this law appears as an extra ‘safeguard’ and more as an addendum than as a fully independent piece of legislation. As such it would not have been necessary or suitable for it to contain further punishments.

CTh 9.16.6 was issued in Ariminum on 5 July 358, it is Constantius’ final law against traditional practices and was directed against his own courtiers and addressed to that trusted Comes of Constantius, Taurus, Praetorian Prefect of Italy and Africa and also the addressee of CTh 16.10.4. It ordered that although “persons endowed with

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176 Matthews (1989) 218
177 y Graf (1999)
high rank” were exempt from torture in most instances, wizards, however, because they were “enemies of the human race, those of them who are in our retinue, however, almost violate our imperial majesty itself,” and therefore any such in the imperial court, or in the court of the Caesar Julian, “shall not escape punishment and torture by the protection of his high rank.” The law was thorough in its detail: “any wizard, therefore, or person imbued with magical contamination who is called by the custom of the people a magician, a soothsayer, a diviner, or at any rate an augur, or even an astrologer, or one who practices any similar art” would be tortured and punished according to the crime committed and not according to his rank. Presumably the law was viewed as a safeguard against assassination or conspiracies against the emperor and to discourage the divination that was thought to precede attempts on the throne. The almost identical subject matter between CTh 9.16.6 and 9.16.4 and the severe penalties given in both laws is further evidence that 9.16.4 was also issued by Taurus, although admittedly 9.16.6 is more characteristic of Taurus than is 9.16.4.

Constantius’ comites would doubtless have been deeply disturbed to have lost one of their privileges and to be exposed to torture like one of the common humiliores. However in terms of intolerance, this law is also very notable. Although most of the comites could have expected soothsaying and the like to be included in any prohibition directed against themselves, the inclusion of augurs would have been more radical. Although augury may have been on the decline since the late republic in terms of its veracity, it still formed a part of the traditional make up of the cities during late antiquity; an inscription from Zama Regia records that the city sent an embassy of ten notables to the local governor in 322, including four ponti ices and two augures. Although Constantius is known to have appointed a number of Christians to his

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178 Liebeschuetz (1979) 22-23
court, and to have received criticism as such from Libanius, it remains very difficult to assess the extent and commitment of the Christianity of these men and therefore the religious ‘flavour’ of his court.\textsuperscript{181} As much as can be reasonably assessed is that it was mixed. Although it is not possibly to see this law as being a assault on paganism in general, it may conceivably be seen as one official trying to achieve some advantage over his rivals in the mixed court. But it is evidence of the degree of intolerance that could be achieved from one official, Taurus, probably to enhance his own standing before the emperor and in the court. By categorising augurs with soothsayers and other already established ‘fringe’ practitioners, Taurus may have been trying to persuade Constantius of the malevolence of all auspicial practices, including hitherto legitimate ones still practised in the religious lives of the cities; a persuasion that may well have had a high possibility of success in an emperor who was easily persuaded by his officials and during the aftermath of the recent Scythopolis trials.

Taurus’ manoeuvrings had come at a pertinent time; the emperor was about to leave the west and return to Constantinople after a not particularly successful Council of Ariminum. Taurus had apparently been offered a consulship if he secured a successful council.\textsuperscript{182} However, during the course of the council, which lasted until probably late July, a majority of the council members came to reject the so called creed of 22 May 359 drawn up by a number of eastern bishops in the presence, and presumably with the agreement of, Constantius. Moreover, and going beyond their writ, which had been to endorse the 22 May creed, this majority decided to condemn a number of anti-Nicene bishops. The Nicene bishops did eventually bend to the emperor’s preferences by rejecting their condemnation of their rivals and by adopting a revision of the 22 May creed, but this only happened almost three months later on 10 October. Therefore Taurus may have suggested CTh 9.16.6 as a means to display his

\textsuperscript{181} Salzman (2002) 101-102 citing Libanius \textit{Or} 1.39; Barnes (1994) has attempted to classify the consuls and prefects of 317-361 according to religion, but the classifications he makes often fail to convince and are often based on suppositions; see for example the case of Flavius Florentius PLRE 1.365, Barnes (1994) 7

\textsuperscript{182} Barnes (1993) 145 Taurus became consul in 361
loyalty to his faith and emperor and therefore to forestall any imperial displeasure that could have occurred in the aftermath, or during, the council. As a Christian, Taurus may well have understood the impossibility of ensuring a consensus from four hundred or so bishops gathered from all over the western half of the empire and therefore a law which attacked paganism in some form may have been just what he needed to reinforce the faith and to show that both he and the emperor were good Christians, despite the failure to achieve consensus among the bishops.\textsuperscript{183} The law had the added bonus of indicating Taurus’ personal loyalty to the safety of the emperor; through the law he was making an obvious declaration that he valued the security of the emperor from divinatory practices. Nevertheless, Taurus did not have to include the augurs in his list and therefore, if he and nobody else did in fact include the augurs, then we may conclude that Taurus was a particular opponent of paganism and made all the more so by his habit of making his laws particularly detailed and comprehensive.

**Constantius and the Church**

Constantius issued an extensive body of legislation (nine laws) on the Church and the clergy, all but one (CTh 16.2.12) was concerned with the exemptions which clerics enjoyed from municipal duties and in that respect the legislation shows a marked increase in the power and privileges of the Church, most notably in allowing clerics of decurion status to continue to hold property and also the grant of a privilege that bishops should have the right of being tried only by fellow bishops and that the secular courts had no jurisdiction over them. The surviving legislation again indicates the influence that one of the emperor’s \textit{comes}, in this case Taurus, could have on the legislative record and at the same time also sheds some light on the extent, or lack, of Taurus’ Christianity

\textsuperscript{183} Ammianus (21.16.18) gives the impression that Constantius failed to deal competently with the Christians and he criticizes Constantius for complicating an \textit{absolutam et simplicem} religion. Rather than producing any benefits, the synods that he called only resulted in chaos for the postal service and in dissension for the Church.
CTh. 16.2.11 of 26 February 342 was Constantius’ first law on the church and was addressed to Longinianus, Prefect of Egypt. It concerned exemptions from liturgies and referred to a lost law in which Constantius had affirmed such clerical rights. The law indicated that clerics were being “disturbed in their life of perfection” and as such this law also ordered that their sons “also who are not financially responsible and who are found to be below the legal age shall sustain no molestation.” Presumably clerics’ sons were being obliged to full their fathers’ obligations, perhaps in deference to Constantine's CTh. 16.2.3, and this law exempted them. Clearly, in this instance, the clerics obtained a better deal than they had from Constantine.

CTh. 16.2.8 of 27 August 343 to the clergy may have slightly restricted the generosity of the previous law. It said that clerics, and their slaves, were not required to pay “new tax payments;” they were also excused quartering soldiers and “for the sake of a livelihood” they were not to pay any business tax. Perhaps the first clause on “new tax es ” implies that existing taxes were still to be paid.

CTh. 16.2.9 of 11 April 349 to Severianus, proconsul of Achaea was preserved as a short law giving clerics exemption from liturgies, but also stated that their sons “must continue in the Church, if they are not held obligated to the municipal councils.”

CTh 16.2.12 of 23 September 355 issued to Severus contained some derogatory rhetoric. This law granted bishops the right to be tried only by their fellow bishops and not in the secular courts. The law referred to the reasons for introducing this

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184 Longinianus in text, given by editors of PLRE as Longinus 1 PLRE 1.514
185 iam pridem san imus ut catholicae legis antistites et clerici ui in toto nihil possident ac patrimonio inutiles sunt ad munera curialia minime devocentur. verum comperimus pro nulla utilitate publica per ectione eos in iustiari. ideo ne praeceimus ilios eorum sicui ne minus idonei et intra legitimam aetatem esse seppriviuntur nullam molestiam sustinere
186 novis collationibus obligavit
187 et si ni de vobis alimoniae causa negotiatiorem e exercer volunt
188 ilios tamen eorum sic euriisobono ii non tenentur in ecclesia perseverare; Severianus 3 PLRE 1.828 who is otherwise unknown.
privilege and also to the types of persons who might wish to attack bishops in secular courts: “an unrestrained opportunity for fanatical spirits to accuse them.”\textsuperscript{190} \textit{nimis urialibus} is quite a mild form of abuse and therefore corresponds with most of Constantius’ rhetorical invective against subverters of true religion.

CTh. 16.2.13 of 10 November 356 was issued jointly with Julian to Leontius, Prefect of Rome.\textsuperscript{191} It simply ordered that privileges given to the church in Rome should be “firmly guarded.” This too may be related to the retaking of the west after the defeat of Magnentius and we may speculate that as he apparently favoured paganism, Magnentius may also, though not necessarily, have done something detrimental to the Roman church.

CTh. 16.2.14 of 28 December 356 (also co-issued with Julian) was issued to Bishop Felix, installed by Constantius as bishop of Rome after his dismissal of Liberius from that see. It repeated much of Constantius’ earlier legislation on clerical privileges: clerics were to be exempt from liturgies; they were immune from taxes as tradesmen, since this would be used for the poor. Tradesmen-clerics were also immune from extraordinary levies. These exemptions were to cover their wives, children and “attendants, males and females equally, and their children, shall continue to be exempt forever from tax payments and free from such compulsory public services.”\textsuperscript{192} As this law was addressed to the Arian bishop of Rome it could be assumed that its provisions applied to Arian clergy alone, since presumably Felix would have been responsible for its distribution.

CTh. 16.2.16 of 14 February 361 was addressed to the inhabitants of Antioch. It may have been intended to protect clerics since its subject was to grant “perpetual

\begin{flushleft}\textsuperscript{189} Severus 7, of unknown office PLRE I. 832
\textsuperscript{190} \textit{libera sit ad arguendos eos animis urialibus copia}
\textsuperscript{191} Flavius Leontius 22 PLRE 1.503
\textsuperscript{192} \textit{ omnibus clericis huiusmodi praerogativa succurrat ut coningia clericorum ac liberi nee et ministeria id est mares pariter ac eminae eorum ne etiam illii inmunes semper a censibus et separati ab huismodi munerebus perseverent.}\end{flushleft}
security” from liturgies to those who “by a vow of the Christian faith show to all persons the merit of exceptional and extraordinary virtue.” The law finished with the pious affirmation that the state “is sustained more by religion than by official duties and physical toil and sweat.” The law did not mention clerics specifically, but they are surely meant by implication; conceivably it could also have included monks.

Two of the most interesting of Constantius’ laws are CTh 16.2.15 of 30 June 360 and CTh. 12.1.49 of 29 August 361 which are the only laws of Constantius which are somewhat anti clerical, though only to a limited degree and potentially contradictory. They were addressed to the same Taurus who received CTh 16.10.4 and 9.16.6. As is consistent with his style as noted in his previous laws against temples and traditional practices, they are the longest of the nine and unusually thorough, particularly in the case of the second law. The first law, CTh. 16.2.15, provided a distinction between wealthy clerics and other clerics and the obligations that rested on both groups. The law is essentially in three parts: the first referred to the recent council of Ariminum and a decree which had apparently allowed liturgical exemptions on lands owned by the Church. This law referred to a “sanction” (sanctio) issued between the time of that decree and this law which overturned this decree and therefore presumably made Church lands liable to liturgies. The second part of the law reiterated the exemption of clerics from “compulsory public services of a menial nature and from the payment of taxes, if, by means of conducting business on a very small scale, they should acquire meagre food and clothing for themselves.”

In the third part of the law, clerics with “landed estates” however were “compelled to make fiscal payments for the land which they themselves possess” and were not allowed to exempt other men’s lands, presumably by claiming it as their own.
and therefore as exempt because it belonged to a cleric. This measure is justified, according to the law, because bishops from Italy, Spain and Africa at Constantius’ court have indicated that it was appropriate. The law then went on to remind the readership that Church lands were taxable and then finished with a contradictory clause: “all clerics must be required to sustain all compulsory public services and to provide transportation.”\(^{199}\) Despite this text of the law it may be safe to assume that this clause related to clerics with “landed estates” to whom the whole of this third part relates and not actually to all clerics including those whom the second part of the law had exempted from liturgies and taxes on small businesses. It should be noted that the law only speaks of “bishops” in the justificatory clause referred to above; throughout the rest of the law Taurus preferred to use \textit{clerici}. The avoidance of \textit{episcopus} was probably a device to include all clerics who possessed estates liable, in order that, for instance, a wealthy but junior cleric (although such would seem unlikely) could not claim exemption on the basis that the law had specified bishops. Thus although bishops were the main targets of this law in practice, Taurus made the law sufficient robust to withstand any anomalies or potential exemptions that may have arisen.

In addition to this rather unfriendly law against wealthy clergy, presumably bishops, though not to ordinary clerics, Constantius issued the second law addressed to Taurus, CTh 12.1.49 of 29 August 361. This also dealt with clerics and their property in relation to the municipal councils and would appear to be a clarification of some of the requirements of CTh 16.2.15. Again, ordinary clerics were treated better than bishops. Like Taurus’ previous law, it too is effectively divided into three parts. The first part began by emphasising the unique privilege that bishops possessed as the only group in the cities to hold property immune from the councils and that their property should not be surrendered to anyone; “he shall remain a bishop and not make any surrender of his substance.”\(^{200}\) Presumably bishops did not have to surrender their property to the councils, but, in view of the recent CTh 16.2.15, would still have been

\(^{198}\textit{eosdem ad pensitanda isalia perurgueri}\\^{199}\textit{ad universa munia sustinenda translationes ne aciendas omnes clerici debeat adtineri}\\^{200}\)
liable for taxes and liturgies on whatever land they owned: pleasing rhetoric for the bishops, but also a practical measure to ensure that they were unable to evade responsibilities, not least through transferring property to someone else, including, presumably any relatives.

The most innovatory and important part of this law lay in its plans to regulate the appointment of clerics and it gave this regulatory power to the municipal councils; it allowed “any persons who have attained the rank of priest, or even of deacon or subdeacon or of any other cleric” to “retain their own property,” but only if the cleric had appeared before the municipal council and a judge and had shown himself to be “outstanding and pure in every virtue.” Only with the approval of the council and a judge could the cleric assume the privileges allowed under law, but at the same time, and probably to compensate the clerics for being subject to secular approval, keep possession of his property: “such clerics must have the heritage of their commendable way of life, so that they may retain their own property, especially if it is requested by the voices of the whole people.”

Admittedly this law does not specifically say that individuals admitted to the clergy and with property would then be exempt from liturgies, but this would seem to be a very reasonable interpretation of the evidence, particularly if it is read in conjunction with the laws of Constantius which do actually order the exemption of clerics from liturgies i.e. CTh 16.2.8, 9, 10, 14, 15 and 16. Moreover, it should be assumed that council approved clerics were indeed exempt from liturgies and were permitted to retain their property whilst clerics since the law then went on to deal with applicants who might not have sought approval from the council: “if any persons should aspire by clandestine devices to those clerical ranks or should creep in by

2 sed antistes maneat nec aciat substantiae cessionem
201 Sane si ad presbyterorum gradus diaconum etiam su subdiaconum ceterorum ne pervenerint ad sistente curia ac sub obtutibus iudicis prouente consensum cum eorum vitam insignem at ne inno centem esse omni probitate consisterit habere debeat patrimonium probabilis instituti ut retineat proprias acutales ma imo si totius populi vocibus e petatur.
the use of fraudulent tricks,”202 that is, if a new cleric had been appointed without the examination (and presumably approval) of the council and judge and if the people had not requested that the cleric should keep his property. In such cases this law made detailed provision for the property of such clerics to be transferred to kinsmen or children in order that liturgies should continue to be performed. Those with children would have to give all their property to them so that they could serve on the council. Those without children would have to give two thirds to their near kinsmen, but could retain one third for themselves. Clerics without near kinsmen or children would have to give two thirds of their property to the council in compensation. Although they too were still allowed to keep one third for themselves. Therefore it appears that ordinary clerics admitted under due process could keep their property without liability for liturgies, but bishops were liable for liturgies.

However, it seems likely that most potential clerics would have had at least one child and few would have had only kinsmen. As such these apparent concessions may not have amounted to much and were probably included in the law for presentational, rather than practical, reasons. Therefore, although there was conciliatory rhetoric, in practice the law was designed to ensure that councils would still have had enough resources to perform their functions. Moreover, since the councils would have now had a supervisory role they could, presumably, have prevented any member of the decurion class from joining the clergy if it suited them to do so, although popular acclamation could have served as a useful ‘safety valve’ in any confrontation between Church and council. However, this clause effectively repealed Constantine’s 16.2.6 of 1 June 326 which ordered that clerics should not be appointed through the popular will. More generally this law also repealed, at least in theory, an earlier (lost) law referred to in Constantine’s CTh 16.2.3 of 18 July 320 which indicated that only those with “slender fortunes” and who were not able to undertake liturgies should be admitted to the clergy. Although arguably CTh 12.1.49 may effectively have ensured that when applicants became clerics, their fortunes had been rendered “slender.”

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202 si ni clandestinis artibus adspirent aut studio randulentae
This law also appears to lay down a hierarchy of people whom the government considered to be more important to its secular aims and therefore prevented “provosts of the state storehouses and persons who are going to accept a magistracy, and also provosts of the peace and receivers of the various taxes in kind” from becoming members of the clergy.\footnote{praepositi horreorum iique, qui suscepturi sunt magistratum praepositi etiam pacis seu susceptores diversarum specierum} The bishops were to prevent them becoming so and if they failed, then the provosts would be brought back to their duties by the judges. Evidently the government considered it vital that praepositi, whether as supervisors in state storehouses or as tax collectors as well as those about to take secular office in a municipality, should remain in post or continue to posts already designated rather than join the Church; it might be unreasonable to suggest that the government thought its own offices and functions more important than the necessity that the Church should be able to perform its function in ensuring the safety of the state, but certainly the government was not going to allow a situation in which vital functions might not be fulfilled because personnel were opting to join the Church. Effectively the interests of the state were guarded against the interests of the Church. Moreover, the interests and manpower requirements of the council would appear to take second place to the requirements of the state in that decurions could (even perhaps in practice only theoretically) become property owing clerics exempt from liturgies, unlike the personnel required for the state.

Admittedly, Taurus’ laws could have been stricter: neither contained any punishments or penalties against transgressors, even in vague terms. The second law might simply have stripped all propertied clerics of their wealth or have required them to rejoin the councils, as Constantine’s CTh 16.2.6 of 1 June 326 does. ut this would have missed the purpose of what Taurus was trying to do and would probably have been ineffective anyway. Taurus went further and with CTh 12.1.49 attempted a lasting solution to this council Church problem and did so to the detriment of the Church by seeking to ‘routinise’ the selection of candidates for the clergy. An
administrative arrangement such as he provided may have had greater chances of success than previous (and future) laws in keeping decurions on the council, since it would have engaged a greater number of people, all of whom would have had an interest in preventing the applicant joining the Church and thus imposing greater burdens on remaining decurions. Also, since the enforcement of Late Antique law was dependent upon the injured party making a suit against the offender this arrangement provided potentially injured parties (injured whenever an applicant ignored the law and entered the Church without the necessary hearing before the council). Hitherto, laws preventing decurions entering the Church had involved no directly injured individuals, only the council as a whole and arguably the emperor (if he had known of the violation); this law not only involved council members as potentially injured parties, but also, probably created a good number of them.\(^2\) Also, with more people involved, the business of arranging a hearing with council and judge present should also have created a ‘collective knowledge’ of procedures which would have proved more enduring and therefore effective, than the execution of one law at one time by one individual. In a sense, this law was aiming to create, in practical terms, ‘the law’, that is to say, an approach that treated the law as an entity in itself, an almost scientific discipline which was applicable in all cases and without constraints of time.

Although Taurus was, as may be seen above in his CTh 9.16.6, a particular opponent of paganism, correspondingly he is not a strong supporter of the Church and clerics. Rather, Taurus emerges as a cunning, robust and moreover far-sighted individual who, although he presented his ecclesiastical laws in terms which may suggest that he was greatly enhancing the prestige and wealth of the clergy and Church, in practice, he was attempting to establish means through which the interests of the state and indeed of the councils, should not take second place to those of the Church and, unlike most laws of the time, he was arguably attempting to ensure that

\(^2\) See Harries (1999a) 93-96 that the enforcement of law in Late Antiquity was an \textit{ad hoc} affair and that laws were only likely to be invoked if an individual had something to gain. Particularly useful is her illustration of Libanius’ frustration (96) with the destructive monks and their reluctance to invoke the anti-sacrifice law as a means to close the temples.
his provisions lasted. As these laws came so soon after the council of Ariminum, it is probable that Taurus was displaying his displeasure with the bishops at their failure to adopt the Imperially sanctioned creed at that council which Taurus had organised. In addition to the evidence just mentioned, there is good reason to believe that Taurus (or at least a single hand) lay behind many of the laws which he received. They went to unusual lengths in their thoroughness to solve the issues which they address, and to do so in a more effective manner which reflects a degree of antipathy by Taurus towards the Church. The laws he received against divination and augury (9.16.6) against temples (16.10.4) and to a lesser extent his probable law against diviners (9.16.4), all show common characteristics of proactivity in attempting to prevent any problem associated with the victims of the laws before such problems could manifest themselves. His laws against these traditional practices are indeed more intolerant than the two which he received (and probably proposed) against the Church, but taken in combination it should be safe to conclude that Taurus, although a Christian, placed his loyalty very firmly with the emperor; and to that were subordinated any sentiments he may have had towards the Church.

The lack of legislation against heretics and the prosaic manner in which most of the legislation on clergy is written, may be partly attributable to Constantius’ own inclination towards Arianism. Nevertheless, and unlike Constantine, in his legislative record Constantius does not discriminate between different sects of Christianity by specifying which group should receive the benefits; the clerics of whatever inclination should have equal immunity from liturgies and the secular courts, according to the legislation at least, although CTh. 16.2.14 to Felix is possibly an exception to this rule.205

205 See, for example, Constantine’s 16.2.4 of 3 July 321 allowing bequeaths to be left to the Catholic Church without mention of other Churches and most notably 16.5.1 of 1 September 326 specifying that privileges granted to the Church should benefit the Catholics alone.
Conclusion

The surviving legislation of Constantius on religious affairs is inconsistent and affected all of his subjects in a negative manner to a lesser or greater extent; none of them could have felt that the emperor was ‘on their side,’ and in this Constantius stands in clear contrast to his father Constantine who did seek to appeal to as broad a consensus as possible. This inconsistency is doubtless a result of the evidence provided by Ammianus Marcellinus that Constantius was easily influenced by his advisors. This is shown most strikingly by Taurus’ four, or, in all probability five or possibly six, laws. Similarly, a contrasting attitude to Jews and Judaism is shown by the harsh legislation of Evagrius and then in the more relaxed law of Thalassius. Taurus is shown by his legislation to be no friend of the Church, but his laws stand apart from the other legislation on the Church; those other laws, coming from other individuals were more benign and favourable, and they form the bulk of Constantius’ legislation on Ecclesiastical affairs. The overall influence of advisors on the emperor, therefore, and on the whole of the legislative record, did not extend beyond that which they could achieve as individuals and consequently there is no evidence that the government, as a whole, was as a matter of course or policy, prejudicial towards any one group, except against paganism. But in the case of paganism, it should be borne in mind that in the first seventeen years of his reign, and up until the usurpation of Magnentius, Constantius issued only two laws against paganism, (albeit confrontational and without grounds for compromise) one of which may have come from Constans and quite possibly referred specifically to Rome. Only after Magnentius’ usurpation, coinciding with the prefecture of Taurus, was consistent and strong action taken against paganism, resulting in the issuing of three of the four laws prescribing capital punishment which Constantius issued throughout his reign. If Taurus had never reached the position that he did, then it is quite reasonable to suppose that the legislative record of Constantius on paganism would have been considerably milder; unfortunately for the pagans of Italy, not only had they
(probably) had the support of Magnentius, but they also had to suffer the attentions of Taurus, and his ambitions.
Chapter: Constantine and the Donatists

The Donatist controversy during the reign of Constantine has possibly the greatest amount of extant Imperial documentary evidence of any episode in Late Antiquity and indeed was the first inter-Christian dispute in which the emperor was substantially involved. There are twelve surviving letters written by, or on the orders of Constantine, to officials and bishops of both parties which enable us, with reasonable confidence, to gauge the level of his intolerance, and how that intolerance developed, or did not, as the dispute developed over the years. Moreover, ten of the letters were produced over a relatively short period of four years, the final two were produced in 321 and 330. Except for one passion narrative written during the first persecution, all the other texts, that is the vast majority, are Catholic, although Donatists too regarded themselves as Catholic.¹ Unlike the texts of the Theodosian Code, the texts of the letters preserved by the principal sources Optatus and Eusebius do not appear to have been substantially edited.² In Eusebius both the opening sentences and the final valedictory sentences are preserved, in Optatus the valedictory sentence appears to have been omitted only from Constantine’s letter to Aelafius of 313 and also in Constantine’s letter to Celsus of autumn 315.³ In the two texts that

¹ Optatus is the principal source of the beginnings and development of the schism (CSEL 26 ed iwsa 1893) and includes five letters of Constantine sent to bishops and his officials as appendices. Eusebius includes the texts of five letters (text and translation by Kirsopp Lake 1949) and Augustine also has some material, including two letters (to Probianus and another to Eumalius), in p 43 (33.159-173), 88 (33.302-309), 105 (33.396-404) and in his Contra Cresconium (PL 43.540-541). All the substantive texts are conveniently assembled with parallel French translation by Maier in two volumes, 1987 and 1989) Edwards (1997) has produced English translations of Optatus and the ten appendices which he included in his account. All translations of Optatus and his appendices are from Edwards; in quoting from the texts, I have not indicated iwsa’s nor Edwards’ year of publication for each translation quoted. Stevenson, J. (1960, rev Frend 1987) has translations of the Augustinian material. Tilley (1997) provides an introduction, translation and notes of the Donatist passion narrative examined below. Shaw’s (1992) attempt to have the Donatists reclassified as ‘African Christians’ has not been widely adopted; although as a definition for the Donatist movement it does have merit.

² Corcoran (2000) 22 on the general acceptance of the authenticity and accuracy of both Optatus’ appendices and the letters preserved by Eusebius.

³ Opt. App. 3; iwsa 204-206; Edwards 181-184; Corcoran (2000) 304; Aelafius PLRE 1.16; Opt. App. 7; iwsa 211-212; Edwards 193-194; Domitius Celsus 8 PLRE 1 195
Augustine included, he omitted from both the valedictory sentences and only included the opening sentence in the letter to Probianus of 316.

We should expect to find evidence of intolerance in the manner in which Constantine approached the two parties; whether he was initially predisposed to one faction over another and how such predisposition might manifest itself, whether through policy decisions or through derogatory or dismissive language; and also, as the affair developed whether, and to what extent, and how, Constantine showed which side he was beginning to favour; and with that, the manner in which (whether through rhetoric or policy) he treated the opposing side.

The Donatist schism, and after 405 heresy, was centred in the North African provinces of Numidia, Mauretania and to a lesser extent, Africa Proconsularis. It began in 307 as a result of some effects of the ‘Great Persecution’ of 303-305 and lasted throughout the Roman, Visigothic and Byzantine periods into at least the late sixth century and possibly into the early eighth when Muslim armies finally secured the area for Islam.

The edict which began Diocletian’s persecution of 303-305 stipulated the destruction of churches, the surrender of scriptures for burning and the loss of civil rights, particularly for elite Christians. A second edict was apparently a specific response to disturbances in the east and ordered the arrest of clergy there. The third edict was again empire-wide and freed bishops who sacrificed. A final edict, apparently

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4 Donatism was only declared heretical in the fifth century: CTh 16.5.37 of 25 February 405 and 38 of 12 February 405; see especially 16.6.4 of 12 February 405 and (for penalties) 5 of 12 February 405; 16.11.2 of 5 March 405; Frend (1952) 263; Warmington (1954) 99
5 There was also a Donatist bishop of Rome and there was probably a small Donatist presence in either Gaul or Spain, possibly both. Parmenianus, Donatus’ successor as bishop of Carthage was not an African, Opt 2.7 describes him as hispanum aut gallum and as a peregrinus
confined to the east, ordered sacrifices, but not universal sacrifices. A number of clerics succumbed to imperial pressures and collaborated with the authorities surrendering copies of the scriptures, vestments and church plate and even, in one case, murdering his own nephews. Those who had co-operated became known as *traditores*, and were, in practice, regarded as apostates; because it was thought that they had assisted the Devil, working through the Roman authorities, in his assault on the Church.

The African Church had developed a mechanism for dealing with *traditores* as a result of Decius’ and then Valerian’s persecutions of 250-258. In 254, Cyprian, bishop of Carthage, was approached by the Spanish congregations of Emerita and Legio for guidance as to whether a cleric who was not in a state of grace was able to dispense sacraments, and whether such sacraments would be valid. In contrast to Bishop Stephen of Rome who urged the Spanish to accept and obey their reinstalled bishop, and drawing upon the decisions endorsed by the council of Easter 251, Cyprian replied firmly that a congregation had no option but to disassociate itself from a sinful bishop whose administration of the sacraments was thereby invalid and to elect a replacement. Indeed to remain in communion and to receive sacraments from such a bishop would endanger the salvation of the congregation. The logical corollary to this, for Cyprian, was that rebaptism was necessary for bishops who had strayed from the faith; otherwise their administration of the sacraments would be invalid. Laymen would also have to be rebaptised since otherwise they would be outside the Church and therefore unable to receive any of its blessings. Cyprian called a Council of eighty-seven bishops which met on 1 September 256 in Carthage and unanimously endorsed his opinions. The doctrine upon which the Donatist Church was to be founded fifty years later had been established.

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7 Corcoran (2000) 179-182 In the case of in particular the second and the fourth edicts, Corcoran indicates that there is no evidence of enforcement in the west. Cf Schwarte (1994) who believes there was only one persecution edict.
8 Optatus 1.13 gives some of the names of collaborators, including the murderer.
9 Frend (1952) 135-9
Diocletian’s persecution of 303-5 produced numerous instances of collaboration, *traditores* and martyrs. A self-confessed *traditor*, the sub-deacon Secundus was elected bishop of Cirta in late 304 through popular choice. Although Secundus was a *traditor*, Frend indicates that his popular practice of robbing pagan temples was apparently sufficient to atone for his sins in the opinion of the mob. Just as potentially important for the question of whether Secundus’ enthronement was valid, was the fact that four out of the twelve bishops to ordain him were also *traditores*. Despite this seemingly inexorable barrier, the bishops conveniently forgot that they had to be pure of any sin in order to be bishops, but did remember to invoke the dogma that bishops were only answerable to God and, therefore, Secundus remained in possession of his bishopric.\(^{10}\) Despite opposition from elite elements in the church at Cirta, and tacit opposition from Mensurius bishop of Carthage, there was no immediate schism.\(^{11}\)

The schism only emerged after the death of Mensurius during the winter of 311-12. The Carthaginian clergy attempted to enthrone a successor without the customary involvement of the Numidian primate. The clergy were unable to agree on a candidate so opted for a compromise in the person of Caecilian, Mensurius’ archdeacon. Unfortunately for him, Caecilian appears to have been unpopular with just about every element of society, essentially because he was a longstanding opponent of the “exaggerated esteem of martyrs.”\(^{12}\) Twelve years earlier he had rebuked a Carthaginian noblewoman Lucilla for kissing the bone of a martyr before she received communion from him and thus secured her lasting enmity.\(^{13}\) He was also popularly blamed for denying aid and sustenance to the so-called martyrs of Abitina while they were imprisoned in Carthage during Diocletian’s persecution, and thus contributing to

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\(^{10}\) The doctrine that bishops could only be judged by God was formulated in Cyprian’s address to the September 256 Council of Carthage. See Frend (1952) 132-133 n 6 for references.

\(^{11}\) Frend (1952) 11-14

\(^{12}\) Frend (1952) 17

\(^{13}\) Opt. 1.16; See Lockwood (1989) on the role of women in the north African church and in particular that women were attracted to the cult of martyrs which Donatism was to foster. Lockwood argues
their deaths as well as organising vigilantes to forcibly prevent sympathetic visitors from visiting the martyrs. Caecilian may have been trying to keep his congregation in order so as not to force the authorities to take more repressive actions. He may also have been echoing opinions that had arisen under Cyprian on the role and authority of martyrs and confessors and making an attempt to preserve exclusive authority for the episcopacy. Caecilian insisted that only the Church could rule whether someone was a martyr and hence worthy of veneration; as the Church had not done so in the case of the Abitinian martyrs there was no reason for the people to congregate around the prison and thereby to tacitly flout episcopal jurisdiction; officially there was nothing to see. For the anti-Caecilianists, the incident was merely proof of Caecilian’s inherent wickedness; Caecilian was “more ruthless than the tyrant, more bloody than the executioner.”

Another reason for excluding the Numidians, and further evidence of underlying tensions within the North African Church as a whole, is indicated by the actions of Mensurius to safeguard the Carthaginian Church’s plate. Mensurius had been summoned to Rome to explain why he had refused to hand over one of his deacons, Felix, to the authorities for having written a tract, probably slanderous, against the emperor. Before he left, Mensurius entrusted the plate to church seniores and also gave an inventory of it to an elderly member of the congregation with orders that she should give it to his successor if he failed to return. Optatus indicates that two seniores, Botrus and Celestius, had embezzled the plate and intended to exclude the Numidians in order to keep their actions as quiet as possible. However, they were forced to return the plate on Caecilian’s ordination.

persuasively that the Donatist church was more accommodating and attractive to women than was the Catholic.

15 Frend (1952) 142: Frend suggests that the Ecclesiastical authorities were having growing doubts over the value of martyrdom and that martyrs could only be established by an investigation carried out by the Church; he points out that Optatus (1.16) records Lucilla’s martyr as being necdum vindicatus
16 Acta Saturnini 20 in Maier 87; Tilley (1996) 45-6: Caecilianus saeviente tyranno et crudeli carnii 17 Opt. 1.17-18; Frend (1952) 17
However, Caecilian’s apparent disapprobation of the esteem which the martyrs enjoyed was not an indictable offence, but was probably the most significant underlying factor leading to the enmity of many, especially Numidian bishops, and hence to the actual beginning of the schism. Officially however, his opponents focused on the involvement of an alleged *traditor*, Felix of Apthungi, in Caecilian’s enthronement. Such an involvement would, of course, on the precedents set under Cyprian, render Caecilian’s position invalid. Caecilian was accepted by all the important sees without objection, except Secundus of Tigisis in Numidia who went to Carthage with seventy Numidian bishops and held a council, to which Caecilian was invited, in order to investigate the allegations. Caecilian naively offered to be re-enthroned if the Numidians could prove that Felix was a *traditor*. This apparent admission of guilt hardened the Numidians’ resolve and the council condemned Caecilian and declared that *traditores* could only be readmitted after rigorous penance. Caecilian was replaced as bishop by Majorinus (a servant of the humiliated Lucilla) and the Numidians returned home. Majorinus died soon afterwards and was replaced by Donatus. 18 As it happens, Felix was declared innocent of *traditio* by an imperial investigation in 314 or 315, but that mattered little to the infant Donatist Church. 19 Optatus’ statement that the schism “was brought forth by the anger of a humiliated woman Lucilla, nourished by ambition, strengthened by avarice of Botrus and Celestius” 20 may be partially correct, but at best it ignores any underlying tensions within the African church that expressed themselves through Caecilian’s encounter with Lucilla and, as part of that, the considerable veneration that many North African Christians felt for the martyrs, (whose provenance they, more than the Church decided) which was equally opposed by other North African Christians.

The government became involved in the dispute almost immediately after Constantine had secured the west and (in practice) by default. In the winter of 312 13

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18 Opt. 1.19-20; Frend (1952) 18-20
19 Opt App 2 in Maier (1987) 175-87; Frend (1952) 22
20 Opt. 1.19 Scisma igitur illo tempore con usae mulieris iracundia peperit ambitus nutriuit avarita roboruit
Constantine ordered the restoration of Church property in the “Edict of Milan.” At the same time, the order was repeated in a letter to Anullinus the proconsul of Africa. Constantine also wrote to Caecilian informing him that he had instructed Ursus the rationalis in North Africa to give 3,000 folles to Caecilian for his use. Caecilian was also assured that should he need any more then he should not hesitate to seek them from the procurator Heraclides. This letter has been taken by Frend in particular, and arnes to a lesser extent, to indicate the prejudging of the schism by Constantine. The letter certainly indicates that Constantine was aware of a problem in the North African Church, and he instructed the proconsul Anulinus and Patricius the Vicar not to ignore any incidents in which people “of unstable mind are desirous of turning aside the laity.” Caecilian was also encouraged to report such incidents to Anulinus and Patricius. But this is all the knowledge that Constantine displays about the controversy and he would appear to be incorrect; at this stage the controversy was, of course, restricted to the episcopacy and on the validity of the contesting claims and had little to do with “the laity” as Constantine’s letter would seem to suggest. With regard to this final concern, if anything may be inferred, it may be a concern with public order, rather than any concern with strictly Episcopal matters.

It seems more likely to indicate that the emperor, far from having formed any opinion or policy towards the anti-Caecilianist party, was carefully navigating his way in an area and with factions with which he was at best unfamiliar and at worse ignorant. Constantine was doubtless far too clever to allow himself to become embroiled in factionalism this early in his reign, not least because it would have potentially weakened his authority in a part of the empire only very recently under his

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21 Lact. D 48.2-12; Eus. 10.5.2-14; Corcoran (2000) 158-160
22 Eus. 10.5.15-17; Maier (1987) 138-139; Corcoran (2000) 153, 335 n4; Anullinus 2 PLRE 1.78-79
23 Eus. 10.6.1-5; Maier (1987) 140-142; Corcoran (2000) 153; Ursus 2 PLRE 1.988
24 Heraclides 2 PLRE 1.417
25 arnes (1981) 56; Frend (1952) 145
26 Patricius 1 PLRE 1.673
27 Eus. 10.6.4: kai; ejpeidh; ejpuqovmhn tina;~ mh; kaqestwvsh~ dianoiva~ turgacavnonta~ ajqnrwpwpo~ to;n lao;n th`~ aJgiwtavvth~ kai; kaqolikh`~ ejkklhsiva~ bouvlesqai diastrevfein ktl.
control. It would be unreasonable to suppose, that at this early point in the schism, anyone in Italy would know, or be able to make a reasonable judgement, of just how long, and to what extent, the controversy was likely to last. At worst, if it became widespread with entrenched views, Constantine would have done himself a disservice through any prejudging of the controversy. Moreover, it was in Constantine's interest not to utterly embrace one party, but rather to keep all parties in a state of suspense, and waiting to see to whom would fall the advantages of Imperial favour. Thus, it seems more likely that since Caecilian was indisputably the first candidate elected to the see of Carthage (possibly as much as six years earlier) and had been accepted as such by his fellows, then in practice if Constantine wished to distribute funds to the Church, in Carthage, such largesse could really only be given to Caecilian, known and acknowledged by other bishops. To have given it to anyone else would at best have looked ridiculous and at worst alienated the bishops in Italy; that most certainly would be evidence of prejudging the issue. If Constantine was prejudicial to the emerging Donatist party (or as it may have been at this stage, Majorinus party), then it would be reasonable to expect some derogatory reference to be made to them in the letter; or at least a positive indication that Constantine's sympathies lay squarely with Caecilian, beyond any assumptions that could be inferred from his receipt of Imperial funds.

In February 313 Constantine wrote to Anullinus, the proconsul of Africa, to inform him of his decision to exempt all clergy from liturgies. Constantine named the beneficiaries as those “in the Catholic Church over which Caecilian presides, bestow their service on this holy worship those whom they are accustomed to call clerics.” Much of the rest of this fairly short letter is taken up with the benefits that flow to the state and to mankind from devotion to worship and the dangers to the same if such worship is neglected. This would appear to be more prejudicial than the previous letter in that, by implication, Constantine is excluding those clerics who did not acknowledge Caecilian’s primacy. Nevertheless Constantine made no derogatory

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28 Aug. Contra Epistolam Parmeniani 1.3.5 (PL 43.37)
29 Eus. HE 10.7.1-2; Maier (1987) 142-144; Corcoran (2000) 155;
references to clerics who did not come under Caecilian’s rule and the letter still reads like that of an outsider looking in to the Church; if not actually ignorant of all internal affairs of a provincial Church, then at least not willing to become any more involved than he had to be. Involvement with the church at this stage appears to go no further than Constantine’s strategic policy of favouring all clerics throughout the empire by exempting them from liturgies. As with the distribution of funds in the letter to Caecilian above, it may have been the case that in order to grant this similar favour to the Church, Constantine had little option than to grant the exemptions to a named individual in order that Anullinus would be clear as to whom the measure should benefit. Furthermore, at this early stage in the controversy it would probably have been impossible, logistically, for Anullinus or Constantine to attempt to classify the clergy of North Africa according to their allegiances, for or against Caecilian, and probably inappropriate for an emperor keen to indicate his munificence to a newly won province and the Christian section of the population.\textsuperscript{30} Indeed for Constantine, he had possibly made his point merely by issuing the edict; thereby he had demonstrated his generosity.

However, the benefits which came to the Church do not appear to have reached anti-Caecilianist clerics. In the \textit{Passio Donati} written on the events of the “first period of repression” of the Donatists by the government (i.e. c317-320)\textsuperscript{31} the Donatist author uses the benefits of Imperial patronage against the Catholics. The devil, working through the Imperial officials, had ensured the flow of funds and thus delighted “these miserable men with vainglory and he also ensnares the greedy by royal friendship and earthly gifts.”\textsuperscript{32} Since the letter to Caecilian indicates that the

\textsuperscript{30} See Corcoran (2000) 155 for the possibility that a single edict granting relief from liturgies may have been issued and then sent out in a number of surviving letters. In which case the personal involvement of Constantine and with that the possibility of a pro-Caecilianist policy existing at this stage would be even less likely.

\textsuperscript{31} Tilley (1996) 52; the phrase is Frend’s (1952) 159-162; Frend however believes that this reference relates to the first period of persecution and that initially, the authorities attempted to bribe the Donatists into converting to Catholicism rather than using force.

\textsuperscript{32} \textit{Passio Donati} 2 non solum oblectans inani gloria miseros sed et regali amicitia numeribus ne terrenis circum scribens anaros
money was to go to him for onward transmission, it may be reasonable to assume that Caecilian would ensure that only his supporters gained the benefits, despite the wishes or vague intentions of the government.

Their aversion to worldly riches did not initially prevent the Donatist party from petitioning Constantine for a redress. The petition itself was forwarded along with a covering letter from Anullinus to Constantine on 15 April 313. From the letter it is evident that the Donatists had moved quickly to ensure their recognition from the government and, in support, had been able to rapidly mobilise a popular contingent. Anullinus reported that he had given Constantine's letter “after I had received and venerated it” to Caecilian and assured him that Constantine had brought liberty and made the Church secure, protected and able to devote itself to “holy law and the things of God.” and that “a few days afterwards” Anullinus was approached by “certain persons, followed by a great throng of the populace who held that Caecilian must be opposed.” Anullinus was presented with one sealed dossier and an unsealed dossier; the unsealed dossier was the short statement preserved by Optatus; the sealed dossier is lost, but something of its content and character may be indicated in its title: “Statement of the Catholic Church of Charges against Caecilian the traitor, from the party of Majorinus.”

In this part of his narrative and prior to receiving the dossier, Optatus states that Constantine “knew nothing of these matters.” It is difficult to be absolutely certain whether Optatus believed that Constantine was utterly ignorant of the existence of any dispute before he received the dossiers, or whether he was just ignorant of the technical and religious differences and the origins of the dispute. Although this is the first time that Optatus mentioned Constantine, it seems likely

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33 The petition itself is preserved by Optatus 1.22, whilst the covering letter from Annulinus to Constantine is preserved by Augustine (Ep 88.2) Maier (1987) 144-146, CSEL 34.408).
34 Aug. p. 88.2 sanctitate legis debita reverentia ac divinis rebus inserviant
35 Aug. p. 88.2 verum post paucos dies titerunt uidam adunata secum populi multitudine ni Caeciliano contradicendum
36 Aug. p. 88.2 ibellus ecclesiae catholicae criminum Caecilian traditus a parte aiorini
that, considering the letters preserved by Eusebius, and assuming that they have not been ‘improved’ by Catholic writers, Constantine was indeed aware that there was some kind of dispute, but not of its technicalities. However there is another, thought less secure possibility: prior to this point the only evidence that Constantine knew of Caecilian is from his two letters announcing the grants of money (Eus 10.6.1-5) and the exemption from liturgies (Eus 10.7.1-2). Now if the first letter granting funds had, like the letter granting immunity from liturgies, been issued as an edict and then disseminated by letter, then the apparent addressing of Caecilian by Constantine could have been a purely technical matter, a name inserted from a list of bishops by a clerk (either in the Imperial court or in North Africa) onto a standard letter template which went to all bishops. If so then Constantine’s apparent personal favouring of Caecilian in both letters could be an illusion, and hence Optatus’ belief that Constantine was ignorant of the dispute may be correct. Unfortunately this is mostly speculation, but nevertheless, and according to Optatus, Constantine was indeed ignorant of the dispute prior to this first Donatist appeal and at least to some degree.\footnote{See Millar (1992) 219-225, esp. 222 & 224 for the manner in which imperial letters were composed.}

Constantine may not have been delighted to receive a dossier describing a beneficiary of his largesse in these terms, but if he had already begun to side substantively with the Caecilianist party then we should expect to find evidence of that in his letter of response to the Donatist petition, of spring or summer 313, to Miltiades, bishop of Rome and to Marcus, informing them of his intention to call a council in Rome to adjudicate on the problem which the Church in North Africa was having. Miltiades, Marcus, Reticius, Maternus, Marinus and others would preside at the conference and reach a “just decision”\footnote{Eus. 10.5.20: ejpimelevstata dieukrinh’ saí The letter is at Eus 10.5.18-20} on the controversy. Constantine also indicated that Caecilian and ten of his supporting bishops would attend along with an equal number of bishops “who seem to call him to account.”\footnote{Eus. 10.5.18-20; Corcoran (2000) 160, 335 n9; Maier (1987) 148-150; devka ejpiskovpwn tw’n aujto;n eujquvnein dokouvntwn} Constantine had sent
Miltiades copies of the correspondence he had had with Anullinus on the subject. Although the letter effectively gives Miltiades full authority to judge the case according to how he sees fit, the letter nevertheless shows no evidence of Constantine having prejudged the issue or of forming any opinion about the merits or otherwise of either party in the dispute.⁴¹ On the contrary, in this letter Constantine granted the Donatists’ request that judges from Gaul should be appointed to hear their grievance.⁴²

In this letter, Constantine’s overriding concern was for the unity of the Church and to see an end to the dispute and to the divisions amongst the laity and the bishops; he was conscious that God had entrusted the North African provinces to his stewardship and in his penultimate sentence he stressed the importance of the job which he had entrusted to Miltiades and hoped that the bishop would not overlook the fact that “respect which I pay to the lawful Catholic church is so great, that it is my wish that you should leave no schism whatsoever or division in any place.”⁴³ Constantine expected Miltiades to come up with a settlement and see that unity was secured; there is no explicit evidence that the Donatists were placed under similar pressure.

The council was held at the Lateran palace in Rome between 30 September and 3 October 313. Despite Constantine’s instructions that there should be ten bishops from each side, Miltiades appears to have been able to pack the council with sixteen of his colleagues from Italy, plus the three Gallic bishops. Optatus does not mention whether the ten Donatist bishops attended.⁴⁴ The council found that Donatus’ practice of rebatising lapsed bishops was “alien to the custom of the Church” and that nothing alleged against Caecilian had been proved by the Donatists. Miltiades

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⁴¹ Jones (1948) 108, cited in Frend (1952) 148 that Constantine’s letter reads more like a minute to a civil servant without any sense of reverence or familiarity.
⁴² Opt. 1.23
⁴³ Eus. HE 10.5.20: ὅπως ἡ μνήμη τὴν ἡμετερίαν λανθανωμενὶ τὸ σαυτὸν μὲν ἀληθὲς τὴν ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφορᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφορᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφορᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφορᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφοরᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφορᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπον ἄνθρωποι ἐν μεταφορᾷ μὲν ἀληθὲς τὸν καθὼς ἐπεμνεμένην, ὡς μὲν κἀν τὸ συνάντησαν ἅ ἐνδεικνύειν ἀνάμεσαν τὸ τοῦ θεοῦ λατρευτὸν μὲν ἄνθρωπο
⁴⁴ Opt. 1.23-4
pronounced Caecilian’s good name to be upheld and that he should continue in his see.⁴⁵

The Donatists however refused to accept the decision of the council; apparently because Caecilian had already been condemned by a council of Numidian bishops in early 312 and therefore by weight of numbers (seventy Numidians had condemned against the nineteen Gallic and Italian bishops who acquitted) the decision of the larger council should take precedence over that of the smaller.⁴⁶ As such the Donatists appealed; a decision that displeased Constantine. However, the basis of the emperor’s displeasure was not religious, but rather that the bounds of propriety in behaviour had been breached. Constantine appears to have been quite saddened that a bishop should have sunk to such depths that he would consider an appeal: “Just as if this were a common case of heathen litigation, a bishop thought it proper to appeal.”⁴⁷ Despite this however, Constantine ordered the secular authorities of North Africa to conduct an enquiry into the behaviour of Felix of Apthungi to determine whether he was indeed a *traditor* and hence whether Caecilian’s enthronement was invalid. The enquiry, finished its proceedings in late 314 or early 315 and found no evidence that Felix had surrendered any scriptures.⁴⁸ Constantine also heeded the concerns of the Donatists and ordered another council to be held, in August 314 at Arles, in order to attempt a conclusion to the controversy.

Two letters of Constantine announcing the Arles council survive. Both must have been written at almost the same time, i.e. Spring 314. One was to Chrestus, bishop of Syracuse⁴⁹ and the other was to the Vicar of North Africa Aelafius.⁵⁰ From these letters onwards it appears that Constantine was concerned to emphasise his personal involvement and that is shown by the knowledge he displays of what had

⁴⁵ Opt. 1.24 iwsa 27 *nec consinus sit se rebaptizasse et episcopis lapsus manum imposuisse nec ab ecclesia alienum est* Edwards 24
⁴⁶ Aug. p. 43.5.14-15
⁴⁷ Opt. 1.25 iwsa 27, *sicut in causis gentilium ieri solet appellandum episcopus credidit*
⁴⁸ Opt. App. 2; iwsa 197-204; Edwards 170-180
⁴⁹ Eus. HE 10.5.21-24; Maier (1987) 158-160; Corcoran (2000) 304;
been the basis of the Donatists’ appeal. In his letter to Chrestus, Eusebius records that the Donatists refused to accept the judgement because “it was a few persons who gave their opinions and decisions, or that they were in a hurry to pass judgement very speedily and sharply without having first accurately examined all those matters that ought to have been investigated.”\(^5\) The (Donatist) reasons that Constantine gives for the dissatisfaction of the Donatists (i.e. the disproportion in numbers between the two councils) tally with those given by Augustine referred to in the last paragraph above.

The letter to Chrestus is the first which gives any indication that Constantine’s patience with either of the rival parties was beginning to fracture and, as with the sentence preserved by Optatus above, Constantine was aggrieved not by just one party, but by the fact of the schism’s existence and the behaviour of the rival clerics towards one another. Admittedly however, the Donatists were the recipients of his stronger emotions of antipathy rather than the Caecilianists. Constantine referred to the beginning of the schism when “some in a base and perverse manner began to create divisions” in worship and in the Church:\(^5\) conceivably the persons referred to here could have been either party in the dispute, according to the sympathies of the reader. Nevertheless Constantine had arranged a council (i.e. the Lateran Council of September October 313) to hear the grievances with bishops from Gaul so that the many bishops assembled might reach a “right solution” through “a careful examination in every particular.”\(^5\) However, despite this, Constantine remarks that some, “forgetful both of their own salvation and the reverence they owe to their most holy religion, even now do not cease to perpetuate their private enmities,”\(^5\) because they

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\(^5\) Opt. App. 3; iwsa 204-206; Edwards 181-184; Corcoran (2000) 304; Aelafius PLRE 1.16
\(^5\) Eus. .10.5.22 o{ti dh; a[ra ojlivgoi tine~; ta;~ gnwvma~ kai; ta;~ ajpofavsei~ eJautw`n ejxhvnegkan h kai; mh; provteron aJpavntwn tw`n ojfeilovntwn zhthqh`n nai ajkribw`~ ejxetasqevntwn pro;~ to; th;n krivsin ejxenevkai pavnu tacevw~ kai; ojxevw~ e[speusan
\(^5\) Eus. .10.5.21: o{te fauvlw~ kai; ejvdiastrfw~ tine~; ajpodiivstasqai h|rxanto ktl.
\(^5\) Eus. .10.5.21: dunhqh/` uJpo; th`~ parousiva~ aujtw`n meta; pavsh~ ejpmelou`~ diakrivsew~ katorqwvsew~ tucei`n
\(^5\) Eus. .10.5.22: ejpilagovmenov tine~ kai; th`~ swthriva~ th`~ ijdava~ kai; tou` sebavsmato~ tou` ojfeileivmovnou th/` aJgiwta/`h/ aijrevsei, e[ti kai; nu`n ta;~ ijdava~ e[cqra~ parateivnein ouj pauvontai
had not conformed to the judgement delivered by the Lateran Council. Constantine deplored the behaviour of both sides and complained that both parties of clerics, who should have been in fraternal concord, were rather “separate from each other in a disgraceful, nay rather in an abominable fashion.”

The final issue of complaint for Constantine in this letter was that it was detrimental to the Church in terms of its ‘Public Relations’ with the wider, non-Christian members of the empire. The divisions between the clerics “give to those men whose souls are strangers to this most holy religion to scoff” and it was necessary for Constantine himself to arrange a peaceful end to the dispute: “wherefore it has become incumbent upon me to provide that that which ought to have ceased by voluntary agreement, after the judgement already passed may even now, if possible be ended by the presence of many persons.” Constantine does not expand upon this theme, unfortunately, but it would seem likely that any perceived damage done to an institution upon which Constantine had lavished such attention and finances would also be damaging to his government.

Constantine evidently believed he had a duty (that is more than just an interest) to facilitate agreement amongst the clergy, but not, at this stage, to actually impose it. Therefore, and in order to facilitate such agreements, it would have been necessary for him not to have been overtly partisan. As such, and with an acknowledgement towards the grievance of the Donatists against the Lateran council, Constantine announced the Arles council for August 314 with the presence of “very many bishops from various and numberless places.” He finished his letter by indicating that Chrestus should approach the local governor for transport to Arles, where,
Constantine hoped, the miserable dispute would end and the clerics could resume a relationship of fraternal concord with each other.

Constantine’s letter to Aelafius, preserved by Optatus, is significantly longer than that to Chrestus and goes to greater lengths in narrating the impropriety of the Donatists’ behaviour. The letter is a response to the situation in Africa as brought to the emperor’s attention by Aelafius. To a large extent his letter follows the format of that to Chrestus: there is a long introductory narrative deploping the sectarianism of the rival parties prior to the Lateran council, who had separated “with rabid anger and vain recriminations against one another,” followed by references to the Lateran council and its verdict against the Donatists. Constantine indicated that the clerics’ opinion of the Donatists was such that they believed the Donatists should not be allowed to return to Africa. Constantine then referred to the current situation in Africa and found that because the Donatists were “persisting in their actions” then evidently they had neither “respect for their own safety or, what is more, the worship of Almighty God.”

As in the letter to Chrestus, Constantine also indicated his concern that the dispute was detrimental to the Church in terms of its ‘Public Relations’ with his non-Christian subjects; the Donatists were not only disrespectful to God, but their actions “give occasion for detraction to those whose thoughts are known to be turned far away from this most sacred form of religion.” Again, Constantine does not elaborate on this theme, but, as with the letter to Chrestus, he possibly feared that the dispute was not just a cause of worry for what it might do with regards to the relationship of the empire to God and the safety that that guaranteed, but was also damaging in terms of the image that the government wished to present of itself, allied, as it was, with “most

58 Corcoran (2000) 168
59 Opt. App. 3; Edwards 181: plures vesano nrore vanis criminationibus contra se invicem
60 Opt. App. 3; Edwards 182: evidenter agnovi nonne ne respectus salutis suae ne ne nonne nonn est
61 Opt. App. 3; Edwards 182: sed etiam his hominibus detrabendi dent acutatem ni longe ab
buisusmodi sanctissima observantia sensus suos noscuntur auertere
sacred religion”. It looks as if, for Constantine, the dispute between provincial Christians had the potential to damage the image of the Church disproportionately and therefore that of Constantine and his government.

ut perhaps to settle this amicably and to demonstrate to Aelafius that Constantine was a fair-minded man who approached the dispute with a strong regard for justice for both parties, the emperor again displayed his knowledge of the Donatists’ concerns and referred to an exchange between himself and the Donatists made after the Lateran council. Constantine reported that they rejected the Lateran decision because their case had not been fully heard and the bishops who had heard it “had locked themselves up in a certain place and reached the verdict most amenable to themselves.”\(^{62}\) Constantine replied that the decision of the council had been made. The Donatists “saw fit to reply to this, in a stubborn and pertinacious manner.”\(^{63}\) However, it appears to have been only their attitude and manner of approach to him that Constantine objected to, rather than any affront that they had shown to a Church council or to God. Despite their rudeness, their appeal bore results and because the “number and magnitude of these claims was prolonging the disputes with such excessive stubbornness,”\(^{64}\) Constantine decided to call another council, with Caecilian present, to settle the matter. Essentially, Constantine conceded the point to the Donatists and apparently admitted that the Lateran council had not been as fair as it should have been. He then gave orders to Aelafius to provide transport for Caecilian and other bishops from the three North African provinces to Arles via Mauretania and Spain. Aelafius was also ordered to ensure that the bishops told their congregations to behave themselves whilst they were absent in Gaul.

It is curious that Constantine went to greater lengths to express his dissatisfaction with the Donatist dispute to the secular official Aelafius than he did

\(^{62}\) Opt. App. 3; iwsa 205; Edwards 182: potius idem episcopi quodam loco se clavisissent et prout ipsi aptum nerat indicassent

\(^{63}\) Opt. App. 3; iwsa 205; Edwards 182: obnixe ac pertinaciter respondendum aecimaverunt

\(^{64}\) Opt. App. 3; iwsa 205; Edwards 183: nare cum haec tot et tanta nimium obni e dissensiones prostrabere peveriderem
with the cleric Chrestus. Although never familiar in his language with Aelafius, (who is only known from this document), Constantine ensured that Aelafius knew that they were both of one mind. Aelafius, Constantine has been informed, was also, like the emperor, “a worshipper of the Most High God.” Constantine then went on to end the letter by sharing with Aelafius his hope that the council would settle the dispute after a full discussion and thus God’s benevolence to the empire, and also to Constantine himself, would be maintained; further discord could, Constantine feared, provoke divine wrath. For Constantine the highly personal nature of the dispute, which he shared with Aelafius, is evidenced by the last sentence: “For only then when concord is achieved and heavenly favour secured shall true and full security be possible for me when I am aware that all men worship the most holy God by the due rites of the catholic religion in harmonious and brotherly observance. Amen.”

It seems likely that Constantine valued the support of the local Vicar more than that of the bishop. ut also, it perhaps shows how seriously Constantine took the business of building a consensus amongst his officials and in demonstrating his desire to do so. In a sense, the support of a bishop in efforts to secure ecclesiastical unity could be relied upon, whereas the support and opinions of an official, who may well have been an officer of the previous regime, could not necessarily be relied upon and had to be cultivated. Part of this cultivation apparently involved sharing what would perhaps have been some of the emperor’s most intimate concerns (possibly feigned for effect) about himself and his fears for the empire entrusted to him by God: the salvation of Constantine as an individual rested upon his correct handling of this dispute. Constantine evidently thought carefully about who he should share his intimate sentiments with, as well as to what extent; and, naturally, he increased the

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65 See Corcoran (2000) 168, 329-330, on Constantine’s form of address to Aelafius; Corcoran points out that Constantine used dictatio tuae and gravitas tuas when addressing Aelafius, the same terms as for Prefects and other Vicars

66 Opt. App. 3; iwsa 206; Edwards 183: te no dei summi esse cultorem

67 Opt. App. 3; iwsa 206; Edwards 184: tunc enim revera et plenissime potero esse securus cum universos senso deo cultu catholicae religionis sanctissimum deum concordi observantiae maternitate venerari.
intensity and range of such ‘sharings’ with those whose support could not necessarily be taken for granted. It should also be noted that here Constantine sometimes presented himself as a passive participant in the unfolding events: that is, God’s favour with him was somewhat reliant upon the actions of others, his subjects. This may well have been a motivational factor in Constantine’s eventual decision to end his tolerant approach and to begin persecution; the actions of others were threatening Constantine and therefore he had a natural right to ensure his safety by preventing them performing such actions. The dispute was arguably a little more personal.

The council of Arles curtly dismissed the Donatists as being without “any rational ground of speech or any proper mode of accusation of proof;” and their assertions were “either condemned or rejected.” Immediately after the council, Constantine wrote to the Catholic bishops to express his satisfaction that a verdict had been issued and to indicate his hostility to the Donatists. The decision of the council seems to have been the deciding point in which his attitude to the rival parties changed substantively; from one of effective neutrality to one of belligerent partisanship; although not necessarily of absolute partisanship, and Constantine still expressed hopes that a peaceful and amicable solution to the dispute could yet be found.

The Letter of Constantine to the Catholic bishops, of mid to late summer 314, went much further in condemning the Donatists and in indicating Constantine’s solidarity with the Catholic party than can be seen in Constantine’s letters to either Miltiades or to Chrestus. The emperor presented himself as one of them and in

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68 There is a dispute over the unusual name ‘Aelafius’. Barnes (1972) follows Seeck in believing it to be unlikely and prefers the interpretation of Duchesne that *aelio* is a corruption of *aelio paulino*, the next recorded vicar. However, Corcoran (2000) 331 indicates that the similar name *lapth ins* occurs later, so Aelafius could be genuine. Ayres (1972) 76 dismissed suggestions that Aelafius was a corruption of Ablabius. Edwards 181 n 1. It should be noted that Aelafius is probably not identical with Ablabius 4 PLRE 1.3-4, Constantine’s Praetorian Prefect of the East 329-337, since Ablabius 4 spent all of his recorded career in the East.

69 Opt. App. 4; iwsa 207; Edwards 185: *ut nulla in illis aut dicendi ratio subsisteret aut accusandi modus nullus aut probatio conveniret*

70 Opt. App. 4; iwsa 207; Edwards 185: *aut damnati sunt aut repulsi*
familiar terms, addressing them as “his most beloved Catholic brethren.” The emperor also expressed himself in the singular (possibly to emphasise his personal concern with the matter) and only used the plural when referring to his place as one Christian among many. The letter also contained several references to the Bible and to the writings of early Church fathers and as such it may have been ‘ghosted’ by a cleric, albeit with Constantine’s approval.

Constantine then immediately went on to say that the goodness of God would not “allow the human condition to carry on straying in error nor does it permit the abhorrent wishes of certain men to prevail” which obscures conversion to the rule of God. Moreover, Constantine humbled himself before the bishops, and perhaps excused himself for not having taken their side when the controversy first arose, by saying that “there were initially in me many obvious defects in righteousness, nor did I believe that the supernal power saw any of those things that I did in the secrecy of my heart.”

But God had revealed his benefits to Constantine who accordingly rejoiced in the “most righteous verdict” of the bishops at Arles. A verdict that “recalled…those whom the malignity of the devil” had turned from the Catholic religion. This is powerful rhetoric: the Donatists were inspired by the devil, the Catholics alone had the blessing of God.

Nevertheless, despite this rhetoric Constantine still offered an opportunity by which the Donatists could redeem themselves and he indicated that the magnanimity
of God was such that even at this late stage they could still avail themselves of God’s benevolence, as he hoped. However, and immediately thereafter, Constantine returned to his initial condemnatory theme and indicated that the Donatists were utterly divorced from God. He says that their rejection of the Arles decision, which was of no use to them, showed that “the mercy of Christ withdrew from these Donatists” and they were “abhorrent even to the heavenly dispensation.” After dealing with their rejection of Arles, Constantine devoted a greater part of the letter to condemning the Donatists’ attitude. They were of “so great a madness with incredible arrogance” and possessed “strong wickedness;” moreover, these “wicked men, who as I have truly said, are officers of the devil.” Therefore the Donatists were unmasked and Constantine asked what their opinion of humanity would be as they had already “ruthlessly assaulted God himself.”

For Constantine, the separation of the Donatists from the divine is linked to their obstinacy and arrogance; indeed, since Constantine made no mention of their theological positions, nor their different views of ecclesiastical hierarchy and discipline, it would appear that their apparent rejection of authority and their insistence on continuing appeals is more indicative of their “abhorrent” and damned status than anything that they might have to say on religious affairs. The Donatist dispute had become concerned with authority in more than just one way; Constantine’s own authority (which he had from God) and prestige, was being damaged by these troublesome clerics and their endless appeals to him. Constantine (following 1 Corinthians 6.1) linked the Donatists’ appeals to those of the “heathen” and indicated that his judgement was insufficient, since he would be judged by God; thus his actions were merely following those prescribed by God in scripture. Moreover, the
“judgement of the priests, should be regarded as if God himself were in the judge’s seat.” With admirable subtlety, Constantine had shown that merely by petitioning him with appeals, that itself indicated the wickedness of the Donatists: “those slanderers of religion, who refusing the judgement of heaven presumably the Lateran and Arles decisions have thought fit to demand my judgement. Is that what they think of Christ our Saviour.” The Catholic clerics could not have wished for a greater enhancement of their status. Constantine had abdicated responsibility for decision-making in one sphere of life and, thereby, in voluntarily casting aside one facet of his power and authority, had enhanced his piety and prestige even further.

In his closing sentences, Constantine stated that although the Donatists were “openly convicted of these things, you who follow the way of the Lord must none the less exercise patience, giving them even now the choice of what they think should be preferred.” Doubtless this request was made in order to remind the Catholics of the necessity of keeping the peace. At the same time, Constantine informed them of his orders to the African Vicar to send “men of a like insanity to my court immediately,” as such, Constantine was evidently informing the clerics that he maintained an interest in the matter and that any ‘breaches of the peace’ would be reserved to himself. Constantine was hinting that whilst the clerics’ word on matters of religion was final, Constantine, as the secular arm would enforce the verdict of the Church.

Early in the next year, in February 315 the proconsul Aelian finally published his verdict on Felix of Abthungi and declared him to be innocent of being a traditor.
and therefore Caecilian’s enthronement to be valid.\textsuperscript{89} Constantine had doubtless been informed of the verdict and the fact that it was a further blow to the Donatists’ position may have influenced the composition of his letter to the Donatist bishops. This letter was a response to another appeal to Constantine, which judging from his reply, requested an investigation of their claims to take place in Africa.

Constantine’s Letter to the Donatist bishops written during the summer of 315,\textsuperscript{90} is considerably shorter than his Letter to the Catholic bishops and although there is little conciliatory rhetoric or sentiment and its contents made clear Constantine’s antipathy towards the Donatists, it does not contain anything approaching the extreme rhetorical invective which is found in the Letter to the Catholic bishops. Constantine was evidently averse to insulting the Donatists directly and probably saw no reason to display whatever disapprobation of them he felt, and therefore increasing any alienation that they may have felt, any more than was necessary. As such, he referred to himself in the singular in this letter as well, and presumably for the same reasons as he did so in his Letter to Catholic bishops.

He even began the letter in a reasonably conciliatory manner by indicating that he had considered their request that they might be allowed to return to Africa where the whole affair against Caecilian could be considered by selected “friends of mine.”\textsuperscript{91} However he had changed his mind and decided instead that Caecilian should travel to Rome and that he would hear the case there. Constantine blamed the Donatists for this change of mind and reasoned that since some Donatists were “great troublemakers and in your obstinacy of mind have very little respect for equitable judgement and the spirit of upright truth,” then the hearing should take place somewhere other than

\textsuperscript{89} Opt. App. 2 iwsa 197-204; Edwards 170-180; On Aelianus: Aelianus 2 PLRE 1.17; arnes (1982) 170, 243
\textsuperscript{90} Opt. App 6; Maier (1987) 192-193 gives the date as Summer 315; Corcoran (2000) 22, 306, 322, 323 n40, he dates it to May 315; Edwards 192 n1, believes (somewhat unconvincingly) it was written after August 315
\textsuperscript{91} Opt. App. 6; iwsa 210; Edwards 192: \textit{ab amicis meis nos elegissem}
Africa. If the hearing were to take place in Africa, then, Constantine thought “the end of the matter will not be that which is proper and demanded by the spirit of truth, and that through your excessive obstinacy the event will be such as displeases the heavenly divinity and greatly impair my own judgement.” This concern may be a fear that civil disturbances would break out in Africa if the investigation was held there.

Constantine certainly comes across as being no ally of the Donatists, particularly in view of his earlier letter to the Catholic bishops, and most obviously in his belief that any involvement by the Donatists, possibly through violence, would subvert the judgement of the investigation, but despite all that, the Donatists did not have to be his enemy, for Constantine at least. Therefore he ended the letter with the generous undertaking that “if in his presence you by yourselves prove anything with respect to even one crime or offence, I shall act as though all the things you allege against him were seen to be proved.” Although by this stage, this could have been an empty promise since Constantine may well have felt fairly confident that the (Catholic) investigation would not overturn earlier decisions; at least, however, he was making conciliatory noises.

The precise chronology of the next few events is impossible to reconstruct with absolute accuracy, but they would all have occurred within a few months, and did not extend beyond January 316. Augustine indicates that Caecilian never went to Rome, but does not say why; however the court moved on to Milan and Constantine presumably heard the Donatist appeal there. Augustine states that some Donatist bishops took advantage of the move to sneak back to Africa. The emperor heard the

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92 Opt. App. 6; iwsa 210; Edwards 192: *non iam scio nosdam e vestris turbulentos satis et obstinato animo rectum indicium et integrae veritatis rationem minime respicere*

93 Opt. App. 6; iwsa 210; Edwards 192: *non ut concedet et veritatis ratio e postulat res inem accipiat at ne ali nid tale eventat nimia vestra obstinatione nod et divinitati caelesti displiceat et e intimatone meae*

94 Frend (1952) 155
Donatists’ case against Caecilian and, “he pronounced Caecilianus perfectly innocent, and them most criminal.” The hearing must have taken place sometime between the emperor’s arrival in late September 315 and his departure for Trier in early January 316. Curiously, despite Constantine’s earlier indications (in Optatus’ appendix five) that he regarded the bishops’ verdict as the judgement of God, he did not apparently see any inconsistency in providing a further judgement, of his own.

During the same few months, the Donatists extensively cultivated the support of court officials and one of them, Philumenus, suggested a plan to end the dispute. It was accepted by Constantine and involved a commission of (presumably non-African bishops) travelling to Carthage and appointing a wholly new bishop. This would, of course, have meant that both Donatus and Caecilian would be jointly deposed and seems to show that the Donatist bishops with the court were quite willing to end their schism if an acceptable third candidate could be found. The sources are not generous enough to grant this to the Donatists, but if correct, it would indicate that they could, at times and to some degree, be reasonable in their aspirations and therefore Constantine’s indulgence of the Donatists with their endless appeals should be balanced by the fact that the Donatists were not always so obstinate and stubborn as the (Catholic) sources would suggest. The commission, of only two bishops, Eunomius and Olympius went to Africa in the winter of 315-316, but, according to Optatus, received a hostile reception from rioting Donatist mobs. They left after forty days without achieving anything.

95 Opt. App. 6; iwsa 210-211; Edwards 192: si praesente ipso de uno tantum crimine vel acinore eius per vosmet ipsos ali uid probaveritis id apost me sit ac si universa nae ei intenditis probata esse videantur
96 Frend (1952) 155-6; Aug. Ep. 43.7.20
97 Seeck (1919) 164
98 Frend (1952) 158
99 Philumenus PLRE 1.699
100 Opt. 1.26; Frend 156-157
During this latter half of 315 and January 316, Constantine received a letter (not extant) from Celsus his vicar in Africa.\textsuperscript{101} In his reply, as with the earlier letters preserved by Optatus, Constantine indicated his personal involvement by referring to himself in the first person. Moreover he expressed his familiarity with Celsus by addressing him as \textit{rater carissime} which Constantine only used in a very few instances throughout his reign;\textsuperscript{102} and also by pointedly reflecting and endorsing Celsus’ experience with the Donatists and his opinions of some of them. Constantine referred to Maenalius, a Donatist bishop, as “long in the grip of insanity, is obdurate, as are others who have departed from God’s truth and given themselves most basely to error: so too your eminence’s most recent letter has testified.”\textsuperscript{103} He commended, and sympathised with, Celsus for carrying out his “orders concerning the proper handling of their contumacy and had been impeded by the tumult which they raised.”\textsuperscript{104}

Constantine referred to a hearing he intended to hold into the dispute and reported that some of the Donatist bishops had sneaked back to Africa, as Augustine was later to indicate. The emperor did not actually report that the inquiry had taken place, but rather the letter tends to give the impression that the unauthorised departure of the Donatists had scuppered the plans for an inquiry. Moreover, since Constantine then announced in the letter his intention to come to Africa in person, it could have been the case that Augustine was incorrect in assuming an inquiry had already taken place in Milan.

\textsuperscript{101} Domitian Celsus 8 PLRE 1 195; arnes (1982) 146; the letter is only datable from the known duration of Celsus’ vicariate. Corcoran (2000) 306 dates it to “late 315”; Maier (1987) 194 to Autumn 315
\textsuperscript{102} Opt. App. 7; Edwards 193; Corcoran (2000) 22 n 80, 168, 239 n 30, 306, 322, 323, 330; Corcoran (2000) 335-336 only lists another eleven instances of this use throughout the period with which he deals, i.e. up to 324.
\textsuperscript{103} Opt. App. 7; Edwards 193: \textit{perseverare enalium eum quem iam dudum susceperat insania ceteros ni a veritate dei digressi errori se pranissimo dederunt pro imas etiam gravitatis tuae scripta testata sunt}
\textsuperscript{104} Opt. App. 7; Edwards 193: \textit{nibus inhaarentem te insionis nostra de merito seditionis ipseorum eo ne tumultum nec apparabant inhibitum esse memorasti.}
Although in this letter the bulk of Constantine’s opprobrium was reserved for the Donatists, he clearly had little respect for the Caecilianists either, and it appears as if he regarded both parties with near equal suspicion and disapprobation; they were to be treated equally. Constantine ordered Celsus to “ignore them the Donatists and accept the necessity of dissimulation with regard to them.”\textsuperscript{105} Moreover, Celsus should also act “as openly towards Caecilian as towards them”\textsuperscript{106} because when Constantine came to Africa he would demonstrate “as much to Caecilian as to those who are seen to be acting against him, what sort of devotion should be paid to the highest deity and what kind of cult he would seem to delight it.”\textsuperscript{107}

Constantine then went on to announce his intention to hold a “diligent examination” into the affair in order to reveal the facts to the ignorant whose actions ensured that “the supreme God is not worshipped with the requisite devotion, and those I shall destroy and scatter.”\textsuperscript{108} Constantine made a connection between the offence of incorrect religious worship and that of stubbornness: those who did not worship God properly would “suffer the due penalties of their madness and their reckless obstinacy.”\textsuperscript{109} Constantine’s use of \textit{seditio} (in his opening and sympathetic sentence to Celsus) indicated that at this point, the behaviour of the Donatists was not just arrogant and obstinate, and possibly religiously incorrect, but was also indicative of their treasonous nature; all three offences were combined together and collectively personified in the Donatists. Constantine finished the letter by reminding Celsus of

\textsuperscript{105} Opt. App. 7; iwsa 211; Edwards 193: \textit{ut interim uidem eosdem omittas et dissimulandum super ipsos esse cognoscas}\n\textsuperscript{106} Opt. App. 7; iwsa 211; Edwards 193: \textit{Caeciliano nam hisdem palam acias}\n\textsuperscript{107} Opt. App. 7; iwsa 211; Edwards 193: \textit{cum amente pietate divina ricam venero plenissime universis tamen Caeciliano nam bis ni contra eum agere videntur lecto dilucido indicio demonstraturus sum nuae et nalis summae divinitati sit adhibenda veneratio et cuinsumodi cultus delectare videatur}\n\textsuperscript{108} Opt. Att. 7; iwsa 211; Edwards 194: \textit{diligenti e amine and veneratione summus deus colatur perdam at ne discutiam}\n\textsuperscript{109} Opt. Att. 7; iwsa 212 Edwards 194: \textit{sine ultra dubitatione insaniae suae obstinationis ne temerariae aciam merita e itia persolvere}
the emperor’s own personal liability in religious affairs; personal because his own
salvation depended upon ensuring correct worship.\footnote{See Frend (1952) 157 for
indications in the letter that Constantine may now have begun to
understand the position of the Donatists and that they were motivated by the traditional desire of
North African Christians to embrace martyrdom.}

In a subtle, yet extremely decisive touch, he stated the reasons for his intended
actions in pressing both parties to be united and thereby observe correct worship.
Constantine stated that he was acting only under the guidance of God and out of the
necessity of ensuring his own salvation: “For I believe that in no other way at all shall I
be able to escape the greatest guilt, than by reckoning it intolerable to conceal what is
scandalous.” Ensuring correct religion was Constantine’s foremost duty: “What
greater obligation is imposed on me by my own intent and the bounty of my
sovereign, than that, dispelling errors and cutting short all rashness I should bring it
about that everyone displays true piety, simple concord and the worship fitting to God
Almighty.”\footnote{Opt. App. 7; iwsa 212 Edwards 194: nam ne nunc am me aliter ma imum reatum e
ungere posse credo
nam ut hoc uod inprobe sit minime e istimem dissimulandum uid potius a me pro instituto meo
ipius us ne principis manere oporteat uam ut discussis erroribus omnius ne temeritatibus amputatis veram
religionem universos concordem ne simplicitatem at ne meritam omnipotenti deo culturam praesentare
per iiam} The end of the letter at this point gives the strongest impression that the
obligation which God had entrusted to Constantine, that is responsibility for the
empire, effectively removed any personal considerations (or emotions) that
Constantine may conceivably have had. In a sense the process had become highly
technical and legalistic; there was an unsatisfactory situation therefore Constantine had
to end it: his role was blunt. He was simply obeying orders and there was nothing he
could do about it. The process of dealing with the rival parties had been
depersonalised. As such, this manner of thought provided an ideological backbone
upon which could be built (and excused because of that ideology) potentially far
greater penalties and more extreme forms of action, because it would be far more
difficult to appeal against the actions of an authority which was simply carrying out
the instructions of a greater (and Divine) power than it would be if that first authority only had obligations to itself.\textsuperscript{112}

Of course, Constantine was only able to write in these terms because of the utter failure of the clerics to come to an agreement. The failure of the clerics would necessitate, or enable him, to take a commanding role in the controversy and to exercise authority in an area from which hitherto he had been excluded. This, together with the personal responsibility he felt himself to be under, created the conditions and atmosphere in which he could, and indeed should, if all else failed, end the status quo of toleration and introduce persecution. As such, and in purely political terms, it was almost in his interests that the bishops should fail in their attempts to secure unity.

However, an extreme interpretation of this would, of course, reduce Constantine's role to that of an insignificant civil servant; a mere cog with little inherent value in a mindless machine. Naturally this would not be a situation best favoured by the emperor. Therefore Constantine continued to display a personal interest (and therefore exhibit a personal liability) in the dispute as indicated by a letter he wrote to the Proconsul of Africa, Probianus after Aelian had acquitted Felix and sometime in the summer of 315.\textsuperscript{113} In this fairly short letter, Constantine took up just over half of it listing the witnesses to the trial of Felix and in narrating its proceedings. The only purpose of this must have been to demonstrate Constantine's detailed knowledge of, and therefore interest in, the case; it cannot have been for Probianus' practical benefit as he would have had direct access to the provincial archives or would have been briefed on such recent proceedings by his local officials. During the trial,

\textsuperscript{112} Edward's (2004b) 230, speaks of: a “profession of servitude which did not diminish, but rather elevated, his authority.” Although Edwards is here referring to Constantine's appreciation of the role of the \textit{logos} in his ideological programme, rather than the Donatists, his phrase is nevertheless still applicable.

\textsuperscript{113} Petronius Probianus 3 PLRE 1.733-4; arnes (1982) 101, 170, 243. The letter is preserved by Augustine in both \textit{Contra Cresconium} 3.70.81 (43.540) and in \textit{Ep.} 88.4 (33.304-305); Corcoran (2000) 22 n79, 278 n73, 306, 321 n25, dates it to May or June; Maier (1987) 189-192 dates it to the end of June to July 315; English translation in Stevenson (rev. Frend) (1987) 308
incriminating documents against Felix were proved to be forgeries created by one Ingentius. Constantine ordered that this Ingentius should be sent to his court in order to prove to the Donatists (who were, presumably still with Constantine), that it was “of no purpose that they show their malice against Caecilian.”\textsuperscript{114} Constantine expected that this would end the affair and then “these disputes having ceased, as is right, the people may without any dissension serve their religion with the reverence that is its due.”\textsuperscript{115}

It was to be over a year later until Constantine held his investigation into the dispute and announced his verdict in a letter to the vicar of Africa, Eumalius, securely dated to 10 November 316.\textsuperscript{116} Despite the solemn words of Stevenson that “This was the final decision, and the next step had of necessity to be persecution,”\textsuperscript{117} this very short letter reads like a short summing up of Constantine's verdict and is devoid of any derogatory references to the Donatists, other than that they had invented faults against Caecilian. Caecilian was acquitted of any charge and also his character was commended by Constantine: he “observed the accustomed duties of his religion and devoted himself to it as was required of him.”\textsuperscript{118} The letter gave no indication of any further action that would be taken against the Donatists presumably because, as shown in the final sentence of Constantine’s letter to Probianus, Constantine expected this to be an end to the matter; Felix had been acquitted and Constantine had found not a blemish on Caecilian’s character. It would have been pre-emptory, and at worst provocative, for Constantine to have issued any dire threats or actions against a group who should logically, by these inquiries, have found no reason for themselves to remain in schism any longer.

\textsuperscript{114} Aug. C. Cres 3.70.81 \textit{rustra eos Caeciliano episcopo invidiam comparare}
\textsuperscript{115} Aug. C. Cres 3.70.81 \textit{ita enim iet ut omissis sicuti oportet eismodi contentionibus populus sine dissensione ali \textit{na} religioni \textit{prope} riae cum debita \textit{vel}eratio ne deserviat
\textsuperscript{116} Eumalius (given as Eumelius by editors of the PLRE from CTh. 9.40.2) PLRE 1.294; Aug. C. Cres 3.71.82 (43.541); Maier (1987) 196-198; Corcoran (2000) 22 n.79, 239 n.30, 307
\textsuperscript{117} Stevenson (rev. Frend) (1987) 309
\textsuperscript{118} Aug. C. Cres 3.71.82 \textit{ac debita religionis suae officia servantem ei neita tu oportuit servientem}
Nevertheless the next step was indeed that of persecution, which probably began a few months after the letter to Eumalius in early 317. The edict which ordered it is, unfortunately, not preserved, and the only evidence that there was an order to persecute is a short sentence in Augustine’s p. 105.9. There is therefore no official context through which we are able to judge whether there were any other circumstances which necessitated this first persecution of a Christian community by a Christian emperor. Possibly, and Constantine’s letter to Eumalius may be seen as evidence for this, it was simply the case that Constantine believed he had exhausted all possible peaceful means to settle the dispute and that there was simply nothing more that could be done; the legal avenues had run their course; decisions and verdicts had been made; therefore compliance should be expected from good subjects. Nevertheless, there does appear to be a ‘gap’ between the final vindication of the Catholic party and then the decision to use force. The only circumstances which seem to make it certain that the first had inevitably to lead to the second, are if the ideological basis for employing persecution shown in Optatus’ appendix seven was indeed adopted by Constantine. It seems reasonable to assume that since the sources make no mention of any incidents or even reactions, that could have provoked further, and more direct Imperial action than hitherto, (and it seems unlikely that they would have omitted such useful aids to their position) then Constantine believed that force had to be used in order that he could fulfil his self-professed mandate and properly execute his duty to God and to the empire entrusted to him and ensure, by the only remaining means, that correct worship occurred.

Constantine’s order, preserved by Augustine, states that “he gave a very severe law against the party of Donatus;” the confiscation of their churches was also ordered. It seems odd that this “very severe law” has not been preserved by either Optatus or Augustine when it surely would have been in their interests to do so; as such it may be reasonable to suggest that the law contained provisions or sentiments

\[^{119}\text{Aug., p. 105.9 (33.399) \text{\textit{Legem contra partem Donati dedit severissimam.}}} \text{Aug., Contra litteras etilian\text{\textit{i}}} 2.92.205 \text{refers to the confiscation of churches.}\]
which were not entirely favoured by the Catholic party, but which were potentially favourable to the Donatists, but this, obviously, is pure speculation.

**Conclusion**

But any indications of conciliation from Constantine would not necessarily be out of the question even at this late stage. Constantine's initial involvement shown in his letters to Caecilian and then to Anullinus display no evidence of any anti-Donatist sentiment and indeed it is quite possible that not only did the emperor know nothing of the dispute, but that he may not even know of Caecilian himself. Even when it is clear that he did know of a problem in his letter to Miltiades announcing the Lateran council of October 313, he must still be regarded as fair and conciliatory in order to achieve his overriding policy of a united Church conducting correct worship. Possibly the 'packing' of the Lateran council by Miltiades with his supporters was one reason why Constantine agreed to the Donatist request for a further council; and it is only after the council of Arles in August 314 that Constantine’s tolerance of the situation began to come under pressure. Even then, however, in his letter to the Donatist bishops Constantine still showed hopes of a settlement and indicated that he was not implacably opposed to the Donatists. This is also evidenced in his apparent support for, or acquiescence in, the plan to appoint a third, compromise bishop to replace both Caecilian and Donatus. Any suggestion that Constantine was instinctively pro-Caecilianist should be dispelled by his letter to Celsus in which he treats both parties equally. Even then, the Donatists had the opportunity to swing matters their way through another enquiry. Constantine consistently regarded it as being in his interests to secure ‘right worship’ and that he had a duty to create an atmosphere in which that might be achieved. The failure of the clerics to achieve this enabled him to move into their affairs and to do so with an ideology which demanded that he end his benign policy of tolerance towards the Donatists and enforce unity; not just for the sake of the empire, but for his own personal salvation. By the end of this stage, Constantine
was not an agent for the Church, but was acting in his own best interests which were identical to those of the empire and only incidentally, and lastly, those of the Church.
The first persecution of the Donatist Church

A brief investigation of the first persecution of the Donatist Church enables a contrast to be made between that which Constantine had (probably) intended and the actual results of his orders to begin a persecution. Therefore it should be possible to contrast the level of intolerance which he exhibited in his written orders and that which actually occurred ‘on the ground’ and in practice. It would be unfair to associate the results of the persecution with Constantine; since once persecution had begun in a region some distance from Constantine, it may well have assumed a momentum of its own, and to a large extent beyond Constantine’s control, the result of a persecution may therefore not have been that which Constantine had intended or ordered.

Constantine’s orders referred to in brief by Augustine (in his Contra Cresconium) are the only evidence we have from the Catholic side of what nature the persecution should take. However the Donatist assio Donati written during and concerned with events of the first persecution, does include some evidence for the intentions of the Imperial authorities. The author of the assio said that once the “Secular powers are forced to use coercion. then Homes are encircled with battle standards; at the same time, threats of proscriptions are launched against the rich. Sacraments are profaned; crowds are bedecked with idolatry; holy assemblies are transformed into splendid banquets.” As such it appears that the military was sent into urban areas and in particular was deployed around the homes of known suspects,

120 The misnamed assio Donati is actually a sermon delivered on 17 March between 317-321. Frend (1952) 321 dates it to 320. It is translated by Tilley (1996) 51-60; her translations are used here. The Latin text is in PL 8.752-758. Maier (1987) 198-211 also provides a Latin text with parallel French translation. It is not concerned with the martyrdom of anyone named Donatus, but rather with the events surrounding the seizure of a basilica and the deaths of numerous Donatists who died defending it. Its title may indicate that Donatus, the founder of the movement, was the author. See Tilley (1996) 52 n1 for references.
possibly to impose a curfew on them; this may well have been to prevent the Donatist elite from mobilising the masses in support of their Church. The elite were evidently threatened with confiscation of properties. These two measures must be the extent of the certain evidence concerning official intentions from this text; although the last phrase, “holy assemblies are transformed into splendid banquet” may refer to the confiscation of churches, since the author of the sermon later goes on to indicate that the basilica in which he was speaking had been transformed into a snack-bar.\textsuperscript{122}

It is unclear precisely what is being referred to when the author speaks of the profanation of sacraments, but there is evidence that this first persecution involved an attempt to obliterate physically much of what the Donatists stood for. Excavations in a church outside Carthage have found bodies and fragments of an inscription dedicated to Perpetua and Felicitas; Catholic militants may well have destroyed the inscription because the martyrs featured so large in the Donatist imagination and therefore Donatist sacrament too, could have been disregarded and not treated with sufficient respect.\textsuperscript{123} There is no evidence that the authorities intended to use violence deliberately either as an instrument in itself nor to ‘make examples’ of any Donatists. Although, of course, there remains the possibility that the authorities understood and accepted the fact that violence and deaths may have had a necessary role in the proscriptions of property and confiscations of churches.

However in practice the persecution went beyond the (known) requirements of proscription of the elite and confiscation of churches. The author of the \textit{passio} indicates that the Donatists “with a desire to suffer” went to the church, the scene of their impending martyrdoms.\textsuperscript{124} The author does not indicate why the Donatists went

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{121}]
\item \textit{Passio Donati} 3 (PL 8.756) \textit{coguntur ut cogant saeculi potestates circum dantur v e illationibus domus proscriptionum minae proanuntatur divitis pro anuntur sacramenta superindacta gentilitatis caterva conventicula sacra inuoculenta convivia
\item \textit{Passio Donati} 4 \textit{popina}
\item Frend (1952) 160 n2 refers to the discovery of both the bodies and the fragmentary inscription in a well.
\item \textit{Passio Donati} 6 (PL 8.755) \textit{voto passionis animosius convolarit}
\end{enumerate}
\end{footnotesize}
to the church, it was presumably understood by his audience that they went to defend it, but what he does articulate is the desire for martyrdom and the advantages of that in itself, regardless of the circumstances of the persecution; to die for the faith was all that mattered. Consequently, an unspecified number of men, women and children (although of uncertain age) were killed and it may be reasonable to speculate that a significant number were killed as the author states that the bodies were touching each other. These consequences evidently went beyond the provisions contained within the surviving orders of Constantine.

However, these consequences were not disadvantages for the Donatists; on the contrary, the persecution allowed the Donatists to polarise the issue and to portray their opponents as wicked. The soldiers, acting in practice to further the Catholic cause, were “cruel mercenaries” who carried out the killings in a mechanistic manner and only for money, “not so much defence of a perverse claim, as the exaction of blood according to some contract.” Furthermore, according to the author of the *Passio*, if Donatists were truly on the side of Christ then by necessity they would be persecuted. The author indicates that the recent and innocent martyrs were imitators of Christ and his passion: “in imitation of the Lord’s passion, this cohort of soldiers marshalled by latter-day Pharisees sets forth from their camps to the death of Christians.” As such, the martyrs had reached the pinnacle of what a good Christian should be: “No one else appears as servant of Christ the Lord as much as someone who suffered the same things as the Lord.” The author supports this with references to John’s gospel (15.19 and 20) in which John has Christ saying that the servants of God would be hated by the world because they, like Christ, were not of the world.

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125 *assio Donati* 13 (PL 8.757)
126 *assio Donati* 6 (PL 8.755) *crudelitati mercenariae*
127 *assio Donati* 6 (PL 8.755) *non tam de ensio pravae assertionis nam e actionem locati sanguinis pro iicetabur*
128 *assio Donati* 6 (PL 8.755) *e castris ecce ad instar dominicae passionis cohors militum progreditur ad Christianorum necem a barisaecis neoterici procurata*
129 *assio Donati* 7 (PL 8.756) *nia nec alius ostendebatur Christi domin servus nam ille ni haec eadem patiebaturuae et iipsa passus est dominus*
Therefore, the persecutions proved who were the real Christians; persecution was virtually an *imprimatur* indicating that the Donatist Church was the true and correct body of Christ on earth.

The place and moment when the persecution occurred was therefore of prime importance, since that event indicated the moment when the Donatist position was vindicated. Hence it was preserved in inscriptions in the very church in which the vindication had taken place. The speaker of the *Passio* drew his congregation’s attention to these inscriptions and noted the location and the time: “It is this very basilica, I say, between whose walls so many bodies were cut down and buried. Here, in the inscriptions, memory preserves the name of the persecution as Caecilianist until the end of time.”

The presence of the inscriptions indicates that for the Donatists the benefits of martyrdoms were not to be recalled merely once a year on their anniversary, but were a constant presence in the church; a daily reminder to themselves of what their co-religionists had achieved and of when their Church had fulfilled the scriptural criteria determining which was the true Church.

**The end of the first persecution.**

Just as there is something of a hiatus between the reasons for the beginning of the persecution in 317 there is also something of a ‘gap’ between the reasons for the ending of that persecution in 321. It has been explained due to the need for Constantine to concentrate on the impending war with Licinius, but at the same time, Constantine had previously indicated that he regarded correct religious worship to be integral to

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130 *Passio Donati* 8 (PL 8.756) *asilia in uam intra cuus parietes et occisa et sepulta sunt corpora numerosa et illic e titulationibus nominum persecutionis etiam Caecilianensi us ne in inem memoria prorogatur*

131 Brown (1981) 101-102 on the reading of *assiones* on anniversaries; an event which allowed the whole community to come together in celebrating and remembering ‘a tense moment when potent images of “clean” and “unclean” power came together.’

132 y Frend (1952) 161 and Tilley (1996) xxxii
the security of the state; arguably therefore, and on that logic, the persecution should have increased in intensity in order to secure a settlement before any war in order to ensure that all affairs at home were correct and proper.

Constantine gave his own ostensible reasons for ending the persecution in a letter of 321 to the Catholic bishops and people in Africa. This reasonably short and somewhat prosaic letter shows that Constantine was certainly on the side of the Catholics and contains no evidence that he regarded them or their actions with any disapprobation, in contrast to his earlier letters; but equally he does not lavish praise upon the Catholics or their faith, nor does he indulge in rhetorical assaults upon the Donatists, still less are there any threats of worse persecutions or penalties to follow. As much as he allows himself is a long sentence which blames the (unnamed) Donatists for the failure of his efforts and he indicates his belief that only “a few” are to blame for the actions of many, as such he may well have been suggesting that most of his Donatist subjects were good and acceptable people who were being led astray by a few criminals: “... ut since our policy was not able to tame that power of ingrained wickedness, deep-seated though it be only in a few minds, and in this depravity they continued to plead on their own behalf, so as in no way to allow the object of their criminal delight to be wrested from them, we must take measures, while this whole business concerns but a few, that the mercy of Almighty God towards his people should be temperately applied”

Constantine was still concerned to secure ‘correct worship’, but he does not give any indication that he now felt himself to be bound by the duties and responsibilities to secure ‘correct worship’, which as emperor he had previously proclaimed himself to

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133 In his letter of February 313 to Anullinus, proconsul of Africa preserved by Eusebius 10.7.1-2; in his letter to Aelafius in Optatus’ Appendix 3 and most notably in his letter to Celsus in Optatus’ Appendix 7
134 Optatus Appendix 9; iwsa 212-213; Edwards 196-197
135 Opt. App. 9; iwsa 213; Edwards 196: sed uia vim illam aceleris in uzi pancorum licet sensibus pervicaciter inhaerentem intentionis nostrae ratio non potuit edomare adhuc sibi haec ne uitiue patrociniu ut e tor ueri sibi omnino non sinerent in uo se deli uisse ganderent spectandum nubis est dum totum hoc per puncus sedit in populum omnipotentii dei nisericordia mitigetur
be under, although he did draw attention to his efforts to secure a settlement: “through all the offices of humanity and moderation.” Instead, Constantine made a virtue of tolerating the Donatists (presumably a not unacceptable option since only “a few” were to blame) and he left the matter to God from whom a cure should be expected. Although Constantine blamed the Donatists, this was not a licence for the Catholics to misbehave and he cautioned them not to respond to any apparent provocations made by the Donatists whilst they were all waiting for God to solve the schism.

The new policy, which not unreasonably might be termed a ‘Policy of Tolerance’ Constantine explained, was to “practice continual patience, and whatever their insolence tries or does as a result of their customary intemperance, all this we are to tolerate with the virtue of tranquillity.” That did not mean that his previous efforts had been incorrect; his new policy was to last “while the heavenly medicine does its work,” although Constantine does not go into any detail as to what might happen once the “heavenly medicine” had completed its work. Constantine went to some lengths to portray the new tolerant policy in positivist terms; he repeated his intention to reserve judgement to God and stated that it was right that God should revenge any Donatist insults. Towards the end of the letter he showed some understanding of the motivation which propelled the Donatists to embrace martyrdom; he reasoned that whatever Catholics suffered from Donatists would be to the advantage of their faith: “our faith ought to be confident that whatever suffering result from the madness of people of this kind will have value in God’s eyes by the grace of martyrdom.”

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136 Opt. App. 9; ziwsa 212; Edwards 196: *per omnia humanitatis et moderationis officia optime scitis*
137 contra Garnsey (1984) 19, who finds no hint of toleration in this letter and regards the suspension of persecution as “a tacit acknowledgement of the limits of power.”
138 Opt. App. 9; ziwsa 213; Edwards 196: *hactenus sunt consilia nostra moderanda ut patientiam percolamus et sic uid insolentia illorum pro consuetudine intemperantiae suas temptant aut aciunt id totum tran uillitatis virtutem toleramus*
139 Opt. App. 9; ziwsa 213; Edwards 196: *verum dum caelestis medicina procedat*
140 Opt. App. 9; ziwsa 213; Edwards 197: *ides nostra con idere sic uid ab huinsumodi hominum uero patietur mart rii gratia apud deum esse salitum*
implication to the detriment of the Donatists. This apparent belief of Constantine indicates the extent to which he had come to understand, and appreciate the value of, the Donatists’ attitude and hence the inappropriateness of persecution as a viable strategy.

Constantine went on to reserve the heights of moral impeccability to the Catholics; regardless of what the Donatists might do Catholics would be triumphant and would receive eternal life: “For what is it in this age to conquer in the name of God, if not to bear with unmoved breast the lawless attacks of those who harry the people of the law of peace” \(^{141}\). It appears that just as persecutions against the Donatists proved to them that they were the true Church, so forbearance in the face of Donatist attacks would prove the finality of the Catholic victory. It seems unlikely, however, that Constantine was referring to physical violence and mob attacks; such instability would surely have been unacceptable in any part of the empire, especially a corn producing area. The emperor is more likely to be referring to a metaphorical attack; i.e. the Donatists were continually attacking the Catholic Church by their very existence, because they denied to the Catholics any legitimacy, and assumed all legitimacy to themselves and their Church.\(^ {142}\)

Although this new policy was possibly just a convenient sentiment in the face of the apparent insolubility of the Donatist dispute, it also articulated a powerful ideological impetus which was issued in order to grant theological superiority to the Catholics. In practice the new ‘Policy of Toleration’ said that the Catholics were better than the Donatists because they tolerated the Donatists’ attacks and would not respond to them; the Donatists were worse because not only did they (albeit metaphorically) attack the Catholics, but they also denied their Church any legitimacy whatsoever; such a denial was studiously avoided on the Catholic side: the Donatist

\(^{141}\) Opt. App. 9; iwsa 213; Edwards 197: *quid est enim aliquid in hoc saeculo in nomine dei vincere nam inconditos hominum impetus uitae legis populum lacesentes constanti pectore sustinere*

\(^{142}\) Opt. 2.1 Optatus mentions that the Donatists believed themselves to be the true Church and that no other church could be true: *apud vos solos esse di isti* i.e the one Church of Christ.
Church was always regarded as valid, at least during the fourth century. Optatus argued that the Donatists were ‘voluntary’ schismatics and he asserted that both sides shared one “spiritual birth.”143 Despite what they said about themselves Donatists, according to Optatus “could not fail to be brethren.”144

However, Constantine’s policy of avoiding confrontation did not succeed from deterring the Donatists from violence, at least on one occasion. At some point shortly before February 330, a basilica built in Constantina with Imperial funds and intended for the Catholics was seized by the Donatists. Because of this, Constantine wrote his last letter on the Donatist dispute to the Numidian bishops on 5 February 330.145 In this letter Constantine extolled the virtue of the unity of all humanity, and therefore he drew no distinction between heresy and schism and regarded them both as twin evils; whatever heretics do is at the instigation of the devil and are under his malevolent control. Once the devil has secured control over heretics then nothing good can be expected from them. However, although he initially identifies heretics and schismatics as the same, he continues to refer only to heretics (and not heretics and schismatics) as members of the devil’s party. Constantine may perhaps be suggesting that schismatics are not victims of the devilish tricks which heretics are. Possibly this is too fine a distinction and may not be considered conciliatory rhetoric; there is certainly no other conciliatory rhetoric or sentiments directed towards the Donatists in this letter; rather all are condemned in the strongest terms: they were “mad, treacherous, impious, sacrilegious, opposed to God and an enemy of the Church”146 they were “withdrawing from the holy, true, righteous and Most High God.”147

In this letter, Constantine continued with the ‘Policy of Toleration’ which he had laid down in his letter to the Catholics of 321. He commended the Catholics for

143 Opt 1.3; iwsa 5; Edwards 2: est nuidem nobis et illis spiritalis una nativitas
144 Opt 1.3; iwsa 5; Edwards 2: non possunt non esse ratres
145 Opt. App. 10; iwsa 213-215; Edwards 198-201
146 Opt. App. 10; iwsa 214; Edwards 198; per idus inrelegiosus pro anus deo contrarius ecclesiae sancceae inimicus potest
following this policy and for not involving themselves in any quarrel with the Donatists: “our Eminences have acted most rightly and wisely, and according to the sacred precept of faith by abstaining from their perverse quarrels and pardoning them for seizing the basilica,” despite the fact that they were “impious and depraved, sacrilegious and profane, treacherous and impious and ungrateful to God and enemies of the Church.” Constantine believed that the Catholics had the fullest and deepest knowledge of God and this was evidenced in the fact that the Catholics knew that “a greater vengeance is provoked against the opponents of the Church when they are spared in the temporal sphere.” Constantine thus expanded upon the ideological principle that he had articulated in his 321 letter which gave a moral superiority to the Catholics and also gave a good reason why there would be no further persecutions of the Donatists. God’s vengeance in the life to come would be greater than anything which earthly authorities could do.

The only vaguely conciliatory move from Constantine was his hope that the heretics and schismatics would take action to provide their own salvation. They should “secede from the devil and flee to God.” Constantine hoped that if only they “would submit to our bidding, they would be freed from every evil.” The emperor stopped short of saying that if only the Donatists obeyed him then they would be saved, but the clear implication is that their failure to obey the emperor renders them under the control of evil; that is the devil. As Constantine had said earlier in the letter,
“heresy and schism proceeds from the devil, who is the fount of evil.” As such, the Donatists were evil, ‘of the devil’ and incapable of receiving salvation. Salvation may come from God, but here at least, it flows through the emperor; the will of God is the exercised through, and is the same as, the will of the emperor.

**Conclusion**

Constantine ultimately failed in his ambition to secure ‘right worship’ and unity of faith for his empire; despite his best efforts, carried out exhaustively over several years, the Donatist schism, then heresy, persisted into the eighth century when the Arab armies conquered the region and imposed new ‘facts on the ground.’ In the years before the persecution, when Constantine went to great lengths to convene councils and reach a settlement, it is unclear what more he could have done to placate the Donatists. Even when he finally ordered a persecution, there is no direct evidence that the orders went beyond confiscation of Church and elite property. Of course, evidence from the *Passio Donati* indicates that the effects were apparently worse than Constantine had intended. Possibly because of that, and certainly with an appreciation that the benefits to the Donatists of dying outweighed any benefits to the Catholics or to the authorities that their deaths might produce, Constantine issued his letter of 321, which appropriated the benefits of such suffering and articulated a new policy which sought to avoid confrontation and provide a means through which the two communities could co-exist, whilst at the same time maintaining the superiority and correctness of the Catholics’, and Constantine's, religion.

Certainly Constantine's final letter on the issue offered only small hope to the Donatists. In the light of this final, condemnatory letter, we may appreciate just how tolerant Constantine was in the years 312-316 as evidenced in his correspondence of that period. However, the failure to achieve a settlement was used by Constantine to his advantage; the recalcitrance of the Donatists in refusing to come (back) to the

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153 Opt. App. 10; iwsa 214; Edwards 198; non dubium est haeresis et schisma a diabolo ni caput est malitiae processisse
Catholic Church allowed him, because of his great efforts, to associate his will with that of God’s.
Chapter 3: The Valentiniani

There is very little evidence on which to assess the degree of intolerance or otherwise that may have occurred during the eight month reign of Jovian. His short reign prevented Jovian from establishing himself in a capital and from formulating any religious policy. There are however three documents which Jovian wrote or in which his words and sentiments are recorded, as well as a fourth document apparently written at his request by Athanasius on the faith. These three documents should help us to make a tentative assessment of his attitude towards Christianity and through we should be able to discern, on the limited evidence, whether Jovian was inclined to be intolerant of other faiths. There is also evidence from Ammianus Marcellinus and from the Ecclesiastical historians which shed light on the extent or otherwise of his Christianity.

The first document is a collection of four petitions made by the Arian patriarch of Alexandria Lucius and a certain Bernician (otherwise unknown) against the Nicene Athanasius in which they attempt to have the Bishop exiled and replaced by an Arian. All of the petitions appear to have been made verbally to Jovian when the emperor was in Antioch in October 363. The first two and also the fourth appear to have been made fleetingly, whilst the emperor was on his way to another destination. The first appears to have been made in the evening since the emperor is recorded as leaving the city “for camp, at the Roman gate.” At this encounter Lucius and Bernician asked Jovian to hear them and the emperor consented; they asked Jovian to give them a bishop, Jovian replied that he had already done so; they complained that Athanasius

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1 The petitions were collected and recorded by Athanasius in his p. d av. 26.820-824; they are also referred to by Sozomen 6.5. The translation is from Coleman-Norton (1966) 294-298.
had been “in exile and in accusation for many years.” At this point a soldier intervened and urged the emperor not to listen to the petitioners because they were the “remnants and refuse of Cappadocia, the residue of the unholy George who desolated the city and the world.” Without bothering himself further, Jovian rode off into the camp.

The second petition of the Arians to Jovian in Antioch seems to have had more substance than the previous one. The petitioners claimed to have “charges and proofs” against Athanasius who, they added, was also exiled under Constantius and Julian. Jovian responded that he was aware of what Athanasius was accused and why he was exiled; such reasons were now in the past. With that the emperor rode on.

The third petition appears to have been more ordered and to have taken place in public during an auditorium, with the emperor likely to have been seated on a tribunal. The petitioners seem to have spoken from the crowd and stated that they had charges against Athanasius; Jovian replied that he would not hear accusations from the crowd, but rather that the petitioners should nominate two persons to present their case and two also from Athanasius’ side to defend him. The petitioners again asked for another bishop, “anyone except Athanasius.” Jovian replied that he had already given judgement on the matter, and that it was at an end; at which point the text says he became angry and said “strike, strike” (pheri, pheri). Coleman-Norton suggests that this is a transliteration of the original Latin ‘feri, feri’ and is an order from Jovian to the guards to “silence the petitioners.” Alternatively however, and perhaps more realistically, it was an order that the petition and the Arians’ demands should be struck down, i.e. dismissed.

What happened next would seem to indicate that the order was not one to silence the petitioners since they went on to complain that Athanasius would “ruin”

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3 See Millar (1992) 228-230 for verbal Imperial hearings.
Alexandria and, moreover, Jovian saw fit to answer that concern. Jovian replied that he had investigated Athanasius and had found him to be orthodox and to teach and think correctly. The Arian petitioners continued and complained that what Athanasius said was right but that there was deceit in his heart. Jovian replied that only God was capable of seeing into a man’s heart.

The Arians then changed tactics somewhat and asked Jovian to order them to attend a religious service. Jovian asked who prevented them; the Arians replied that Athanasius described them as heretics and dogmatics. According to the emperor, that was the duty of persons who “teach rightly.” The Arians again and for the last time asked that Athanasius be replaced. Jovial replied that they should leave and learn the faith from Athanasius; the emperor himself would be leaving in two days and that seems to have been Jovian’s method of drawing this hearing, and the whole affair, to an end.

Jovian’s imminent departure did not discourage the Arians from trying one last time to swing the proceedings their way. The same Lucius who made the first petition presented the fourth and final petition to Jovian as he was leaving the Palace in Antioch, possibly on his last day there. This time, before Lucius could even indicate what his petition was about, Jovian wished God’s curses on the companions with whom Lucius had travelled because they had not thrown him into the sea; Jovian also extended his curses to the ship in which Lucius had travelled. According to Athanasius’ record of events, even after the emperor had left Antioch the Arians tried to gain a hearing through one of the court eunuchs. When he heard of this further attempt the emperor apparently had the eunuch tortured in order to discourage other petitions against “the Christians.” It should be noted that Jovian did not take any action against the Arians themselves beyond cursing their means of travel. The torture of the court eunuch may indicate Jovian’s desire to see an end to the discussion and to

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4 Coleman-Norton (1966) 298 n13
curtail an avenue of approach for them rather than as an attack on the Arians themselves.

Of course Athanasius would tend to portray Jovian as sympathetic to the Nicene cause, but despite this it does seem fairly certain that Jovian had no desire to be drawn into ecclesiastical politics so early in his reign. Only with the persistence of the Arian petitioners, and at their third attempt, was Jovian obliged to involve himself in the affair and that obligation may have been due to the apparent circumstances of the third petition in that Jovian appears to have been sitting in his judicial capacity expecting petitions from the crowd who in turn expected a response and therefore he could not avoid the situation. When he finally did give some indication of his position, he reversed the policy of both his predecessors and restored Athanasius to the see of Alexandria. This seems counter-intuitive. In light of the recent defeats inflicted by the Persians and the Roman withdrawal from Mesopotamia, it may have been reasonable to expect Jovian to have continued with the policies of his Christian predecessor Constantius, at least until he felt himself secure enough in his new position to push forward his own religious policy. Lenski suggests that the restoration of Athanasius was in practice unavoidable as he had now become “an icon of orthodoxy in the west.”\textsuperscript{5} Socrates however has a revealing quote from the emperor in which Jovian is reported as saying that he “would not molest any one on account of his religious sentiments, and that he should love and highly esteem such as would zealously promote the unity of the church.”\textsuperscript{6} As such, Jovian may have been less inclined with doctrinal questions and hence more inclined to tolerate Athanasius for the sake of unity and peace, rather than because he necessarily agreed with the bishop.

The Ecclesiastical historians however are keen to present Jovian as an instinctive Orthodox Christian. Socrates records that he had long considered himself a Nicene rather than anything else and also records that on his accession he recalled all

\textsuperscript{5} Lenski (2002) 238
clerics who had been banished by Constantius and not recalled by Julian, closed the
temples, and prevented blood sacrifice. Sozomen records that he restored the
privileges previously due to the Church and clerics, but withdrawn by Julian; however
this should be qualified with evidence from Theodoret who indicates that Jovian only
restored the grants of money to one third of the amount set by Constantine. Such
steps are consistent with Ammianus’ verdict on Jovian that “he was an adherent of the
Christian faith and took some steps to exalt it.” Ammianus has no indication that
“some steps to exalt it” necessitated the denigration of other faiths.

Sozomen also contends that Jovian believed that the impiety of Julian had
resulted in the present military disaster; as such Jovian wrote to all the governors
ordering that they should allow the people into the churches and indicated that the
emperor regarded Christianity as the only true faith. Oth historians relate the same
story of Jovian’s initial reluctance to take the throne because, as a Christian, he was
unwilling to rule over pagans. Oth sources state that only when the soldiery
pronounced themselves to be Christians as well did Jovian agree to become emperor.
Socrates complements this story with another that Julian had ordered through an edict
that officers on his staff should sacrifice; Jovian, along with others including
Valentinian and Valens, offered their resignations rather than sacrifice. Although
since Jovian did indeed serve under Julian the extent or seriousness of the late
emperor’s demand may be questioned.

Jovian may have allowed himself to be inclined towards Christianity, but it
seems unlikely that he was by this stage such an ideologue that he would have gone so
far as to confidently define himself as a Nicene Christian and their narratives of his

6 Soc. 3.25
7 Soc. 3.24
8 Jones (1964) 89, 898-899, 1374n 66; Theod 1.11
9 Amm. Marc. 25.10.15: Christianae legis itidem studium et nonnum nam honori iens.
10 Soz. 6.3
11 Soz. 6.3, Soc. 3.22
12 Soc. 3.13 and 3.22
reluctance to rule over pagans as well as Socrates’ claims that he offered to resign rather than sacrifice and banned blood sacrifice, should be balanced by evidence from Ammianus on Jovian’s religion. Ammianus directly contradicts Socrates and records that on Jovian’s accession “victims were sacrificed on behalf of Jovian and their entrails inspected.” The signs from the entrails indicated that Jovian should abandon his initial plan of “staying within the rampart” and rather should move out. Ammianus does not say whether Jovian actually attended the sacrifice, but evidently neither Jovian (nor apparently his self-confessed Christian soldiers) were Christians of such an inclination as to be offended by blood sacrifice. Whether he acted because of what the augurs said is more uncertain; the hopelessness of the Romans’ situation was probably obvious enough without an inspection of entrails. However, Ammianus was present on Julian’s Persian campaign and so may well have witnessed the accession sacrifices, or heard of them first hand.

Further doubt on the degree of Jovian’s Christianity may be found in the Ecclesiastical historians themselves. Both Socrates and Sozomen record near identical letters written to the emperor by attendees of a council held at Antioch in 363. The council had resulted in the assembled clerics unanimously accepting the Nicene creed including the Arianising Macedonians and Acacians. In both versions, the letter reads almost like an exposition of the faith; the authors had taken the trouble to explain to the emperor the meaning of *homoousios* which presumably they would not have to have done if Jovian had already been a confirmed Nicene.

Similarly in his dealings with Athanasius, Jovian is thought to have requested a statement of faith from the archbishop; to what extent the emperor did seek such a statement, and why, or whether he was asking for details on Athanasius’ own faith is

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13 Amm. Marc. 25.6.1: *hostiis pro Ioviano e tis ne inspectis pronuntiatum est eum omnia pertitum si intra nallum romanisset.* Matthews (1989) 184-185
unknown, but Jovian did receive such a statement. However, as in the letter from the recent council of Antioch, Athanasius’ statement has more of a didactic quality and reads more like an introduction to the Nicene position than an encapsulation of orthodox belief; essentially it seems to be an attempt to capture the emperor for the Nicene faith. Athanasius sketched a brief history of the Nicene position informing the emperor that that position had been so since the beginning of time and had been affirmed by the fathers of the Church. He indicated how the Arians, as heretics, had sought to undermine it, but (with some exaggeration) he told the emperor how the Nicene faith was now the accepted mode of Christianity throughout the empire from Britain, Gaul and Africa to the East, save for a few areas of Arian resistance. Athanasius even included the text of the Nicene creed and finished off his statement by belittling the Arian position and affirming that they were only contending over the meaning of a few words. Such a précis of the Nicene faith and moreover inclusion of the Nicene creed would not, presumably, be necessary if Jovian was already committed to that faith as Socrates and Sozomen allege.

CTh. 9.25.2 of 19 February 364 issued to Secundus, Praetorian Prefect of the East, is the only law to have survived from Jovians short reign. It should be noted that this law was actually issued two days after Jovian’s death and eight days before the accession of Valentinian. Antioch is given as the place of issue. Jovian had left Antioch in early November 363 making slow progress to Constantinople and dying in Bithynia during the night of 16/17 February 364. Presumably it must have been authorised by the late emperor, but as it was pending for nearly four months (between Antioch and Bithynia) it must be doubted how urgent it was and therefore how much importance Jovian and his ministers attached to its provisions.

14 Barnes (1993) 159-160 is also dubious as to whether Jovian did indeed request such a statement. 26.813-820 Also quoted by Theodoret 4.3
15 Saturninius Secundus Salutius 3 PLRE 1.814-817. The law is referred to by Socrates 6.3
16 Barnes (1993) 160-161
The law was short (as it has survived) and ordered capital punishment for any man who sought to solicit “consecrated maidens or widows for the purpose of matrimonial union.”  

17 This law went beyond the provisions of Constantius’ CTh. 9.25.1 of 22 August 354 on the rape of consecrated virgins and widows. Whereas Constantius’ law ordered punishment of an actual rape, this law sought to prevent even an attempt to seduce or court consecrated widows or virgins. The death penalty had already been established for rapists in Constantius’ CTh. 9.24.2 of 12 November 349 so extending it to attempted rapists and seducers is evidently an attempt to extend protection of consecrated widows and virgins and because of that, this law may be seen as evidence of an increase in intolerance against those who sought to abuse consecrated women and therefore the Church. However it should be noted that the law does not restrict such protection only to Nicene Christian or even to all consecrated Christian women; quite conceivably the protection could be understood to extend to consecrated pagan women such as the vestal virgins.

Therefore there is a large amount of evidence which casts doubt on the verdict of Socrates in particular that Jovian was an innate Nicene Christian from his earliest days. If, therefore he was not a doctrinaire Christian, then as such he may not necessarily have been inclined to be intolerant towards other faiths. Such a lack of intolerance may most obviously been seen in CTh. 9.25.2 whose provisions could conceivably be extended to consecrated women of all faiths and, of course, his apparent tolerance of blood sacrifice on his accession.

The alentiniani: alentinian I

Valentinian’s reign as distinguished by toleration (moderamine) in that he remained neutral in religious differences neither troubling any one on that ground nor ordering him to reverence this or that. He did not bend the
necc o his subjects to his o n belie b threatening edicts but let such matters undisturbed as he ound them. (Amm. Marc. 30.9.5)

Ammianus’ description of Valentinian’s official religious attitude is reflected to a considerable degree in his extant laws as preserved in the Theodosian Code.\textsuperscript{18} The status of the Church was not enhanced either to the detriment of other religions or simply within its own right; although its status was substantively undermined, at times and in certain situations laws were enacted which curbed earlier Clerical activities and privileges, which would have been somewhat to the detriment of clerics and the Church. There is little evidence in the Code at least, that Valentinian was an “earnest Christian.”\textsuperscript{19} Legislation against heretics is the only blot against Ammianus’ glowing verdict, but even in these cases and in legislation affecting other groups, there is only one specific punishment laid down and only three instances in which derogatory sentiments are expressed.\textsuperscript{20} With this legislation Valentinian may have been constrained by earlier practices and attitudes towards heresy. Similarly, a brief law touching on paganism does stand apart from the others, but there are significant secular factors which caused this temporary departure. As with legislation under previous emperors, the particular political circumstances at the time do affect the nature of the laws themselves, as do the personalities of those involved in proposing and then accepting new legislation.\textsuperscript{21}

There are twenty surviving laws from the reign of Valentinian I in the Theodosian Code concerned with religious matters. Fifteen deal with the Church and Christianity,\textsuperscript{22} there are also eight letters from Valentinian to his officials on the

\textsuperscript{18} For other instances of Valentinian’s tolerance and flexibility on religious issues which are not contained within the Code see Lenski (2002) 238-241.
\textsuperscript{19} As alleged by Jones (1964) 139; See Nixon (1994) 295-297 on how Valentinian’s “Christian credentials” were established after his death and projected back into his reign, most notably by Ambrose for use in the Altar of Victory debate.
\textsuperscript{20} Soc. 4.1.12-13 “[Valentinian] offered no violence to the Arians” toi`s de; ajreianvzousin oujdamw` h
\textsuperscript{21} See Lenski (2002) 214-15 for similar sentiments expressed by the younger Symmachus.
\textsuperscript{22} CTh 16.2.17 of 10 September 364; 12.1.59 of 12 September 364; 9.40.8 of 15 January 365; 14.3.11 of 27 September 365; 15.7.1 of 11 February 367; 9.38.3 of 5 May 367; 8.8.1 of 21 April 368 370 373; 11.36.20
Ursinian dispute which survive outside the code. Only one law dealt with Christian-pagan relations, and another drew a line of demarcation between legitimate divination and harmful divination. Only two laws were concerned with heretics. There is one law that tangentially touches on relations with the Jewish religious authorities, but no laws have survived that may have dealt exclusively with paganism or Judaism as religions in themselves. There is also a restored inscription which has not survived textually, but orders the protection of all graves.

_valentinian and the Church_

*I am but one of the laity, and have therefore no right to interfere in these transactions let the bishops to whom such matters appertain assemble here the please.* (Soz. 6.7) Valentinian’s response to a petition of Arian bishops asking for his permission to call a council in 363.

CTh 16.2.17 of 10 September 364 was Valentinian’s first law on religious affairs; it was a short sentence forbidding wealthy plebeians from being “absorbed” into the Church. It was issued from Aquileia in September 364 as Valentinian was journeying to the west after he had bidden farewell to his brother in Sirmium. It was addressed to the “inhabitants of Byzacium” in North Africa. The law reflects long standing official concern of a loss of manpower and therefore financial resources from the councils into the Church. Constantine had addressed the problem at least twice in the 320’s (CTh 16.2.3 and 16.2.6). In terms of social status the Constantinian legislation had only mentioned decurions or their descendants although CTh. 16.2.3

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of 8 July 369; 13.10.4 of 22 November 368; 16.2.18 of 17 February 370; 13.10.6 of 30 March 370; 9.38.4 of 6 June 370; 16.2.20 of 30 July 370; 16.2.21 of 17 May 371; 16.2.22 of 1 December 372

CTh 16.1.1 of 17 November 364

CTh 9.16.9 of 29 May 371

16.5.3 of 2 March 372 and 16.6.1 of 20 February 373

CTh 7.8.2 of 6 May of 368 370 373

CIL 6.31982  ILCV 1.14

A sentiment echoed by Ambrose  p. 21.5 to Valentinian II

In full the law reads:  _plebeios divites ab ecclesia suscipi penitus arcemus_
also included those of “adequate resources” which presumably implied those of a lower status than decurions, i.e. plebeians. This law of Valentinian made clear the situation as it had doubtless existed in practice since Constantine and made clear that everyone who had sufficient wealth was to put the interests of his *municipium* beyond those of his church.

CTh 12.1.59 of 12 September 364 was also addressed to the inhabitants of Byzacium. It appears to be a partial revision of the previous law, and allowed a grudging concession to the Church. It allowed men of curial status to join the Church, but only on condition that they transfer their property to a “near kinsman” thus allowing the kinsman to serve the council; or, they would have to surrender their property to the council instead before joining the Church themselves. The law is retrospective: anyone who had already joined the Church without doing one or either of these two measures would have to leave the Church and join the council. Evidently the law was designed to allow some quarter to men of curial status if they really did wish to become clergy, but at the same time it preserved absolutely the ability of, and finance for, the municipal councils to function. However at the same time, the law extended to “any person who should choose service in the Church” thus including not just the clergy, but also, presumably, anyone else working for the Church. No punishments were laid down in either of these laws, although at the same time they did not offer any of the conciliatory rhetoric or measures which Constantine’s CTh. 16.2.3 had contained.

CTh. 9.40.8 of 15 January 365 was addressed to Symmachus, prefect of Rome, and prevented Christians from being “sentenced to the arena” for any crime at all. It ordered “severe censure” for any judge who gave such a sentence to a Christian and also, unusually, ordered that his “office staff should incur a very heavy fine.”

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30 *Qui partes eligit ecclesiae*
31 L. Aurelius Avianius Symmachus *signo Phosphorius* 3 PLRE 1.863-865
32 *Quicumque Christianus sit in quolibet crimine deprehensus ludo non adiudicetur. Nod si uis uam iudicum ecret et ipsa graviter notabitur et o iicium eius multis a mai imae subiacebit*
measure did not, of course, ‘cost’ the government anything, but doubtless it was appreciated by the Christian authorities as a privilege which set their criminal element apart from the Jewish and pagan criminal element of Rome. Presumably however, Christians were still liable to the sort of punishments which they would hitherto have faced in the arena. This law effectively said that Christians could not be punished in the arena, i.e. in public, but in private, they could, presumably, suffer the same punishments that they would hitherto have faced in the arena, i.e. death.

CTh. 14.3.11 of 27 September 365, also addressed to Symmachus, sought to dissuade bakers from taking “refuge in the Church” and thereby “evading service” as bakers. If any baker “should enter the Church” then he would not receive the benefits that clerics normally received. If a baker decided that he still wanted to become a cleric then there was apparently nothing in this law to prevent him, but he would remain liable for recall to his trade for the rest of his life.

CTh. 15.7.1 of 11 February 367 was addressed to Viventius,33 Prefect of Rome, which dealt with the issue of “men and women of the stage” receiving “sacraments of the Most High God.” The law said that if such actors took sacraments because of the “compelling necessity of imminent death” but survived, they could not then “be recalled, by any summons, to the performance of theatrical spectacles.”34 The law made clear the great reluctance of the authorities to allow actors to receive sacraments. Valentinian ordered: “with diligent sanction the exercise of due circumspection and oversight” so that only those who genuinely appeared likely to die would be given the sacraments; bishops would also have to give their approval in such cases. Also, the law laid down a bureaucratic procedure that would have to be followed whenever a actor was dying. Requests by them for the sacraments had to be “immediately reported to the judges so that inspectors may be sent and careful inquiry may be made” to

33 Viventius PLRE 1.972
34 scaenici et scaenicae si in ultimo vitae ac necessitate cogente interitus imminentis ad dei summis sacramenta properarunt si ortasius evaserint nulla posthae in theatricalis spectaculi conventione revocentur
determine whether “such extreme help be granted as a favour.”\textsuperscript{35} The government thus appears to be quite prejudicial against actors.

\textit{ut this apparent prejudice should be balanced against the practice of the Church to offer sacraments only to full and baptised members of the Church; of course baptism was also a sacrament and it was still common to administer baptism only at or near death in many cases. The law appears to be prejudiced against actors by making it more difficult for them to receive sacraments, because they had to show greater evidence of needing sacraments than other people, but there is nothing in the law to suggest that actors were not, or could not at least become catechumens, and at least the law made provision to enable actors to receive sacraments if that proved to be necessary. Rather than a law discriminating against actors, it may be more accurate to read this law as a measure to preserve the sanctity of the sacraments and to ensure that such sanctity continued and was not contaminated by the recipient’s future actions. This stance against actors receiving sacraments may well have been inspired by earlier Christian prejudices against traditional entertainments and in particular by Tertullian’s \textit{de spectaculis}.}

CTh. 9.38.3 of 5 May 367 was also addressed to Viventius and is a prime example of a law issued for an occasional purpose, with limited applicability and understood to be so. The law ordered the release of those “bound by criminal charges or who are confined in prison” on Easter day, except those “guilty of sacrilege against the Imperial Majesty, the person guilty of crimes against the dead, the sorcerer, or magician, the adulterer, ravisher or murderer.”\textsuperscript{36} The only sense in which the law was understood to be permanent was in the sense that the released persons were permanently free and unable to be sent back to prison. The law certainly shows an

\textsuperscript{35} \textit{ante omnia tamen diligent} \textit{i observari ac tueri sanctione in h} \textit{bemus ut vere et in e} \textit{tre} \textit{mo periculo constitut} \textit{i id pro salute poscentes si tamen antistites probant bene hic} \textit{i conse} \textit{nuntur. uod ut ideliter iat statim eorum ad indices si in praesenti sunt vel curatores urbi} \textit{um singularum desiderium per eratur} \textit{uod ut in} \textit{spec} \textit{toribus missis sedula e ploratione uaeratur an indulgeri bis necessitas possat e trema su ragia
influence of Christianity and this beneficent law doubtless increased the prestige of the Church in Rome, but its provisions are not confined to Christians: members of all religious groups were included. It should also be noted that since imprisonment was not a punishment in itself in the Roman Empire, those released would probably have been either awaiting trial or were convicted criminals awaiting execution in the arena, transportation to the mines or the Imperial estates. Since the law did not apply to those already under such routine sentences, and hence not in prison, the overall beneficence of this law is quite limited. As with CTh. 9.40.8 this latest law may well have been more symbolic of the beneficence of the emperor than of much practical benefit to many of the citizens of Rome and the large number of serious criminals who were to remain in prison ensured that those most serious to the physical, political and moral security of the state would have no opportunity to re-offend.

Viventius was Prefect of Rome during the riots between the supporters of Damasus and Ursinus over which of them should become the next bishop of Rome in 366-367. Ammianus writes that Viventius, an “upright and wise Pannonian” was “unable to end or abate the strife” and because of the violence had to leave the city for the suburbs. Ammianus indicates that the violence was such that on one day 137 people were killed in the basilica of Sicininus. Ammianus does not record how the rioting ended, but he implies that it was done so with violence: “and it was only with difficulty that the long-continued fury of the people was later brought under control.” As such it seems quite possible that this law was issued to release those who had been arrested and imprisoned by the authorities during those disturbances. The injection of a Christian element into the law would have reminded such Christians that the emperor too was a Christian, and in a sense therefore ‘one of them’; (“On

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36 b diem paschae nem intimo corde celebramus omnibus nos reatus adstringit carcer inclusit claustra dissolvimus. damen sacrilegus in maiestate reus in mortuos venec iussive male iuus adulter raptor homicida communione istius munenis separantur

37 Millar (1984) 125, 130-132 on the reluctance to use prison as a punishment. However, cf Acts 24.27 which indicates that St. Paul was in prison for over two years.

38 Amm. Marc. 27.3.11-13: integer et prudens anno ines nec corrige su carinis iventius nec molire; e erat aequo plebe postea deleniam.
account of the day of Easter, which we celebrate in the depths of our hearts.”) If it was indeed connected to the recent inter Christian riots in Rome, it may indicate their desire to diffuse the situation and was symbolic of the authorities desire to indicate that, as far as the government was concerned, the destructive events surrounding the disputed election were now at an end, those involved were forgiven and released and were aware of Imperial munificence.

CTh. 8.8.1 is of indeterminate date; the text indicates that it was issued on 21 April at Trier and during the joint consulship of the emperors and that could mean 368, 370 or 373. It was issued to Florianus, Governor of Venetia who is otherwise unknown. 39 The law ordered that no Christian could be “sued by tax collectors on the Day of the Sun, which has long been considered holy.” Valentinian ordered “peril against any person who should dare to commit this offence.” 40 No similar protections were offered for Jews or pagans on their holy days. This law, rather like CTh. 9.40.8 and 9.38.3 appears to be of more benefit to the prestige of Christianity (in that immunity from tax collectors was allowed to adherents of that faith for one day of the week) than of much practical benefit to individual Christians or to the Church in general since Christian tax payers would still have been liable to pay same amount of tax as before the law, but of course, only on one (or more) of the other six days of the week. 41

CTh. 11.36.20 of 8 July 369, issued to Claudius proconsul of Africa, is another law issued for a specific purpose. 42 It ordered that a certain Chronopius, an ex-bishop, because he had violated procedure by appealing against a decision of a court, should pay a fine of fifty pounds of silver. It appears that Chronopius had been convicted of some offence by a council of seventy bishops; he seems to have appealed that

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39 Florianus PLRE 1.367
40 die solis non dudum autus habetur neminem Christianum ab eis inveniri contra eos nisi id acere aequi sint hoc nostris statutis interdicto periculum sancientes
41 For the inability of clerics to prevent or mitigate the demands of the Imperial tax collectors see Brown (1992) 147-148
42 Petronius Claudius 10 PLRE 1.208
conviction to Claudius and appealing a just conviction was unlawful and so therefore he was fined for making that appeal. This law indicates that although decisions of synods were final, the secular authorities had to deal with situations that went beyond such finality.

CTh. 13.10.4 of 22 November 368 or 370 was addressed to the same Viventius who had received CTh. 9.38.3; he received this law as Praetorian Prefect of Gaul. (As with CTh. 8.8.1 the date is only determinable from the named consuls, Valentinian and Valens, and from the known date of Viventius’ Prefecture. The text does not give the place of issue.) This law exempted from the plebeian capitation tax male pupils under twenty, unmarried women, widows who were of such age that it was deemed unlikely that they would remarry and also “women who live in perpetual virginity.”

Like his earlier law granting an Easter amnesty (CTh. 9.38.3), the beneficiaries of this law could potentially have come from any religious group (as in Jovian’s CTh. 9.25.2). Christians were necessarily the main beneficiaries of the provision that women who were in a state of “perpetual virginity” should be exempt simply because such a phenomena was more common in Christianity than in other religious communities. Of course, the other groups exempt from the capitation were not disproportionately represented in the Christian community. No punishment was prescribed against anyone who might have sought to force the exempts of this act to pay the capitation.

CTh. 13.10.6 of 30 March 370 was slightly more explicit in its references to Christianity, it was also the last law addressed to Viventius. It repeated the provisions of the previous act that widows and school-age pupils should not pay the capitation tax and also ordered that “any women who have dedicated themselves to the perpetual service of the sacred law shall also be held exempt from such public service.”

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43 in virginitate perpetua viventes
44 similiter devotione habeantur immunes et si, etae sacrae leges obse, ui no perpetuo dedicarunt
From his legislation it seems fairly certain that Viventius was a Christian, but like Valentinian he does not emerge as a doctrinaire Christian intent on restricting the practical benefits of Christianity to Christians alone. However, by promoting Christianity through reasonably minor yet beneficent measures Viventius was establishing the faith in a more subtle, and therefore perhaps more lasting manner, than might have been achieved otherwise. His failure to mention Christianity in his CTh. 13.10.4 (a law obviously applicable to Christianity) indicates that favour should be shown to the mode of life which was (as it happened) a part of Christianity. This indicates the degree of Christianisation that had been achieved by this time or rather that the bases on which Christianity rested at this period of the fourth century were in themselves ‘good things’ and should be encouraged by the state through legislation; that such legislation would also therefore benefit Christianity would have been expected, but was not necessarily the primary motivation of such legislation.

CTh 16.2.18 of 17 February 370 was issued to Claudius, the “Proconsul of Africa.” The law ordered that the “regulations of the sainted Constantius which clearly existed at the end of his life shall be valid.” That which was “done or decreed when the minds of the pagans were aroused against the most holy law by any depravity shall not acquire validity under any pretext.” This law was evidently aimed at abolishing any extant Julianic legislation on religious affairs (and especially that which had been directed against the Church) and to restore the status quo that had existed before Julian’s reign. This would probably not have been seen as anti-pagan by contemporaries and even pagans may have viewed this law with a certain degree of relief, as it formally ended any official changes that may have come about as a result of Julian’s peculiar interpretation of paganism. It should be noted that this law

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45 Petronius Claudius 10 PLRE Vol 1 208 This law gives his position as *pro consul*um *r*ic*ae*

46 *nam ultimo tempore divi constanti sententiam nisse clarnerit valeat nec ea in adsimulatione ali ne conval esant nae tunc decreta vel acta sunt cum paganorum animi contra sanctissimam legem nibusdam sunt depravationibus cita ti*

47 Lenski (2002) 217 claims that Valentinian (and Valens) merely “reversed his Julian’s reversal”

48 For Julian’s peculiar paganism and Ammianus’ criticism of that and other features of Julian’s reign, see Matthews (1989) 112-114, 469; Amm. Marc. 22.12.6-7, 25.4.17
repealing what may have remained of Julian’s pagan reformation was passed nearly seven years after his death; evidently whatever had remained was not given top priority.

The only derogatory reference in this law occurred in the last sentence in which the “minds of the pagans are aroused by any depravity (depravitionibus)”.

Depravatio indicates a moral error or perversion, a distortion, or a deviation from correct behaviour. The law was evidently suggesting that pagan minds might be susceptible to deviant ideas. But more importantly, the law was indicating that that which had been decreed under (the unnamed) Julian was simply wrong. Rather than just saying that whatever had been decreed by Julian was abolished, the law went a little further and stated that his legislation was a moral error. Although this law was not particularly intolerant in itself or in what it decreed, it was clearly demarcating a difference between the legislation of the Christian Constantius and the pagan Julian. As such, it was prescribing what was acceptable and that which was not. At the same time, however, the law laid down no penalties against anyone who may have continued to enforce, or be guided by, Julianic legislation.

**CTh. 9.38.4 of 6 June 370,** repeated an Easter amnesty for the citizens of Rome. It was addressed to Olybrius and contained the same provisions as 9.38.3 of 5 May 367. It contained the same provisions and categories of those to be released as the earlier law; i.e. it was not applicable to murderers, adulterers, traitors, magicians, sorcerers or rapists. The disturbances between the followers of the rival bishops Damasus and Ursinus were still continuing in 370 and therefore this law may have been passed for the same reasons as CTh. 9.38.3; that of the authorities trying to demarcate an end to the affair, and therefore the violence too.

**CTh 16.2.20 of 30 July 370** was, unusually, addressed to a bishop, Damasus of Rome. The law was apparently designed to combat clerical legacy hunting and forbade “Ecclesiastics, ex-ecclesiastics and those men who wish to be called by the name of
Continents” from visiting the homes of “widows and female wards.” By using the term *ecclesiasticus*, the law extended the prohibition to the widest possible extent by potentially including all persons attached to the Church rather than just to *clerici*. Ecclesiastics who violated this law were to be tried by the “public judges”, that is to say in the civil courts. As bishops were also ecclesiastics, this law would appear to be a partial repeal of Constantius’ CTh 16.2.12 of October 355 which gave bishops the right of being tried only in courts consisting of fellow bishops. This law of Valentinian had been comprehensively thought out and aimed to prohibit any means through which clerics could acquire any benefit from such women either during their lifetimes or after in their wills, and even through the agency of a third party. Furthermore, if such women did give or bequeath anything to the ecclesiastics, then it would be confiscated to the treasury. Only ecclesiastics who were relatives of the women would be able to inherit anything from them.

Although it may seem curious that a piece of legislation which was directed against the interests of the Church and its members was addressed to the bishop of Rome, in this instance the force of the law was almost certainly being directed against Damasus personally. He had acquired a reputation for frequenting the homes of older elite women and was ridiculed as “the matrons’ ear tickler.” This law may also be indicative of a distaste which Valentinian felt for the urban clergy and the conflict in 366 between Damasus and Ursinus over the Roman pontificate which left 137 dead in one day. Therefore this law may have been an attempt to prevent the accumulation of wealth by the Church which was thought to inspire this sort of violence. Valentinian would not have been alone in this criticism of the Roman bishop; Praetextatus apparently joked with Damasus that he would become a Christian.

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49 Q. Clodius Hermogenianus Olybrius 3 PLRE 1.640-642
50 *eclesiastici aut ecclesiastici vel ni continentium se volunt nomine nunccupari viduarum ac pupillarum domos non adeant*. Pharr translates *continentium* as “Continents” but perhaps it is more accurate, but clumsy, to translate *continentium* as ‘those who wish to be chaste.’
51 As CTh 12.1.59 did nine years earlier
52 publicis indiciis
53 *C.S. 35.1.10 matronarum auriscalpius*, Kahlos (1997) 35-54
“immediately” if he was made bishop of Rome. Ammianus too recorded that whoever was bishop was “assured of the gifts of matrons” as well as other privileges and signs of wealth. In order to secure the episcopacy candidates would “engage in the most strenuous competition to attain their goal.” Ammianus went on to say that the Roman bishop would be “truly happy” if he adopted the humble clothing and demeanour of a provincial bishop. However it should be noted that there is an obvious, but perhaps only minor, chronological problem in that the law was issued as much as three years after the biggest incident of violence following the election.

The evidence that the law was directed against Damasus personally, and against his notorious activities seems secure, but equally, the law may also have been concerned with securing the resources of families and with reinforcing existing legislation which aimed to ensure that wealth flowed unimpeded from one generation to the next. Constantine’s CTh. 2.24.1 of 29 August 324 had reinforced the rights of children and grandchildren to inherit their father’s estate even if that was not the intention of the will, although only in circumstances in which the will was in some way deficient legally. Similarly, CTh. 8.16.1 of 1 April 320 protected whatever was owned by wives from interference by their husbands and three laws (CTh. 8.18.1-3) issued throughout Constantine’s reign, proceeds from this principle to ensure that children could inherit from their mother whatever property she had held independently from her husband, again without interference from him. However, it should be noted that these examples from Constantine’s reign are more exact in their pursuit of securing family wealth than is Valentinian’s CTh. 16.2.20.

54 Jer. c. Ioh 8 (PL 23.379) Facite me Romanae urbis episcopum et ero protinus Christianus
56 For the date see Corcoran (1996) 315
57 Humfress (2006) 212-218; Grubbs (1995) esp.115-117 on Constantine’s laws and 138-139 on CTh. 16.2.20; see also, more generally, Grubbs (2001); Giardina (2000); Arjava (1996)
CTh 16.2.21 of May 371 was addressed to Publius Ampelius. In this law, the western government decided for the first time to prescribe a time period after which clergy were liable for recall to the councils.\(^{\text{58}}\) The law reinforced the existing ruling that clergy were exempt from service on the councils, but only if they had “devoted themselves to the cult of our law before the beginning of our reign”, i.e. before 364.\(^{\text{59}}\) The “others”, who had become members of the clergy after such time were to be recalled to the councils. This somewhat flowery language appears to simply mean that those who had obeyed the existing law under Valentinian’s predecessors and had only joined the clergy when they were unable to serve in the councils may continue to remain in the clergy; but those who had done so since the beginning of Valentinian’s reign were liable for recall. As such, the law was a little harsh and took no account of clergy who may have been unable to fulfil the responsibilities of office, unlike previous legislation on this subject.\(^{\text{60}}\) As such the law does not appear to have been particularly well drafted. It also used the term *ecclesiasticus* rather than *clericus* to include the widest possible Church membership in its scope.

The comprehensiveness of CTh. 16.2.20 (through its use of *ecclesiasticus*) and that it was intended to include all members of the Church hierarchy and not just Damasus, is evidenced by CTh 16.2.22 of 1 December 372 addressed to Paulinus, Governor of New Epirus.\(^{\text{61}}\) In this law the emperor specified that the “general rule of the foregoing decree i.e. CTh 16.2.20 shall be valid and shall extend also to the persons of bishops and virgins as well as to the other persons who are included in the foregoing statute.”\(^{\text{62}}\) Presumably Paulinus had been unsure whether the earlier law related to all churchmen; an uncertainty which was perhaps based on CTh 16.2.12. These two laws indicate a close collaboration between the separate administrations of

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\(^{\text{58}}\) Publius Ampelius 3 PLRE 1.56-57

\(^{\text{59}}\) *si tamen eos ante ortum imperii nostri ad cultum se legis nostrae contulisse constiterit ceteri revocentur ni se post id tempus ecclesiasticis congregarunt*

\(^{\text{60}}\) *orma praeecedentis consulti etiam circa episcoporum virginum ue personas et circa alias narum statuto praecedenti acta complete io est valeat ac porrigatur*

\(^{\text{61}}\) Paulinus 6 PLRE Vol 1 676
East and West. New Epirus, in north-west Greece, was within Valens’ realm and yet the office of Paulinus was evidently still informed of, expected to be cognisant of and act upon, legislation from Valentinian which had originally been addressed to officials within the western empire two years previously.

Valentinian and the Ursinians

Valentinian had to deal with inter Christian rivalry within two years of his accession. The riots and disturbances between the supporters of Damasus and Ursinus referred to above in connection with CTh. 9.38.3 of 5 May 367 continued to be a problem in Rome until 370. Beyond that however, the dispute does not appear to have been lasting and it does not appear that the Ursinians were ever regarded as a schism, still less a heresy. There are eight letters from Valentinian to his officials in charge of Rome (most of which are undated) which deal directly or indirectly with the Ursinian problem over the course of approximately eighteen months.63

The first letter was issued in the names of all three emperors to Praetextatus Prefect of Rome on 12 January 368.64 On Praetextatus’ suggestion, the letter ordered the expulsion of “Ursinus’ friends and ministers whom your sublimity i.e. Praetextatus has thought ought to be removed for the sake of the peace of the eternal city.”65 However, Valentinian’s expulsion order was reasonably mild and allowed them to go wherever they wished (except Rome) so that they would be seen in their new adopted homes as “foreigners, rather than exiles,”66 and where they could carry out their own religion without bothering others. Valentinian did not specifically state

63 All the texts are in CSEL 35. Lenski (2002) 239-240 summarises Valentinian’s involvement and believes it is: “the best example of Valentinian’s tolerance of religious difference.” Quote at 239. See also Kahlös 1997 for some background of the dispute and Praetextatus’ involvement in its beginning.
64 CSEL 35.7 When giving these references I have chosen to use the volume number followed by the letter number in contrast to Coleman-Norton who prefers volume number followed by page number. Except when indicated I have used his translations.
65 *Ursini sociis ac ministris, quos praecelsa sublimitas tua propter quietem urbis aeternae de medio putauit esse tollendos.* Coleman-Norton prefers “associates and accomplices” for *sociis ac ministris*
66 ut peregrinari potius quam exulari videantur
that Ursinus himself was exiled, but it can reasonably be assumed that he was exiled
along with his supporters. Valentinian finished his letter with the hope that his orders
of exile would restore concord to Rome: “after the inciting discords have been
removed, concord may again be established in the populace.”

Valentinian’s second letter on the issue is undated, but since it was also
addressed to Praetextatus and referred to the exile of Ursinus it must have been issued
after the previous letter and before the third letter written to Praetextatus on the
matter. The letter shows that Valentinian was subject to lobbying on the part of
Damasus and more importantly that the emperor responded favourably, to a degree, to
such lobbying. Valentinian referred to “the petition of the defenders of the Church of
the City of Rome, or of Damasus, the bishop of the sacred law.”

As a result of such
lobbying, and in this letter, Valentinian appears to view the affair as being not just
prejudicial to the peace of Rome, but also damaging to the Church. As such he also
expressed his concern to see unity restored to the church in Rome.

Valentinian began the letter by referring to his exiling of Ursinus and therefore,
but indirectly, to his own efforts to achieve church unity. Valentinian also thought
that the cause of the dispute was Ursinus himself, rather than the wider Ursinian
community: “...y the removal of the author of dissension, all cause for discord ought to
be settled” and Ursinus was the “tinder of the quarrels.”

Damasus’ (lost) petition
apparently said that the Ursinians still occupied one church in Rome and Valentinian
ordered Praetextatus to restore this church to Damasus. He also revealed some
religiously motivated concerns to heal the dispute: “...fest from this circumstance some

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67 dummodo incentinis disensionibus ablatis Irma sit rursus in plebe concordia
68 CS 35.6: nam ob rem praecella sublimititas tua de ensorum ecclesiae urgin omnes sive Damasi sacrae
levis antiquitas petitione perspecta
69 Dissensionis auctore sublato omnibus causis discordiae sopienda est
70 omitem iurgiorum
tumult again may arise, since not trifling is the image of schism.” Valentinian ordered the church to be given to Damasus and the reason for this is, Valentinian explains: “that all may know with what zeal unity must be cultivated, with what peace all must live, since the congregation, everywhere permitted to assemble, when the churches have been restored, demands the fullest harmony.”

Valentinian’s lack of animosity against Ursinus is also evidenced by his third letter in which he recalled Ursinus and his supporters from exile. Again the letter is undated, but as it is also addressed to Praetextatus as Urban Prefect it must have been written not long before the end of Praetextatus’ term as Urban Prefect which would have been in the autumn of 368. Therefore Ursinus’ exile only lasted a few months. Valentinian’s motivation in recalling the Ursinians was, perversely, the same as that which had caused him to deprive them of their last church in Rome. Valentinian appears to have thought that the exiles’ return to Rome would enhance unity and harmony in the Church: “where harmony ought to be greatest, namely in either the seat or the state of the Church, each of which situations demands both moderation and reverence on Valentinian’s part.” That would appear to be an exceptionally magnanimous action since, and the letter goes on to imply this, the Ursinians had not admitted to any wrongdoing, during or after, the disputed election. Nor did Valentinian admit, tacitly or otherwise, that exile had been wrong or inappropriate, on the contrary: “the punishment seems to have been just, which has settled by chastisement the faction riotously undertaken there.” Valentinian evidently hoped that the punishment had served its purpose and now, hopefully, the Christians in Rome could regain cordial relations with each other.

71 Littera tumultus oriatur, tando uidem non parva sit separationis e igies.
72 Si singuli universi se cognosant, no omnibus studio sit colet a omnibus pace vivendum cum ecclesiis restitutis plenissimam postulet congregatio ubi ne permissa concordiam.
73 C.S. 35.5; The last law addressed to Praetextatus is CTh. 1.6.6 of 20 September 368.
74 Ubi ma ima debet esse concordia, scilicet in ecclesiis vel sede vel causa, nara num rerum utraque, ut et modestiam poscit et cultum.
75 Licet insta videatur, nisse vindicta, nara illic turbulentur, e ercitam actionem coercitione sedavit.
In order for the “greatest harmony”\textsuperscript{76} to be secured for the Church, “moderation and reverence”\textsuperscript{77} were demanded. Valentinian also admitted that he had “compassion, both because of our nature’s leniency and on account of consideration for religion itself and for the law.”\textsuperscript{78} Therefore Praetextatus was ordered to allow “all who are of that condition and guilt” to return home. Valentinian’s concern for “religion” and for church harmony may indicate that Damasus’ influence over the emperor’s policy was still a factor, at least in rhetoric, but by now apparently a diminishing factor. The only condition Valentinian imposed was that if the Ursinians reverted to their former ways and created trouble, then they should receive the “severest sentence”\textsuperscript{79} since “they who cease not to sin after pardon can deserve no pardon.”\textsuperscript{80}

Correspondence between the emperor and his officials at Rome on the Ursinians continued under Praetextatus’ successor Olybrius.\textsuperscript{81} The next three letters on the Ursinian affair are, again, not dated and their exact sequence is difficult to determine, but the first seems likely to have been a reply from Valentinian (\textit{CSEL} 35.10) to a letter, now lost, which Olybrius had probably written at the beginning of his tenure. It seems reasonable to ascribe the letter to the beginning of Olybrius’ term because Valentinian spent more than half of the letter assuring Olybrius of the faith that he had in the new prefect. More importantly for the purposes of dating, Valentinian laid out some ‘ground rules’ that should apply to their correspondence. Valentinian told Olybrius that it was not necessary for him to refer every case to Valentinian for judgement, but rather that Olybrius should apply some of his own judgement to cases and to take some responsibility for himself.

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\textsuperscript{76} \textit{maxima…concordia}
\textsuperscript{77} \textit{modestiam…et cultum}
\textsuperscript{78} \textit{et propriae lenitate naturae et ipsius religionis ac legis contemplatione miseremur}
\textsuperscript{79} \textit{severissima…sententia}
\textsuperscript{80} \textit{nullam enim possum veniam promereri…ui non desinunt peccare post veniam}
\textsuperscript{81} Olybrius PLRE 1.640-642: his prefecture lasted from 1st January 369 to Autumn 370
\end{flushleft}
Valentinian’s conciliatory gestures towards the Ursinians, shown in his last letter to Praetextatus, seems to have borne some results as an irenic state of the church in Rome continued at least into the first few months of Olybrius’ prefecture. In his original and now lost letter to Valentinian Olybrius referred to the present peaceful state of the Church in Rome which in his reply the emperor noted with satisfaction: “these persons, who had disturbed the most sacred law by riot and sedition, have been restrained.” This must be a reference to the Ursinians. Valentinian also referred to the condition of the grain supply in Rome which, he says, “has gradually begun to return to its former condition.” It can only be speculation, but it is possible that the sectarian violence between the Christian factions may have been exasperated by the threat of impending famine.

However, the peace between the rival factions in Rome does not appear to have lasted. Possibly in 370, but at any rate at some point after the previous letter to Olybrius and before the end of Olybrius’ prefecture in autumn 370, Valentinian sent a second letter to Olybrius and a near identical letter to Aginatius, the Vicar of Rome. Again, the letters are undated, but in all probability they were sent simultaneously. Valentinian's letter to Olybrius gives the impression that the emperor was not being kept fully aware of events in Rome; Valentinian indicated that disturbances in Rome had been brought to his attention by Aginatius: “as the writings of the most distinguished Aginatius have witnessed, to disturb peaceful affairs still delights some persons, and repeated uproar is incited at meetings outside the city’s walls.” While Olybrius had apparently, in his latest letter to Valentinian, assured the emperor that “there can be no discord in the city of Rome and that the people of the Christians can enjoy profound security in peace.” Perhaps there was some tension between

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82 C.S 35.10: *cum et eos esse compressos ni sanctissimam legem tumultu et seditione miscuerant*
83 annonam communis omnium patriae paulatim in statum pristinum redire coepisse testatae sunt
84 Aginatius PLRE 1.29-30
85 C.S 35.8: *sed nantum ginatii clarissimi viri vicariae prae ectoriae scripta testata sunt adhuc ali nantos placata miseree delectat et tramunatis ne conventibus re nuns strepitus e citatur*
86 ut nulla in urbe oma possess esse discordia Christianorum ne populus pro anna in otia securitate gaudere
Olybrius and Aginatius and the duplication of the order was designed to impress upon both the necessity of securing peace and harmony in Rome and to ensure that both would work in conjunction, or even competition, to achieve the same end. Thus Valentinian concluded his letter to Aginatius: “and you two will easily perform what you are able to perform individually.”

Therefore in his letters to both, Valentinian ordered that the Ursinians should not be allowed to gather within twenty miles of the city of Rome; noticeably, however, he did not order the execution of the “severest sentence” as he had indicated he would in his last letter to Praetextatus (CS 35.5). In both of these letters Valentinian stated his expectation that this would bring peace and stability to the city; he did not indicate that the expulsion was designed to enhance the status of the true church or that the Ursinians were religious dissidents. Any religious element in the dispute was by no means paramount for Valentinian; the issue was essentially one of public order. y expelling the Ursinians from Rome, “settled peace will be granted to the people for all time,” he told Olybrius and to Aginatius he wrote of the “restoration of peace and of tranquillity.” In these letters, and in contrast to the last two letters written to Praetextatus (CS 35.6 and 5), there does not appear to have been any influence from Damasus.

Valentinian used little derogatory rhetoric in either of these letters. In his letter to Olybrius the Ursinians were described as “dissenting people” and as a “mad congregation.” Although in his letter to Aginatius, Valentinian went further and described them as “persons whom factious disunion delights” and as an “impious gathering of factious persons” (actiosorum impios coetus). y the fourth century, actiosus had developed from its earlier meaning of ‘factious’ into one which may perhaps be better translated as ‘treason.’

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87 CS 35.9: et acile praestabitis duo non singuli praestare positis
88 CS 35.8: plebi in aevum omne tribetur
89 CS 35.9: paci tran nullitati ne reparandae
Evidently Aginatius received more rhetoric than Olybrius. However, there is no evidence that Aginatius was a Christian and indeed there may be some evidence that he was not.\(^9\) Therefore, there can be no speculation that Valentinian was attempting to build alliances with fellow Christians in Rome against a common religious opponent. However we do know from Prudentius that Olybrius, the recipient of less invective, was a Christian.\(^9\) Although Olybrius appears to have been reluctant to inform the emperor of disturbances in Rome, because he was a Christian (and presumably an orthodox Christian, like Damasus) Valentinian may well have thought that his assistance in expelling the Ursinians could be taken for granted. Whereas the support of a non-Christian could not be relied upon in dealing with the unorthodox and therefore Valentinian had to increase the rhetoric in his letter to Aginatius to impress upon him the importance of the issue.\(^9\) (On this basis therefore, it may be best to prefer ‘treason’ as opposed to ‘factious’ as a translation of *actiosus*.)

At the same time it should be noted that the rhetoric contained in Olybrius’ letter, especially the phrase “dissenting people” had a Christian meaning that was more obvious than any of the rhetoric in Aginatius’ letter. Essentially it appears that Valentinian used less, (but more Christian) rhetoric when writing to a Christian official than he did when writing to a non-Christian official. Paradoxically, therefore, the Christian emperor appears to have been more intolerant of religious dissidents in his letters to non-Christian officials than in those written to his Christian officials.

The expulsion of the Ursinians from Rome does not appear to have prevented them from continuing to disturb the peace. As Valentinian had with Olybrius and Aginatius, the emperor issued identical and simultaneous orders in two letters, one to

\(^9\) *CS* 35.8: *populo dissenentiti* and *insana collectio*

\(^9\) Aginatius was hurriedly tried and executed by his successor Maximinus 7 on charges of using black magic to seduce a woman. Amm. Marc. 28.1.50-56

\(^9\) Prud. *c. S mm.* 1.554-557

\(^9\) For similar reasons Constantine, when announcing the 314 Council of Arles, went to greater lengths in expressing his concern over the Donatist dispute in his letter to Aelafius the Vicar of North Africa than he did to Chrestus, bishop of Syracuse. Euse 10.5.21.24 and Opt. App. 3 See above.
each of their successors, Ampelius prefect of Rome and Maximinus his vicar. Both letters named eight associates of Ursinus who should also be expelled from the city. Ampelius was prefect from 1 January 371 to at least 3 September 371 and Maximinus was vicar between 370-371 therefore the letters must have been written in 371.94

In his letter to Ampelius Valentinian gave his reasons for the expulsion of the Ursinians as “favouring the harmony of the Christian people, providing also for the peace of the most sacred city,”95 but at the same time Valentinian took some care to indicate that his line against the Ursinians themselves was not hardening as such. He referred to an earlier (and now lost) decision of his to confine Ursinus to Gaul, but had decided to mitigate that order and instead order that Ursinus should not enter Rome or its suburbs; this is presumably a reference to his letters to Olybrius and Aginatius. Nevertheless, Valentinian intended that the punishment he was about to order was made in “the hope of future amendment.”96 Valentinian also ordered that if the eight named exiles of this letter “thought that our gentleness’ ordinance can be transgressed” then he should no longer be treated as a cleric, but as an ordinary citizen who might thereby feel the full “severity of public punishment.”97 Presumably therefore the offenders would not be eligible for trial by other clerics, but would be dealt with by the secular courts. Ostensibly this is a diminution of the Ursinians’ rights as clerics, but in cases of schismatics, or potential schismatics, the secular courts may well have been more lenient than the ecclesiastical courts which in Rome would certainly have been filled with Damasus’ supporters. Therefore Valentinian was able to give the impression that he was being harsh against the Ursinians, and perhaps that he regarded them as being ‘non-priests’, but in practice he may well have been attempting to curb Damasus’ influence in the dispute and prevent his supporters from exacting revenge.

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94 Publius Ampelius 3 PLRE 1.56-57; Maximinus 7 PLRE 1.577-578. Ampelius’ first dated law is CTh. 15.10.1 of 1 January 371 and his last dated law is CTh. 6.7.1 of 3 September 372
95 C.S. 35.11: aventus concordiae populi Christiani nieti etiam urbis sacratissimae providentes
96 ac spe emendationis uturae
97 ut si uiipiam e memoratis sacrilega intentione statutum mansuetudinis nostrae transgrediendum putauerit non iam ut Christianus sed ut legum ac religionis ratione seclaus severitatem publicae animadversionis agnoscat
and thereby, perhaps, perpetuating the dispute. Valentinian may well have learned from Constantine’s experience in the Donatist dispute that giving clerics the power to adjudicate on the affairs of other clerics was not likely to secure a peaceful solution.

The repeat of the order to Maximianus was also made “for the sake of the Christian people’s peace and the obedience owed to religion and to the laws.”\(^9\) Valentinian also repeated the provision that offenders of the exile order should not be dealt with by the clerical courts, but rather by the secular authorities; however this time, Valentinian seems to be referring specifically to Ursinus, rather than to the other exiles and indeed, most of the provisions of this letter are directed towards Ursinus himself rather than his followers. In this letter, Valentinian expanded upon the question of whether the Ursinians should be judged by clerical or secular officials and indicated that Ursinus was not someone who should be dealt with strictly by the clerics since he was: “a traitorous reading for \textit{actio} person and a disturber of public peace and an enemy of laws and of religion.”\(^9\) Valentinian finished his letter by indicating his concern for public order to Maximianus; Ursinus and his followers should be excluded from Rome and its suburbs “lest, when an occasion has been presented by the nearness of the disturbers, we should challenge the religious people’s zeal to perhaps some outburst.”\(^10\)

In terms of rhetoric Ampelius received more and perhaps stronger rhetoric than did Maximinus. Arguably, the rhetoric which Valentinian used in his letter to Maximinus was a little more sophisticated than the occasionally caustic language which the emperor employed in his letter to Ampelius. In the Ampelius letter, Valentinian began by indicating that by one means or another Valentinian was acting under the guidance of a superior force: “Rightly it has been granted to our Gentleness’ feelings

\(^9\) CS 35.12: \textit{propter quietem populi Christiani et debitam religioni ac legibus}

\(^9\) \textit{sed ut hominem actionum perturbatorem ne publicae tran nullitatis legem et religionis}

\(^10\) CS 35.11: \textit{ne occasione praestita vicinitate in nitorum ad ali nam orisant voci erationem religiosi populi studia provocemus}
either by divine providence or by nature’s serenity” that the punishment should fit
the “delinquents’ wickedness.” He referred to Ursinus as “the disturber of the public
tranquillity” the “application of his precepts” would lead to disorder. Therefore
Ursinus’ exile was necessary to prevent him instilling Rome and its suburbs with “the
infection of his own wickedness.” The named eight were “associates of this error,”
and they were those “whom the imitation of wickedness embraces.” Valentinian
indicated that any of the eight who thought they could disregard his order of exile
would be acting with “sacrilegious intention.”

His letter to Maximinus was without the strong rhetorical invective of his letter
to Ampelius. The emperor did begin in a similar vein by invoking divine guidance for
his actions and the origin of such guidance was given in a less ambiguous manner: “y
divine providence such appointment has been made for our gentleness.” Only “divine
providence” guides Valentinian in this letter. Valentinian referred to the Ursinians
as “delinquents” although it may be better to use ‘sinner’ for delinquentum. Ursinus’
exile was necessary to ensure the “Christian people’s peace and the obedience owed to
religion and to the laws.” Any infringement by Ursinus of his exile would be an
“unpleasant obstinacy.” More importantly, and in such a case he should no longer
be treated as a Christian since “his spirit’s restlessness separates him from religion’s
fellowship, but as a traitorous [preferred to Coleman-Norton’s use of ‘factious’ for
actiosum person and a disturber of public peace and an enemy of laws and religion.”

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101 inre manugetudinis nostrae sensibus vel divinitus datum est vel tran nilittate naturae
102 delin nentum acinore
103 perturbatorem tran nililitatis publicae
104 applicatione morum
105 ne utiae suae contagionem coetur in undere
106 erroris eius consortibus
107 nos ne utiae similitudo complectitur
108 sacrailigia intentione
109 CS 35.12: est istuo divinitus institutum mansuetudini nostrae
110 delin nentum in the text, Coleman-Norton prefers delinquents to sinners
111 propter nitem populi christianii et debita religioni ac legibus disciplinam
112 ingrata pertinacia
113 non a communiore religionis mentis in niitudo determinat sed ut hominem actiosum
perturbatorem ne publicae tran nililitatis legum et religionis inimicum

119
Towards the end of the letter Valentinian referred to the eight additional exiles as “associates of his restlessness and error.”

Thus it appears that the emperor used a greater quantity of invectives in Ampelius’ letter, but preferred to use religious invectives (though fewer invectives overall) in his letter to Maximinus. In a sense, Valentinian was being more technical in his description of Ursinus’ faults in his letter to Maximinus than he was to Ampelius. Unfortunately, there is no external evidence of Maximinus’ religion, but the use of delinuentum to refer to the Ursinians and the emperor’s more technical language against the Ursinians may indicate that Maximinus was a Christian, if it is accepted that it appears to be a feature of the emperors’ technique in letter composition that non-Christian officials should have the importance of acting against Christian religious dissidents impressed upon them to a greater degree than was necessary for Christian officials. There is evidence from Libanius that Ampelius was a pagan and so the emperor had to employ stronger rhetoric, and rhetoric with a religious flavour, in that letter than he did in his letter to Maximinus, who, if he were a Christian, would be able to appreciate the significance and importance, that is the technicalities, of what Valentinian was saying. As with his letters to the Christian Olybrius and the (probably) non-Christian Aginatius, in these letters to the pagan Ampelius and to the (probably) Christian Maximinus, Valentinian gives the impression of being more intolerant of religious dissidents when writing to pagans than when writing to Christians.

These two letters were the end of Valentinian’s involvement with the Ursinians and for the remaining four years of his reign he does not appear to have had to involve himself in the dispute again. They demonstrate that Valentinian consistently had no wish to create martyrs throughout his dealings with the Ursinians. Although the rhetoric increased, the sentences imposed were never more than exile; that the imperial...

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114 in inquietudinis suae errorisue consortibus
bark was worse than its bite, is most clearly demonstrated in the threat of imposing the “severest sentence” (in the last letter to Praetextatus, CSEL35.5) which was never enacted. Most interestingly, the letters appear to show that the emperor felt obliged, for practical purposes of demonstrating why action should be taken against a particular Christian group, to show more intolerance towards the Ursinians to a non-Christian official than to a Christian one. This could indicate that for Valentinian the religious aspect of the dispute was actually more important than it may appear. No religious rhetoric or invective would have been necessary if the issue was purely, or primarily one of public order since in that case officials of whatever religious inclination would have needed no impetus from the emperor to act with all necessary force. ut in the case of a religious dispute, in order to oblige officials to act the opposite may have been necessary depending on the religious affiliation of the official.

ut the lack of practical action of Valentinian's part (beyond exile) raises the more plausible interpretation that the rhetoric he employed was part of the performance expected from an emperor in such circumstances. He was playing to an audience that went beyond just the recipients of the letters; to display himself as a conscientious (and Christian) emperor he had to convey some impression of his affront at the actions of the Church-condemned Ursinians. As such, and in a sense, Valentinian's decisions were (naturally) to a degree dictated by the circumstances of the age in which he found himself. In the same sense, it could be observed that the duty of adhering to an orthodox belief had penetrated the Imperial office to such an extent, or had become an integral part of that office that Valentinian had to appear (to a certain degree) intolerant of those who drifted outside that orthodoxy.

However in practice Valentinian did not allow himself to take decisive sides in the dispute and unlike Constantine with the Donatists, he did not find a way to exploit the situation for his own ends. He consistently sought the restoration of a

Lib. Ep. 208
peaceful situation in Rome, and his actions to remove the dispute from the Church courts show that he did not wish the affair to be perpetuated and for bitterness to become a feature of it.

Valentinian and Paganism

CTh 16.1.1 of 17 November 365 is the only surviving law of Valentinian that touched upon paganism.\(^{116}\) addressed to Symmachus, the Prefect of the City.\(^{117}\) This second law of Valentinian dealing with religious matters ordered that “neither the life nor the fortune will be spared” of an official who appointed a Christian to be a “custodian” of a temple.\(^{118}\) This was the only law of Valentinian which ordered a specific punishment for a religious offence and indeed ordered two penalties, one of which was, of course, the most severe possible. Although it should be noted that it did so with a tone of restraint and moderation. Furthermore, the law was only dealing with one aspect of pagan Christian relations. It should be reasonably assumed that the law as given and recorded in the Code is not, unusually, similar either in detail or in substance with any *suggestio* that Symmachus may have proposed, since Symmachus himself was a pagan. Rather the unique and specific severity of this law may be related to the revolt of Procopius, the situation on the Rhine frontier and Valentinian’s response to the revolt.\(^{119}\)

Valentinian received news of Procopius’ highly organised, and unnervingly unusual revolt at the beginning of November while he was in Paris and on the day that

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\(^{116}\) There is a dispute over whether the law was issued in 364 or 365. Mommsen favours 365, but points out that Symmachus may well have completed his tenure as Prefect by this date. Ammianus Marcellinus (26.5.2) however states that Valentinian was in Paris in November 365 whereas the law itself stated that it was issued from Milan. As such, some commentator, including Seeck, have reckoned the correct date to be 364 when other evidence attests Valentinian’s presence in Milan. However, Mommsen is probably right. The law records that it was issued during the first consular year of Valentinian and Valens (ie 365), if it had been issued in November 364 then its consular date would have been given as that of Jovian.

\(^{117}\) L . Aurelius Avianus Symmachus *signo* Phosphorius 3 PLRE Vol 1 863-865

\(^{118}\) *sciat non saluti suae, non fortunis esse parcendum*. *Custodiam* is translated by Pharr as custodian

\(^{119}\) Procopius 4 PLRE Vol 1 742-3
he was about to launch a campaign against the Alamanni.\textsuperscript{120} Ammianus indicates that there was considerable confusion and ignorance in the western court concerning the eastern situation and no immediate response or plan was forthcoming from Valentinian to deal with a usurper so early into the reigns of the joint emperors. Valentinian was even unaware if Valens was still alive or whether he had been killed by Procopius, or whether perhaps Valens’ death had encouraged Procopius to revolt.\textsuperscript{121}

Ammianus and Zosimus record that Procopius was a kinsman of Julian, had risen to the rank of count under Julian and had commanded a sizeable body of troops in the ill fated Persian campaign. More importantly for Procopius, Ammianus records the existence of rumours which stated that Julian had given Procopius a purple robe prior to his Persian campaign with instructions to take over the throne if Julian died on that campaign.\textsuperscript{122} A sentiment which Julian is said to have repeated on his death-bed.\textsuperscript{123} These rumours encouraged Procopius to lie low at his estates near Caesarea in Cappadocia during the brief reign of Jovian. The importance of the perceived threat that he posed to Jovian (and potentially thereafter to Valentinian and Valens) is evidenced by Ammianus who reports that Jovian’s ministers urged the new emperor to reach a hasty and unfavourable peace with the Persians in order to forestall any attempt by Procopius to seize power, which they thought he could easily do.\textsuperscript{124} Although he renounced any pretence to the throne under Jovian, when Valentinian and Valens became joint emperors, Procopius felt himself to be under greater suspicion and he went into hiding.

\textsuperscript{120} On Procopius’ considerable achievements with very limited means see Lenski (2002) 74-6, 83-4, 88, 96-101; unusual because it was not launched from the power base of an army, and hence was not “predictable” Lenski (2002) 115. Van Dam (2002) 103-106 gives details of the revolt and of some of the personalities involved.
\textsuperscript{121} Amm. Marc. 26.5.4-5
\textsuperscript{122} Amm. Marc. 23.3.2 repeated at 26.6.3; os. 4.4.2
\textsuperscript{123} Amm. Marc. 26.6.2 Although at 25.3.20 Ammianus records the death-bed speech of Julian in which he pointedly declined to name a successor. Lib. Or. 18.273 also says that Julian declined to name a successor and left the decision to the army.
\textsuperscript{124} Amm. Marc. 25.7.10-11
This perception forced his hand. While Valens was in Bithynia on his way to
Syria in the late summer of 365 to deal with a threat from Persia, Procopius entered
Constantinople secretly and set about making alliances with the legions sent by Valens
to secure Thrace against a Gothic threat. He secured their loyalty with promises of
reward and they proclaimed him emperor; he was accepted and proclaimed by the
populace of Constantinople; he maintained his position by emphasising his links
with the imperial family, and through those links he secured auxiliaries from the
Goths, and he began to form a government. Valens heard of the revolt when he
was in Cappadocian Caesarea and slowly made his way back to Constantinople to deal
with the situation. Procopius gained some successes, including control of Bithynia and
the Hellespont and Ammianus reckoned he could have gained control of the whole of
the eastern empire and to have done so with the acquiescence of its inhabitants, but he
was finally defeated by Valens in Phrygia and executed in the spring of 366, eight
months after the beginning of his revolt.

At the same time as Procopius was attempting to assert his (quite legitimate)
claim to the throne, Gaul was invaded by the Alamanni who succeeded in defeating a
Roman force and killing its commander. In early November Valentinian was
proposing to march east to prevent Procopius making any attempt on Pannonia from
Thrace, which had already fallen to the usurper; but the situations in Gaul was such
that he decided, in response to petitions from worried cities, to remain and face the
greater threat from the Alamanni. Ut at the same time Valentinian despatched two
trusted and experienced officers Neotierius and Masaucio to Africa to secure that

125 Amm. Marc. 26.6.3-4; os. 4.5.1-2 states that Valens was suspicious of Procopius to such an extent that he had Procopius and his immediate family arrested. Procopius escaped and made his way to Constantinople.
126 Amm. Marc. 26.6.14; os. 4.7.1
127 Amm. Marc. 26.6.18
128 Amm. Marc. 26.7.10
129 Amm. Marc. 27.10.3; os. 4.7.1-2
130 Amm. Marc. 26.7.4
131 Amm. Marc. 26.8-9; 26.8.14 on how easily Procopius could have seized the east; os. 4.8
132 Amm. Marc. 26.5.7-8
133 Amm. Marc. 26.5.13; os. 4.9
province, and its grain, against the possibility of an invasion by Procopius.\footnote{Flavius Neoterius PLRE Vol 1 623; Masaucio PLRE Vol 1 566; Amm. Marc. 26.5.14} He also promoted the comes rei militaris of Illyricum, Flavius Equitius, to the rank of comes et magister militum to ensure his loyalty.\footnote{Flavius Equitius 2 PLRE Vol 1 282; Amm. Marc. 26.5.10}

Therefore CTh 16.1.1 was issued at the very beginning, and during the most uncertain period of, the Procopius revolt. Valentinian, unsure of the fate of his brother and whether the eastern provinces were still loyal to his newly created dynasty, or to what had remained of the old, carried out a series of measures to secure the west and those parts which he knew were not yet under the control of Procopius. Italy and Rome were certainly not on the front line, but equally they were closest to Pannonia and of course controlled access between Gaul and the rest of the empire. More importantly, Procopius is reported to have received embassies from the West, including Italy and to have spread rumours that the senior Augustus was dead.\footnote{Them. Or. 7.91d-92a; Amm. Marc. 26.7.2; noted in Lenski (2002) 74-5, and see 109-110 for evidence that Procopius’ followers tended also to have been followers of Julian, and like Julian and Procopius himself, to have been men of high culture and education.} As such a robust assertion of the emperor’s authority in Rome was probably felt to be in order. Furthermore, Zosimus informs us that the emperors and in particular Valentinian, carried out a minor purge against officials of Julian’s regime as soon as he came to power.\footnote{os. 4.2; Matthews (1975) 40; Lenski (2002) 105-8 calls it a “period of political terrorism” with several former ministers accused of embezzlement and punished, usually with massive fines and exile, designed to force Julian’s associates into a “squalid impotence.”}

At the same time we know that Symmachus had been in high favour with Julian. By contrast, as we have seen, Valentinian and Valens had offered to resign their positions rather than serve under Julian, according to Socrates.\footnote{In his letter to “Nilus, surnamed Dionysius”, which was a criticism and rebuke for Nilus, Julian contrasted the offensive behaviour of Nilus with the exemplary behaviour of Symmachus: the “beautiful Symmachus” who “would never willingly tell a lie, since he

\footnote{134 Flavius Neoterius PLRE Vol 1 623; Masaucio PLRE Vol 1 566; Amm. Marc. 26.5.14}
is naturally disposed to be truthful in all things." In 361 Julian received a Senatorial embassy led by Symmachus and Maximus. Julian appointed Maximus as Urban Prefect over the “better man”, i.e. over Symmachus only in deference to Maximus’ uncle, Rufinus Vulciatus. Ammianus tells us that Valentinian “hated the well-dressed, the learned, the rich and the high-born”. We do not know whether Symmachus was “well-dressed”, but Libanius thought him to be “learned” and he was certainly “rich and high-born.” The opportunity to deliver a law to Rome and to a member of a group to whom Valentinian was not naturally favourable and who had been on close personal relations with the former regime, and who therefore may have been viewed as close to the usurper, should be sufficient to explain the unique severity of this law during this moment of crisis for the fledgling regime.

Valentinian and Judaism

CTh 7.8.2 is Valentinian’s only surviving law on Judaism and ordered Remigius, the agister iciorum of the West, not to use Synagogues for quartering his troops; instead the “homes of private citizens, not religious institutions” should be used. This law did not make a special case for Judaism, but rather implied that Judaism should be treated as all other religions since all religionum loca were also granted this privilege.

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139 Soc. 3.13; but c f Soc. 4.1 where Julian opted to retain their services although they had refused to sacrifice. Soz.6.6 indicates that Valentinian was exiled for his faith under Julian, though ostensibly on the grounds of military incompetence.
138 Jul. Ep. 50 (Loeb); 82 (ude): tou` kalou` ummavcon punqavnou. pevpeismai gavr, o ti u[potj a{vn ejkkwv ei`nai yeuvsaio. 
140 Amm. Marc. 21.12.24; Maximus 17 PLRE Vol 1 582; et potiore posthabito 
141 Amm. Marc. 30.8.10: bene vestitos oderat et eruditos et opulentos et nobiles 
142 Lib. Ep. 177.4 in Loeb; given as 1004 in Foerster 
143 Remigius PLRE Vol 1 763 
144 Linder (1987) 161-163: In s nagogam Judaicae legis hospitii velut merito inruentes inueas emigrare nos privatorum domus non religionum loca habitationum merito convenit adtinere
Valentinian and Heretics

CTh 16.5.3 of 2 March 372, addressed to Ampelius, Prefect of the City, was Valentinian's first extant law against heretics. Ampelius had earlier received CTh. 16.2.21 of May 371. This latest law was directed against Manicheans and ordered that teachers of Manichaeism should be punished by a “heavy penalty” whenever one of their “assemblies” or “throngs” was found. Those taking part in such assemblies were to be “segregated from the company of men as infamous and ignominious” Properties in which the “profane doctrine” was taught, were to be forfeited to the treasury.

The law only sanctioned a punishment for the teachers of the heresy, it did not seek to punish the attendees of Manichaean assemblies. Nor did it prescribe any particular punishment for the teachers, only an unspecific sanction that the penalty should be “heavy”. This presumably allowed the enforcers of the law to exercise a considerable degree of discretion whenever a teacher of Manichaeism had been convicted. Similarly the order that those who assembled should be considered “infamous and ignominious” also allowed any enforcer a considerable degree of latitude in interpretation when deciding what measures, if any should be brought. *In amis* has no religious connotations and at worst means no more than “disreputable” or “disgraceful”. Similarly, *probrosis*, meaning shameful, also has no religious overtones. Other these insulting words may indicate that the activities of the Manichaeans themselves were not considered by Valentinian’s government to be primarily religious offences. Whereas the Manichean *institutum* was labelled *pro anus* which of course did have religious connotations of impiety or wickedness. Evidently, on a scale of “unacceptableness”, and therefore of official intolerance, the doctrine itself was considered to be more unacceptable than the adherents of the doctrine. Valentinian had drawn a careful demarcation between the morality of people who

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145 anichaeorum conventus vel turba huiusmodi repperitur doctoribus gravi censione.  
146 *ni conveniunt ut in amibus ut ne probrosis a coetu hominum segregatis  
147 domus et habitacula in nibus pro an institutio docetur*
happened to attend Manichean assemblies who may themselves be considered to be Manicheans, and the actual morality of their doctrine and the Manichean institutum.

Publius Ampelius, must have been unusually well trusted by Valentinian: he managed to ride out the ‘clean sweep’ carried out by the new regime of Imperial bureaucrats who had been officials of the previous governments. Most of their replacements were from reasonably obscure offices and backgrounds, but Ampelius was an exception; he had already been proconsul of Achaia under Constantius and possibly governor of Cappadocia. Valentinian had no problem appointing him proconsul of Africa on his accession, even though he came from the elite, wealthy and sophisticated literary class which Valentinian is supposed to have despised.

Ampelius was a pagan, but his religious preferences appear to have had no effect on CTh 16.5.3. However, and by contrast, CTh 16.2.21 indicates that Ampelius was willing to have laws enacted which were somewhat prejudicial to the interests of members of the Church. Although the style of the legislation in both laws in that they specified no actual punishments, and the anti-heretical law was reasonably lenient towards lay Manicheans at least, may conceivably be typical of Ampelius’ character, in the sense that he may have been the sort of official who was reluctant to cause himself unnecessary hassle or work. Ammianus records that he introduced regulations on drinking and snack-bars when he was Urban Prefect, but lacked the will to fully enforce them. Ammianus also records that he was popular with the people; a disinclination to punish religious deviants may have brought him a measure of popularity, at least among the heretics themselves. Ampelius was also the recipient of CJ 1.28.2 in which he received a rebuke, thought in mild terms, for apparently not fully observing more than one of Valentinian’s laws and for going beyond the powers of his office. This constitution is only datable because it relates to Ampelius’ term as

148 Matthews (1975) 36-7
149 Sid. Ap. Carm 9.304 lists him as being among the great literary figures of the time, and better than Sidonius himself.
150 Lib. Ep. 208
151 Amm. Marc. 28.4.3-4
Urban Prefect, but it may well be related to his conduct of the trial of the Senator Hymetius, the ex-proconsul of Africa, who had been accused of consulting a diviner to perform an illegal sacrifice in order to make Valentinian favour him. Valentinian also suspected Hymetius of defrauding him over sales of corn from Africa.\textsuperscript{152}

However, it should be noted that this law was the first to deal exclusively with heretics and to do so in a negative manner with regards to their \textit{institutum} and to their teachers, both rhetorically and with practical punishments.\textsuperscript{153} As such, it marks a development in official attitudes to heretics and heresies. However it would not be correct to see this law as indicating a comprehensive change in the attitude of the government towards religious deviants, in the sense that heretics were now phenomena which should, by virtue of their very existence, attract official attention. Although Constantine had been content to limit the benefits he conferred on the Church exclusively to the Catholics and had “not found the Novatians to be precondemned to such an extent that \textbf{…}”, this implies that had he felt differently, or had been investigating a different heresy, then the Novatians could potentially have been judged and treated in the same manner as Manicheans were now being judged and treated, or perhaps in a worse fashion.\textsuperscript{154} Apparent official attitudes may have been guided as much by whatever happened to be brought to the attention of the emperor and his Consistory, than by religious developments ‘on the ground’ and beyond the notice (and perhaps concern) of the Imperial residence and the ministers gathered therein.

CTh 16.6.1 was directed against Donatist bishops and was issued to Julianus, Proconsul of Africa on 20 February 373.\textsuperscript{155} Valentinian judged “to be unworthy of the priesthood that bishop who repeats the sanctity of baptism by unlawful usurpation

\textsuperscript{152} Amm. Marc. 28.1.17-23  See “Valentinian and the Magic Trials” below.
\textsuperscript{153} Previously, only two extant laws are known to have dealt with heretics or heresy: CTh 16.5.1 of 1 September 326 and 16.5.2 of 25 September 326; see above
\textsuperscript{154} CTh 16.5.2 above
\textsuperscript{155} Sextus Rusticus Julianus 37 PLRE Vol 1 479-80 was one of the ‘new men’ with whom Valentinian filled his administration. Lenski (2002)
and, against the teachings of all, contaminates this act of grace by repetition.”

This law was a little less severe than the previous law on heretics in that it did not order any punishments to be administered against offenders, nor did it say anything derogatory about Donatists or their clergy other than that their bishops were unworthy of the priesthood and were acting illegally. The law did not even seek to prevent Donatist rebaptisms or any other Donatist practice. However, Julianus may have been seeking to establish whether Donatist bishops were exempt from liturgies; if so, then in this law, Valentinian was upholding the terms of Constantine’s 16.5.1 of 1 September 326 which restricted the material benefits of Christianity to Catholics alone and specifically excluded heretics and schismatics. Nevertheless, the law makes no mention of other clerics in Donatism, below the rank of bishop, being denied access to privileges which their Catholic colleagues enjoyed.

This law CTh. 16.6.1 may have been issued in response to the revolt of Firmus in North Africa of 372-373. The revolt was suppressed by Theodosius, magister e uitum and father of the future emperor Theodosius. There is some evidence that Firmus was sympathetic to the Donatist cause and that they in turn were supportive of him. According to Augustine, the Donatists were labelled as “Firmians” by the more moderate Donatist sub-sect the Rogatists and Augustine also refers to a ‘deal’ apparently attempted by the Donatist bishop of Rusicade to surrender that city to Firmus during the revolt on condition that he “yielded up the Catholics to destruction.” However, as the law is quite mild, it may be reasonable to believe, because of that mildness, that it was not a response, in any way, to the revolt of Firmus.

However, and just on the character of Julianus, it might be reasonable to expect that the law would have been a little harsher than it actually was as Julianus was noted

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156. ntistitem ui sanctitatem baptisi inlicita usurpatione gem in averit et contra instituta omnium eam gratiam iterando contaminaverit sacerdotio indignum esse censumus
158. Flavius Theodosius 3 PLRE 1.902-904
159. Aug. p 87; c. itt. etil. 2.83.184
for his cruelty when he was Proconsul of Africa. Ammianus says that he was “a man who, as if smitten by a blast of madness, was as greedy for human blood as a wild beast, as he showed when governing Africa with proconsular power.” As such it seems likely that Julianus was not particularly averse to Donatists and this may be related to his own personal religion. There is some evidence that Julianus was a pagan; a fragmentary inscription from Rome (AE 1953.237), of which he was Praetorian Prefect in 387, records an individual who belonged to the grade of *ater a trum* in the Mithraic cult. The grade of *ater* was, of course, the highest level of initiation in Mithraism. Unfortunately the only part of the name that is preserved reads “TICUS V C” which could also be attributed to Pontius Atticus. But it could be equally attributable to the addressee of this law Sextus Rusticus Julianus, if the surviving “TICUS” is restored to Rusticus.

The other candidate for identification with the individual listed on AE 1953.237 is Pontius Atticus and he has been thought, by the editors of the PLRE, to be “probably a pagan priest” since he is listed on CIL 8.31118 which records his name among others who are attested as holding different positions in pagan cults. However, and unlike the others, Pontius Atticus himself has no priesthood, or grade of initiation listed after his name on this inscription. If he had been a priest or even an initiate of Mithras, and was therefore the individual referred to on AE 1953.237, then it seems likely that CIL 8.31118 would also have listed him as such, particularly as he would

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160 Amm. Marc. 27.6.1 *nasi a latu nodam uroris bestiarum more humani sanginis avidus ut ostenderat cum proconsulari potestate regeret ricam*. See Barnes (1998) 109-111 for Ammianus’ use of bestial stereotypes.

161 AE 1953.237. Mithraism was, of course, particularly attractive to ambitious men from low social origins who, like Julianus, sought to better themselves.

162 As suggested by the editors of the PLRE. Pontius Atticus 3 PLRE Vol 1 123. In full the inscription reads:

DIIS M 
M D MI ET Attidi meno 
T RANNO se tius rus 
TICUS V C et inlust 
RIS PATER Patrum dei in 
VICTI MITHRae
have held the highest possible grade of initiation in the cult. Therefore it seems likely that Julianus, as Rusticus, should be preferred over Atticus as the most likely possibility for AE 1953.237. If Julianus was indeed the figure referred to on AE 1953.237, then as a pagan, he may have been quite content to allow the Donatists as much leeway as possible within the official and disapproving constraints that had existed towards that heresy since Constantine and within the latest constraints due to their support of a rebel. Evidently Valentinian and his Consistory were also willing, at times, to display flexibility to long-standing schismatics and thereby to reflect (conveniently) the attitude of the suggerens. Valentinian’s policy appears to have been much the same as that adopted by Constantine after 314 and his failure to suppress them; that is to leave the Donatists to their own devices, but nevertheless, if Valentinian had been intolerant towards them, rather than of a similar attitude as Julianus, we may at least have expected a display of rhetorical invective, if not some provision for punishment as Valentinian had applied to the Manicheans. The absence of such at this time, during a revolt which the Donatists were apparently supporting, is certainly evidence of a remarkable degree of tolerance on Valentinian’s part.

An order for the protection of graves was made to Eutherius which has survived only because it was recorded on an inscription in Rome. From its provisions however, it seems likely that the order would have been included in the Code, but in all probability the commissioners appear to have accidentally missed it. Unfortunately it is not possible to provide even an approximate date for the inscription; the half that gave the emperors’ names is lost leaving just the titular

163 The other holders of pagan positions listed on CIL 8.31118 are: TURCIUS SECUNDUS ASTERIUS V C V a SF and S AEDESIVS V C P HIEROF HECATAR. It is dedicated to VALENTE V ET VALENTINIANO and is therefore datable to between March 364 and August 367.
164 Possibly following the line adopted by Julian that allowing Christians of all descriptions an opportunity to attack one another was the best strategy to ensure their weakness. Amm. Marc. 22.5.4
165 Constantine’s attitude on Donatists: Eus. VC 1.45.1-3; Opt. App. 9, 10
166 Fl. Eutherius 4 PLRE 1.315
AVGGG. No title is given for Eutherius who is only known from this inscription. As such the order could date from 367-394 or even from 402-408.

According to Mommsen’s reconstruction, the law granted equal protection to all cemeteries regardless of which religion they belonged to. The emperor ordered “the eternal protection of graves, which clearly must be maintained for the benefit of all.” More importantly, Valentinian expressed the opinion that previous religious rites and customs should not be allowed disappear: “we do not reckon that any previous custom, whether the divine rites of divine law, or cults should perish.” Valentinian indicated that ground set aside for burials had been the subject of “sacred services and mysteries” and therefore “since continually and jointly by divine and human laws require this, the eternal protection of cemeteries,” this order reinforced that custom so that “perennial faith and reverence should remain defended by the eternal dignity of the rites.” Evidently the law was phrased broadly enough to afford protection to all faiths and it was also written in a manner which would have been entirely appropriate for a pagan emperor. The law seems to be most characteristic of Valentinian’s religious policy, rather than of any of the other candidates. If the law was indeed issued by Valentinian then it may be related to his attempts to pacify the city following Ursinus’ disturbances. Equally, it could be an acknowledgement of the pagan establishment in Rome. Difficulties of dating prevent a definite or specific explanation (if there was even one at the time).

**Valentinian and the Magic Trials**

Hymetius’ trial for magic was one of a number of magic trials carried out in Rome between 369-375. These magic trials prompted the issuance of CTh 9.16.9 of 29 May 371 to the Roman Senate. Ammianus, who is the only source for the trials,
presents them with considerable dramatic effect, but tacitly admits that there were few actual victims of the trials; but he does report that the fears that the trials and investigations inspired were widespread.\textsuperscript{173} There is no evidence in Ammianus that the trials were anti-pagan as such and this is reflected in CTh 9.16.9 which also appears to have recognised the fears which Ammianus reports and to have gone to some lengths to allay them.\textsuperscript{174} The law, in which, unusually, Valentinian spoke in the first person at the beginning, and then more normally in the first person plural, decreed that there was no connection between magic and divination.\textsuperscript{175} Furthermore, the law went on to declare that neither divination (\textit{haruspicinam}) nor anything similar which had been allowed by previous generations was a criminal act.\textsuperscript{176} The only practice that this law did prohibit was that of “harmful” divination, which, of course had frequently been the subject of censure, not least by Constantine.\textsuperscript{177}

This law contains further evidence in support of Ammianus’ view that Valentinian’s religious policy was one of tolerance. It contains a reference to earlier, and now lost, laws of Valentinian which reportedly allowed full religious freedom: “Of this opinion that Valentinian did not consider divination or earlier lawful practices to be a crime the laws not extant given by me in the beginning of my reign are witnesses, in which free opportunity was granted to everyone to cultivate that which he had conceived in his mind”\textsuperscript{178} The repetition of this sentiment here almost amounts to a declaration of toleration for Valentinian’s subjects. It is, of course unfortunate that these laws have not survived; however it should be noted that if the law for the protection of graves and the imperial expectation that previous rites should continue (CIL 6.31982) was indeed Valentinian’s then this may well be one of the laws referred

\begin{flushright}
173 Amm. Marc. 28.1.24: \textit{cernebantur in paucis, omnibus timeri sunt coepta}
174 Lenski (2002) 222 n63 estimates that possibly as many as three of the Senators convicted were Christians he notes that one was certainly either a Christian or a Jew.
175 \textit{haruspicinam ego nullum cum maleificiorum causis habere consortium indigno}
176 \textit{ne ne ipsam aut ali nam praeterea concessam a maioris religione genus esse arbitror criminis}
177 \textit{ec haruspicinam reprehendimus sed nescire et reverentiamus}, Constantine’s CTh 9.16.3 of 23 May 317-319; for earlier prohibitions see Tac. Ann 2.32; Sue. Tib. 36
\end{flushright}
to in CTh. 9.16.9. Also, and at the same time, it would be unreasonable to suggest that Valentinian was either lying or that he was exaggerating the nature or tone of these lost laws. It does seem quite possible that Valentinian’s government would have issued such laws within the terms of the sentiments expressed, not only on the evidence of what CTh. 9.16.9 actually says, as well as from CIL 6.31982, but also on the evidence of his and his government’s attitude to religious affairs as contained in other extant laws discussed above.

**Conclusion**

Much of Valentinian’s religious legislation on the Church conferred some symbolic and cost-free privileges to Christianity, but little substantive benefit to the Church (CTh. 15.7.1, 9.38.3, 9.40.8 and 8.8.1). Like his predecessors, Valentinian legislated to ensure that important functions carried out by the councils (CTh. 16.2.17 and 12.1.59) and even by bakers (CTh. 14.3.11) would not be jeopardised by the Church. The rights of individual clerics were even partially curbed by CTh. 16.2.20 and 22, though possibly only to maintain and support existing rights pertaining to families and their wealth. Evidently Valentinian favoured Christianity, but there is little evidence that he inclined to one interpretation of Christianity over any other. He initially approached the Ursinian problem with the strict practicality of attempting to ensure peace in Rome. He responded to Damasus’ petition and that introduced an element of ideology into his correspondence, but that influence did not last. He showed himself to be very magnanimous in his third letter on the subject (C.S. 35.5) in allowing the Ursinians to return to Rome without, apparently, any conciliatory moves from them. Despite the thwarting of his intentions, Valentinian never carried out his threats of “severe punishment” and instead simply extended the boundary around the city from which the exile took effect. The rhetoric did increase as the correspondence increased, but much of that increase seems to have been the result of the emperor trying to persuade officials to see the situation his way. Like the laws

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178 *Estes sunt leges a me in e ordio imperii mei datae, utibi non inimicui ne nod animo inhibisset colendi libera*
giving symbolic privilege to Christians, the emperor appears to have made, and to have been obliged to make, the right impression; the result of which is that on occasions he did appear (because he was obliged to appear) more intolerant, but in practice and more importantly, the action did not met the rhetoric.

The only law he passed against paganism was severe and indeed the severest of all his laws on religious affairs (CTh. 16.1.1), but it dealt with only one small aspect of paganism and its severity is probably due to the uniquely dangerous situation that his new dynasty was in at the time. Otherwise it appears that he may well have legislated (9.16.9) to preserve aspects of paganism that had long been thought to be acceptable and similar evidence emerges from the law to Eutherius (CIL 6.31982). On heretics his legislation was more concerned with the institution of the heresies than with the ordinary followers (CTh. 16.5.3 and 16.6.1).

aculis trubuta est.
In contrast to his brother Valentinian, Valens appears to have had little interest in issuing legislation either for or against religious groups. There are only five surviving laws on religious affairs, or on issues linked to religion, in the Theodosian Code from Valens’ reign. Two concern the Church, another deals with monks and Municipal councils and two are concerned with divination and black magic; the latter two are the only laws prescribing the death penalty. This dearth of legislation is unexpected since Socrates and Sozomen would have us believe that Valens actively campaigned for his own Arian interpretation of Christianity and was equally opposed to the Nicenes of the East; therefore it would be reasonable to expect more legislation, or perhaps a greater survival of laws issued, than we have. That which we do have may well be most of what Valens issued on religious affairs; three of these five surviving laws were addressed to the same individual, Domitius Modestus, Praetorian Prefect of the East for much of Valens’ reign (369-377). It should be noted that earlier emperors were also disinclined to issue legislation on religious affairs, i.e. Constantine II and Constans. Ammianus indicates that although Valens wished to appear bound to the rule of law and judicial inquiries he nevertheless ensured that his own will prevailed. Possibly Valens was astute enough to realise that the existence of his codified opinions, issued as laws, could potentially at least, have curtailed his own freedom of action and his own will, in the future. Furthermore, under the convention of the time legislation was issued in the names of both or all three emperors and therefore it would have been at best awkward for the homoian Valens to have issued sectarian and anti-Nicene legislation since Valentinian, the senior Augustus, is

179 CTh 13.1.5 of 17 April 364; 16.2.19 of 17 October 370
180 CTh 12.1.63 of 1 January 370 or 373
181 CTh 9.16.7 of 9 September 364 and 9.16.8 of 12 December 370 or 373; Zosimus (4.3.2) states that Valentinian issued the first law, but since the version in the Code is addressed to the Praetorian Prefect of the East then that version is more likely to have been issued by Valens. Quite possibly the western version of the law issued by Valentinian was lost thus leaving only the version issued by Valens’ court.
182 Domitius Modestus 2 PLRE 1.605-608
generally attested as Nicean and was keen to maintain concord among religious groups.\textsuperscript{184} Although if that were the whole story, it would be reasonable to expect some pro-Arian legislation in the four years between Valentinian’s death in 375 and that of Valens’ in 379 as indeed his antipathy towards non-Arians increased during this period, but without leaving any record in the legislation.

\textbf{Valens and the Church.}

CTh. 13.1.5 of 17 April 364 issued to Secundus Praetorian Prefect of the East was Valens’ first law affecting the Church.\textsuperscript{185} The law was included by the commissioners under the heading “The Lustral Tax Payment (De \textit{ustrali collatione}) and therefore the provisions of the law must relate to that tax. The law ordered that merchants, including Christian merchants, should be compelled “to the necessity of the tax payment”\textsuperscript{186} i.e. the lustral tax payable every five years by merchants. The law may well have been interpreted as being directed against clerics as well as lay Christians; it went on to refer to those Christians liable for the tax as those “who have the true religion and wish to assist the poor and those situated in need.”\textsuperscript{187} For Christians, that last provision would most readily apply to bishops and the resources which they could command. ut apparently it only included those bishops (never referring to them as such) who traded: “if indeed their occupation is buying and selling, especially since any person of the more powerful classes either must not engage in business himself or must pay the tax.”\textsuperscript{188} This law appears to be repealing tax-exemption privileges granted in Constantine’s CTh. 16.2.10 of 8 of 27 August 320 to

\textsuperscript{183} Amm. Marc. 31.14.6: \textit{nec cum legisbus lites omnes quaesitiones nec committere videri se vellet destinatis ne velut lectis indicibus negotia spectanda mandabat nihil agi contra libidinem sanctam patiabatur}
\textsuperscript{184} Lenski (2002) 240; Lenski, 268 also cites Lib. \textit{r.}, 1.145 in which Valens was obliged to adopt a law of Valentinian on illegitimates, even though he disapproved of it. Heather and Moncur (2001) 175-177 also point out that none of our sources gives any indication of any tension between the two emperors.
\textsuperscript{185} Saturninus Secundus Salutius 3 PLRE 1.814-817
\textsuperscript{186} \textit{ad necessitatem pensisationis adhibeas}
\textsuperscript{187} \textit{ubi in merce mercandi cura est ad necessitatem pensisationis adhibeas praeertim cum potiorum usu ne aut miscere se negotiationi non debeat aut pensisationem debeat}
the clergy who engaged in business as merchants or as small traders on the understanding that their profits would benefit the poor.

CTh. 12.1.63 of 1 January 370 was addressed to Modestus, Praetorian Prefect of the East and was concerned with monasticism. Monasticism was more an eastern phenomenon than a western and therefore Valens was able to legislate against monks without the possibility of offending his elder brother. The law observed that “certain devotees of idleness” had abandoned service to the councils and “under the pretext of religion” had joined the monks. Valens ordered that they were to be “routed out of their hiding places” by the Count of the Orient and recalled to the councils, or were to give up their property in favour of others who would perform the liturgies. The law specified Egypt as the area of operations and therefore, presumably, no other province was to be targeted.

Valens had held an antipathy towards ascetics since the beginning of his reign; it was a sentiment common to the ruling and elite class. Monks had emerged during the fourth century to stand, by the end of it, outside the traditional arrangements of power and influence hitherto channelled through the city and its civic elites. Often of low social status, they were able to claim a direct relationship with God and to self-consciously ignore previous social and cultural conventions. Frazee regards this law as one attempt by Valens to undermine Nicean Christianity in favour of his own Arian version and as such it would have been logical to have attacked Egyptian monks, Athanasius’ loyal militants. This is a reasonable interpretation of the law, but the

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189 The text indicates that the law was posted at eirut on 1 January 370 and therefore it would actually have been issued in late 369. Although Lenski (2002) 257 n264 maintains that it was issued on 26 January 373
190 uidam ignavie sectatores
191 specie religionis
192 ernt e latebrit
195 Frazee (1982) 264-265
law itself does not give any indication that it was connected with Valens’ anti-Nicene and pro Arian sentiments rather than the elite’s antipathy towards monks. It was quite restrained in its rhetoric and nor did it prescribe any punishments for offenders. It should probably be considered as one of many laws designed to protect the councils’ ability to perform their functions, rather than as an attack on monasticism.

CTh 16.2.19 of October 370 was addressed to the same Modestus who received CTh 12.1.63. This law was a further attempt to address the problem of whether clerics should be obligated to the city councils. But, in contrast to earlier legislation, this law did not render clerics of decurion status permanently liable to service on the councils and indeed it was quite favourable to the Church and clerics. Rather, it ordered that a cleric may only be recalled to the councils if he had spent less than ten years in the priesthood; thereafter he would be free from any obligation to the council. As such, this law partially abolished Constantine’s arrangements and which maintained a fairly strict demarcation between the clerics and decurions and that those able to carry out liturgical duties should do so. Indeed Constantine’s 16.2.6 of 1 June 326 leaned towards supporting the councils against the clerics and implied that there was a permanent liability that wealthy clerics may be recalled to the councils; the long and detailed arrangements which Taurus had sought to impose with CTh 12.1.49 in 361 were also apparently ignored. Furthermore and despite Valens’ homoian inclinations, CTh 16.2.19 made no distinction between clerics of various schisms or heresies; all, apparently, were to benefit from this law and that was again a partial repeal of provisions established by Constantine which sought to restrict such benefits to the Catholics. Doubtless, it would have been difficult to have issued sectarian legislation and maintained imperial unity in the light of his brother’s beliefs. Apparently heretics and schismatics were necessarily tolerated in the overarching strategic policy of fraternal and imperial unity.
The effects of CTh 16.2.19 may well have prompted Basil’s letter 104 of 372 to Modestus, in which Basil requests the exemption of all clergy from liturgies which he correctly, but selectively, says would be in accordance with earlier law.\(^{196}\) Despite the flattery of Modestus that might routinely be expected from such a request, as well as Basil’s argument that more clerics would result in more prayers for the safety of the empire, there is no evidence either in the code or in subsequent letters of Basil to Modestus that the prefect arranged for a further law revising the ten year rule laid down in CTh. 16.2.19. This is perhaps surprising since Gregory Nazianzus would have us believe that Modestus was greatly under the influence of Basil since the bishop had cured him of an illness which Modestus apparently thought was a result of his attempts of 370 to coerce Basil into supporting the official \textit{homoian} position.\(^{197}\) Evidently Modestus was not so grateful to Basil for curing him that he then sought to express his thanks through even more beneficent legislation. The five other letters from Basil give no indication of any friction between the two; rather, like all important and local elites, in his letters Basil is shown giving references for his constituents and asking for favours from Modestus. Quite apart from the light this letter sheds on the relationship and degree of influence that a successful and popular cleric could have over a Praetorian Prefect, it also indicates the power that Modestus had over the emperor and government. It shows that under Valens, if change in the law was required, then one means of doing so was through Modestus. Indeed the letter appears to simply assume that the power to grant such privileges as Basil requested lay solely within the remit of Modestus. Although this is partly due to flattery and the manner in which favours were requested by the ‘poor’ from the ‘great,’ the complete absence of any mention of Valens is quite possibly indicative of where true power in the regime actually resided.

\(^{196}\) Basil was doubtless referring to any one of a number of laws produced during the previous sixty years: CTh 16.2.1, 2, 3, 7, 9, 10, 14 and 16.

\(^{197}\) On the curing of Modestus by Basil see Greg. Naz. \textit{Or.} 43.55; on Modestus earlier efforts at pressurising Basil see Greg. Naz. \textit{Or.} 43.48-51; Lenski (2002) 253; other letters of Basil to Modestus are: 110, 111 and 279-281
Valens and Paganism

CTh 9.16.7 of 9 September 364 was issued by Valens to Secundus immediately upon his accession. It was directed against mystery cults. It also appears to have been issued by Valentinian, according to Zosimus. The law ordered that hereafter “no person shall attempt during the night-time to engage in wicked prayers or magic preparations or funereal sacrifices.” Those detected in such acts would be “stricken with a suitable punishment.” Pharr has translated mactari as stricken, but it also implies execution. The execution of those on the boundaries of traditional cult, such as those performing ne arias preces aut magicos apparatus, was consistent with previous legislation and not least with laws enacted by Constantius. The addition to that of “sacri icia unesta” was however a new departure. According to Zosimus’ account of Valentinian’s issuance of the law, the emperor wanted to “hinder the mysteries by this law.” However, Zosimus goes on to say that the pagan Praetextatus, then governor of Achaea, protested to Valentinian that the law would prevent his fellow pagans from celebrating the now common pagan mystery rites and therefore Valentinian abandoned this provision in the law.

Lenski has argued convincingly that this law, and its perhaps almost immediate partial revocation, is evidence of the lack of “intransigence” in the emperors’ approach to religion. He reasons that since both brothers issued the law, then both would also have issued the same partial revocation and he substantiates his belief with reference to Theodoret’s criticism of Valens in allowing the worship of Demeter and Dionysus to continue. He also cites evidence from Epiphanius that nocturnal worship continued

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198 Saturninius Secundus Salutius 3 PLRE 1.814-817
199 os. 4.3.2
200 ne quis deinceps nocturnis temporibus aut ne arias preces aut magicos apparatus aut sacri icia unesta celebrare conetur. Detectum enim ad ne convictum competenti animadversione mactari perenni auctoritate consensum
201 Vettius Agorius Praetextatus PLRE 1.722-724. os. 4.3.2
under Valens.\textsuperscript{202} Lenski’s argument would have been strengthened if he had also noted that the addressee of the law, Secundus Praetorian Prefect of the East, (also the addressee of Valens’ CTh. 13.1.5 of 17 April 364) was a pagan, a friend of Julian to whom the late emperor addressed his eighth oration and who had held his Praetorianship through the reigns of Julian, Jovian and Valens.\textsuperscript{203} Despite the motivation given by Zosimus, it seems unlikely that either of the emperors would have issued an avowedly anti-pagan law to the pagan Secundus, particularly as he appears to have been trusted by Valentinian, and with good reason; Secundus, along with Arintheus a tribune and Dagalaif the commander of the cavalry, had ensured Valentinian’s accession to the throne, according to Philostorgius, after the death of Jovian. Ammianus indicates that after the death of Julian, Secundus had been offered the throne, but had declined the offer.\textsuperscript{204} The fact that he maintained his influence over the new regime is illustrated by Zosimus: he states that Secundus had persuaded Valentinian at the beginning of his reign that the illness which was affecting him was not the result of witchcraft brought about by Julian’s friends.\textsuperscript{205}

However, the law does appear to be evidence that there was an inclination in government to view some pagan cults, which had hitherto been regarded as inoffensive, in the same light as illegal, nocturnal activities which had always been regarded as wrong. Alternatively, this law which has survived as just twenty-six words (and may, in its unedited, original form have been shorter than most laws), could have been issued hurriedly with little thought as to its full implications and was perhaps done so when Valentinian was still mindful of his recent illness (in March – April 364) and was therefore trying to enact an extra precaution. Nevertheless, whatever the motivations, the successful intervention of Praetextatus indicates that essentially neither of the emperors had a substantive wish to assault paganism.

\textsuperscript{202} Lenski (2002) 217-218 n 36 and 37 for references.
\textsuperscript{203} Soc 3.19; Julian Or. 8 esp. 252 A-D
\textsuperscript{204} Lenski (2002) 21 n 48 and 49; Eun. Fr. 30, Philost 8.8, Joh. Mal. 13.28; Amm. Marc. 26.2.1
\textsuperscript{205} Zos. 4.1.1; although he was later dismissed by Valens (os 4.2.3), as a result of machinations by Valens’ father in law (Amm. Marc. 26.7.4), but this was a year after the issuing of this law, see Lenski (2002) 105-106
CTh 9.16.8 of 12 December 370 or 373 was addressed to the same Modestus who received CTh 16.2.19 and CTh 12.1.63; it was Valens’ second and final law on traditional practices. It was directed against astrology, and was apparently an attempt to eradicate its existence completely, but only through a long term strategy. As such, Valens ordered an abolition of the teaching of astrology, both publicly and privately. Teachers and pupils were to be treated equally; he ordered that “each of the two persons involved shall be stricken with a capital sentence. For the crime of learning forbidden doctrines is not unlike that of teaching them.” The thrust of the law was thus against the teaching and learning of astrology, but it may also have intended to prevent its practice, although the law does not actually say so: as far as it goes is to prescribe capital punishment for anyone “apprehended in this forbidden charlatanry.” Whether those “apprehended” were engaged in its practice or in learning or teaching is impossible to ascertain. It is uncertain when this law was issued; the text indicates that it was passed during the consulships of Valentinian and Valens, and would therefore have been either 370 or 373 and since it was issued from Constantinople then it came from Valens’ eastern government.

During the period of the magic trials in Rome, and beginning in early 372, a series of similar trials began in Antioch. Unlike those in the west, the eastern investigations did reveal a conspiracy against the emperor, but the sources do not specifically indicate that astrology itself played a part in the actual conspiracy itself. Initially there was an accusation that two men Palladius and Heliodorus who is described by Ammianus as a “reader of horoscopes” were intending to poison the count Fortunatian; this is the only reference to astrology throughout Ammianus’ account of the circumstances preceding the conspiracy. Interrogation of Palladius

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206 Cesset mathematicorum tractatus. Nam si qui publice aut privatim in die noctu ne deprehensus erit in cohibito errore versari capitali sententia erit atque ne ne enim culpa dissimilis est prohibere adiscere nunc docere.

207 Lenski (2002) 219 n42 believes that it is a mistake to place the law in 373 and that it should be dated to 370, but he does not expand on this.

208 Amm. Marc. 29.1.2; Eunap S 480-481; Matthews (1989) 219-226; Lenski (2002) 223-234

209 Amm. Marc. 29.1.5: atorum per genituras interpretatem
revealed a bigger plot by an ex governor Fidustius and other senior members of the government, to discern the name of Valens’ successor through “the abominable art of divination in secret.” The conspirators found the successor to be Theodorus, the deputy head of the notarii, who was summoned from Constantinople and executed along with others; some victims had their property confiscated and suffered exile. Ammianus claims that the victims included both the guilty and the innocent.

Ammianus describes the nature of the divination ritual as revealed during the trial as invoking “the divine power which presides over prophecy” rather than as astrology itself, and both Matthews and Lenski refer to the ceremony as involving a ouija board through which the name of the next emperor was revealed. Unfortunately, therefore CTh 9.16.8 is probably not a direct response to this elite conspiracy against Valens; if it were, then it would have been focused on divination. At best, it can be reasonably said that CTh 9.16.8 is consistent with the prevailing atmosphere and may reasonably be viewed as one measure, probably amongst many, to curb the general sort of dubious magic with which the conspirators were engaged.

However if this law can be linked with any specific event recorded in the sources, then the most likely incident must be one briefly referred to by Ammianus. An unnamed, but “respectable citizen” was discovered to have a copy of a horoscope belonging to someone called Valens, whom the “respectable citizen” claimed was his long dead brother. Ammianus records that the brother claimed to be able to prove this, but was tried and executed before he could do so in c372. The authorities possibly had good grounds to be suspicious; the accused’s brother had been dead for some time and so therefore the question of why should the brother have kept a horoscope belonging to a dead person may well have arisen. Alternatively, the horoscope could have indicated the actual death of the brother and thus was evidence

210 Amm. Marc. 29.1.6: detestandis praesagiis didicisse secretim
211 Theodorus 13: PLRE 1.898; Amm. Marc. 29.1.18: innocentes ne maligna
212 Amm. Marc. 29.1.31: conceptis carminibus numine praescriptionum auctore
213 Matthews (1989) 223; Lenski (2002) 224; Amm. Marc. 29.1.29-32
214 Amm. Marc. 29.2.27: municipalis claris; Matthews (1989) 222
of the “respectable citizen’s” innocence. Ammianus presents the execution of the “respectable citizen” as one among several instances of the government disregarding due process in its prosecution of the conspirators and anyone else who may have innocently engaged in ‘fringe’ religious activities. Whatever the truth of the allegations, it seems likely that CTh 9.16.8 was issued in the aftermath of the trials as a form of ‘mopping-up exercise’ in an attempt to preclude any possibility of astrology being used in the future, and quite possibly the trial of the unlucky “respectable citizen” was inspiration to the author of this law. If this is correct, then this law should be dated 373, rather than 370.

Two incidents from the trials in particular show these few years were a period of heightened intolerance of traditional practices, and that even previously tolerant legislation on religious matters could not necessarily be relied upon by contemporaries. Ammianus highlights the level of apparent hysteria prevalent in the East in 371-2 through reference to the case of a “simple-minded old woman” who used a “harmless spell as a remedy for intermittent fevers” who was executed by the governor of Syria, Festus for using such a spell, even though she had been summoned by Festus to treat his own daughter “with his full concurrence.” Festus may well have thought that he should indicate his antipathy towards magic as well as any associated arts, and persecuting an old woman for casting spells may have been an excellent opportunity to show his loyalty to the regime and its current attitudes. The second incident involved the trial and execution of a young man for performing a little ritual in order to cure a stomach complaint. The ritual was performed in the baths, and therefore, presumably, in public. Evidently, at least during this period, rites no longer had to be performed in private to arouse the suspicions of the authorities. More importantly, the above

215 In relation to the trials of the actual conspirators themselves, Ammianus (29.1.27) indicates that one of the greatest objections which the public had was that the judges manipulated the outcomes to suit the wishes of Valens. “Valens had entirely abandoned the path of equity and learned the trade of persecution” totus enim devius ab ae nitate dilapsis iam ue eruditior ad laedendum

216 Amm. Marc. 29.2.26: anum quandam simplicem intervallatis ebribus mederi leni carmine consuetam occidit ut no iam post nam iliam suam ipso conscio curavit ascita; Festus 3 PLRE 1.334-335;

217 Amm. Marc. 29.2.28
two cases show that Constantine's CTh 9.16.3 of 23 May 318 was, under Valens, being disregarded; Constantine's law had ordered that “remedies sought for human bodies shall not be involved in criminal accusation,” the same law also allowed the continuance of traditional rites in agriculture, although at the same time ordered execution for anyone who used “magic arts” to the detriment of mankind.\(^{218}\) There is no evidence from Ammianus that the accused in either case had been harming anyone, on the contrary, they had only been trying to perform some good for themselves and others; therefore under the terms of Constantine's law, they should have been protected in their innocuous rites.\(^{219}\) In the performance of traditional rites at least, this period of Valens’ reign is measurably more intolerant than that of Constantine’s, but equally of course, Constantine never had to deal with such a conspiracy.

As already noted, Domitius Modestus was the addressee of three out of five of Valens’ laws concerning religion. It may be the case that this unusually small number is actually very nearly all the laws issued by Valens. Modestus, along with many of Valens’ other ministers, held his Eastern Prefecture for an unusually long tenure (370-377).\(^ {220}\) As eastern emperor, most, if not all of Valens’ laws would have been addressed in the first instance to the Praetorian prefect for further dissemination. Also, Ammianus Marcellinus indicates that Modestus primarily, but also with other unnamed “friends and intimates of Valens” persuaded the emperor that, although he was of the character that would be inclined to do so, he should not be concerned with hearing legal cases because that would be beneath his dignity. Valens apparently agreed and “entirely abandoned the practice” of sitting as a judge and thus the poor were betrayed by judges and advocates who grew rich by selling the interests of the poor to army commanders and those with influence. Whatever the merits of Ammianus exaggerated judgements, it seems clear that Modestus and others, for reasons that are probably indeterminable and not relevant here, sought a controlling

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\(^{218}\) CTh 9.16.3 nullis vero criminationibus implicandae sunt remedii humanis quantum corporibus and magicis artibus

\(^{219}\) Matthews (1989) 222 makes this point, but without much elaboration.

\(^{220}\) See Lenski (2002) 62-63 for other examples of Valens’ ministers holding long tenures.
influence over the exercise of law; it would therefore be natural if they and the most important prefect Modestus also sought a controlling influence of the issuing of that law. Gregory Nazianzus also claims that Valens was heavily influenced by those around him.\textsuperscript{221}

When he was \textit{comes} in the east, Modestus had been chosen by Constantius to judge the Scythopolis trials in 359 because he was considered more ruthless than the Praetorian Prefect of the time Hermogenes of Pontus, accordingly to Ammianus.\textsuperscript{222} He was initially forced out of government (he was Julian’s prefect of Constantinople) when the brothers ascended in 364, but later he became instrumental in securing the magic trials at Antioch in 372 through feeding the “monstrous ferocity” (\textit{proditiosa eritas}) of Valens. Ammianus also accuses Modestus of ingratiating himself with the emperor by likening Valens’ crude language with that of Cicero and by proposing that even the stars were subject to him.\textsuperscript{223} Elsewhere, Ammianus accuses him of being poorly educated;\textsuperscript{224} a charge that may not be accurate: more than once in his letters to Modestus, Libanius makes references to classical writers, references which presumably Modestus must have recognised if they were to have any impact.\textsuperscript{225} Ammianus clearly dislikes the successful Modestus, who was one of only two civilians unrelated to the imperial family who held the consulship,\textsuperscript{226} but there is also evidence that Modestus used his position to secure a relatively tolerant religious policy which seems to be contrary to the religious policy Valens desired.

The ecclesiastical historians record that Valens had the Nicenes of Edessa banished from the city in September 373. Two years later in 375 Valens was reportedly outraged to see Nicenes still worshipping at a church outside the city walls and to such an extent that he struck Modestus for failing to clear out the dissenters.

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\textsuperscript{221} Amm. Marc. 30.4.1-2; Lenski (2002) 231-232; Greg. Naz. \textit{Or}. 43.30, 44, 54
\textsuperscript{222} Amm. Marc. 19.12.6
\textsuperscript{223} Amm. Marc. 29.1.10-11; Lenski (2002) 94-95 for Valens’ lack of education and 106-107 for Modestus’ demotion in 364, 113 for his return.
\textsuperscript{224} Amm. Marc. 30.4.1;
\textsuperscript{225} See, for example, Lib \textit{Ep} 37, 277
\end{flushleft}
Modestus returned the next day to execute the Nicenes, but realised it would be counter productive when his unit was overtaken by a Nicene woman desperate to achieve martyrdom for herself and her child. Modestus returned to Valens and persuaded him that the order should not be carried out. Modestus is also given credit for secretly warning the Nicenes of Edessa to avoid the church in order to save their lives. Like Ammianus, the ecclesiastical historians indicate that Modestus was able to persuade Valens from a course of action.\footnote{227}

Although at the same time the historians also accuse him of executing up to eighty Nicene clerics in 370 on Valens’ orders, by means of a burning boat in the gulf of Astacus. Ostensibly they were put on the boat in order to go into exile, but in reality, so the ecclesiastical historians argue, Modestus was afraid of the popular reaction to their execution so the whole incident was designed to look like an accident.\footnote{228} Lenski doubts whether the accounts that the clerics were deliberately burnt are accurate, he admits that it is impossible to discern whether there ever was a plot, but believes it unlikely. He argues that such a plot would have done Valens no good and in addition it may be argued that arranging such a plot would have been a long and difficult process during which time Valens’ wrath may have abated anyway.\footnote{229}

Modestus’ personal religion is difficult to determine; he may well have been an ancient equivalent of the ‘vicar of ray’. Libanius wrote to him when he was comes of the east in mid 360 urging him to complete a portico attached to the temple of Dionysius in Antioch in such a way as not to upset those who were liable to perform such liturgies. As such he may well have been a pagan under Constantius, or at least sympathetic to paganism. However, Libanius’ letter gives no hint that he and Modestus may share the same religion, and indeed the portico may not have been a

\footnote{226} Lenski (2002) 63-64
\footnote{227} Soc. 4.18, Soz. 6.18, Ruf. 11.5, Theod. 4.17; Lenski (2002) 257-258
\footnote{228} Soc. 4.16, Soz. 6.14
\footnote{229} Lenski (2002) 250-251
part of the Temple itself. A further letter to him from Libanius written in 363 when Modestus had become Praetorian Prefect of Constantinople is firmer evidence of his beliefs. Libanius writes that Modestus had been “wondering” about the gods for a while before accepting them. Under Julian therefore, Modestus seems to have erred on the side of paganism.

Under Valens however, Modestus may have embraced Arianism. Gregory Nazianzus and Sozomen indicate that he shared the faith of the emperor and was either a baptised Arian or had been admitted for baptism. Although Rufinus, when writing of the events surrounding Edessa and Modestus’ refusal to massacre the Nicenes, refers to him as a pagan. Rufinus was contemporary with that event and was in Egypt at the time. Therefore, under Constantius, he may have created the impression that he was not fully attached to paganism, but with the accession of Julian, he was able to embrace paganism more fully. Although, a more accurate description may be that he was not inclined to advertise his faith under one regime with a particular (as it happened Christian) attitude and in which it may not have been advantageous (or disadvantageous) to be positively known as an adherent of one faith or another, but when a regime that was avowedly sectarian and in favour of one faith came into power, then he saw that it was to his advantage to be identified, to a lesser or greater extent with the sectarian stance of that regime. Similarly, under Valens, who was baptised in 366 by the homoians, Modestus appears to have found it advantageous to have been thought of as sharing the faith of his emperor.

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230 Lib. p 196. Libanius requests that the munera imposed upon the local elites be equitable; he makes no reference to Modestus’ own religion. Liebeschuetz (1972) 133
231 Soz. 6.18; Greg. Naz. r 43.48 (PG 36.558) for his baptism.
232 Ruf. 2.5; for Rufinus’ movements at this time see Amidon (1997) VII-VIII
233 For the reasons Valens adopted Homoianism see Lenski (2002) 243-246; Lenski (2002) 235 also provides a useful and brief breakdown and definition of the different Arian sects current in the 360s and 370s
Conclusion

Modestus thus appears to have held a position comparable to that which Taurus held under Constantius. But with his cordial links to asil, apparently unaffected by whatever religious differences the two may have had and beyond that which Gregory Nazianzen records, and with his more substantial links to Libanius, he emerges as a more powerful figure than Taurus and unlike him, Modestus appears to have used his position at least not to the detriment of other religious groups. This may have been easy for him as he appears to have had no strong religious inclinations himself; or rather that whatever religious beliefs he may have had at any particular time, did not impel him to either penalise members of other religious groups or to force them to adopt his beliefs. The resulting picture in the Theodosian code is of a rather benevolent individual, and hence emperor, who offered all clerics of the Church and without sectarian divisions, greater privileges in terms of exemption from liturgies than they had previously enjoyed. Legislation against paganism was similarly beneficent and targeted only those practices which had previously been thought suspicious and potentially subversive. The initial prohibition of some practices in CTh 9.16.7 was quickly overturned by the intervention of Praetextatus. It appears that this intransigent approach may well have been due to the combined influences of a prefect without strong religious inclinations, but with a desire to moderate the behaviour of his emperor, coupled with an emperor who, in the opinion of Ammianus, was only willing to appear to be bound by the rule of law, rather than in practice.
At the end of the 365–367 campaign against an invasion of Alamani in Gaul Valentinian became ill and nearly died. Machinations over the succession in the court were stopped short by Valentinian's recovery and his decision to appoint his eight year old son Gratian as Augustus on 27 August 367; and not as Caesar. However, Gratian was only able to assume power in his own right with the death of his father on 17 November 375. He remained emperor until his own execution on 23 August 383 by the usurper Maximus. During this reasonably substantive reign, Gratian issued thirteen laws on religious affairs. Eight were on the Church, Christians and clerics, two were on heretics, one was directed against the Donatists, (though they are not actually named as such) one was on privileges allowed to Jews and the last of his laws was against apostates. He also addressed a letter against various heresies and Donatists entitled *de rebapti atoribus*. It would be reasonable to expect a continuance of Valentinian's essentially unsectarian religious policy in the reign of his son; equally we should be attuned to any evidence which suggests that Gratian’s tutor and later Praetorian Prefect Ausonius had on Gratian’s religious policy. Perhaps most importantly, we should be expecting evidence in the legislation of some influence from Ambrose, the vocal bishop of Milan and whether he had by 378 “secured Gratian as a defender of the Catholic faith,” or at least whether he had the guiding influence over Gratian that is generally assumed.

Gratian and the Church

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234 CTh 16.2.23 of 17 May 376; 16.2.24 of 5 March 377; CSEL 35.13 of 378 or 379; CTh. 13.1.11 of 5 May 379; 15.7.4 of 24 April 380; 15.7.8 of 8 May 381; 9.38.6 of 21 July 381; 15.7.9 of 28 August 381
235 CTh 16.5.4 of 22 April 376 or 378 and 16.5.5 of 28 August 379
236 CTh 16.6.2 of 17 October 377; 11.16.15 of 9 December 382 and 16.7.3 of 21 May 383 respectively.
237 Coll. ven. 13 in CSEL 35.13
238 Matthews (1975) 189
CTh 16.2.23 of 17 May 376 was issued to “Artemius, Eurydicus, Appius, Gerasimus and all other bishops.” The law allowed bishops to settle whatever matters might arise from “certain dissensions and slight offences pertaining to religious observance” to be heard in “their own places and by the synods of their own diocese” unless any offence committed was of a nature which precedent had established should be heard by “extraordinary judges or the illustrious authorities.”

Unlike previous legislation on internal ecclesiastical affairs, such as Constantius’ 16.2.12 of 7 October 355 in which bishops were only to be judged by other bishops and not laymen, the provisions of this law only dealt with strictly internal ecclesiastical affairs relating to dogma and religious observance; it had nothing to say about the discipline of individual ecclesiastics themselves and did not grant any disciplinary powers to synods, still less did it extend the right of bishops granted in 16.2.17 to other clerics. Whatever was “criminal” may well have been understood to include a definition so large as to include whatever the secular authorities may have decided to investigate.

CTh 16.2.24 of 5 March 377 was issued to Cataphronius, the vicar of Italy. This law again emphasised the exemption that clerics enjoyed from liturgies. The law was short and stated who would be exempt: “priests, deacons, subdeacons, exorcists lectors, doorkeepers and likewise all persons who are of the first rank.”

Unlike Constantius’ 16.2.15 or 19, this latest law did not indicate that bishops should fulfil any duties nor that decurions would have to serve ten years in the church before being immune from recall to the councils. Essentially this was as good as it could get for the clerics. Moreover, this law did not specify that the exemptions should be restricted only to the Catholics; quite reasonably the exemptions could be taken to include heretics and schismatics as well.

\[239\] Si \(\text{na sunt e nibusdam dissensionibus levibus ne delictis ad religionis observantiam pertinentia locis suis et ad suae dioceseos nodis audiantur e seipsis ne actio criminalis ab ordinariis e traordinariis ne indicibus aut inlustribus potestatibus audienda constituit.\]

\[240\] Cataphronius 2 PLRE 1.186

\[241\] presb teros diaconos subdiaconos ad ne e orcistas et lectores ostiarios etiam et omnes perinde ni primi sunt.
CTh. 13.1.11 of 3 July 379 was issued to Hesperius Praetorian Prefect of Italy and Gaul and son of Ausonius. It dealt with clerical liability for the lustral tax payable by merchants. Valens had ordered that Christians, and therefore presumably clerics as well, would have to pay the tax (in his CTh. 13.1.5 of 17 April 364). As clerics were the subject of this law then evidently they were understood to be included in Valens’ earlier law. Whereas Valens’ law had been somewhat vague as to whether clerics were included, but had possibly suggested that by paying the tax the clerics would be assisting the poor as demanded by their faith, under Gratian’s terms the situation was clarified and all clerics engaged in trading would have to pay the tax, but clerics in Illyricum and Italy were allowed to have a tax threshold of ten solidi each, those in Gaul a threshold of fifteen solidi each; tax would be payable on all profits after these amounts. Hesperius had secured an advantage for clerics, but only in his prefecture.

CTh. 15.7.4 of 24 April 380 was issued to Paulinus, Prefect of Rome and dealt with the relationship between the church and the theatre, which had been the same concern of Valentinian’s CTh. 15.7.1 of 11 February 367. Both laws benefited the Church; Valentinian’s through protecting the sanctity of the sacraments and Gratian’s through protecting recruitment to the Church, but Gratian’s law was more conciliatory to actors than Valentinian’s had been; in many ways it could afford to be. Gratian ordered that any female actor (male actors were not mentioned) who tried to leave the theatre should be recalled “provided that contemplation of most holy religion and reverence of the Christian law have not bound her to their faith.” Gratian ordered that they should not be recalled in such cases since they would be in “a better mode of living.”

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242 Decimius Hilarianus Hesperius 2 PLRE 1.427-428
243 Anicius Paulinus 12 PLRE 1.678
CTh. 15.7.8 of 8 May 381 was issued to Valerianus Prefect of Rome on the same subject.\(^{245}\) Just as Valentinian's CTh. 15.7.1 of 11 February 367 had prevented any actors from returning to the stage after they had received sacraments, so this law sought to prevent women returning to the stage not through any practical punishments or just by ordering that they were not to return, but rather by denying them absolution. It began by indicating that actresses should be allowed to leave the theatre “in the name of religion,” \((\text{religionis nomine})\) but if thereafter an actress was involved “in indecent embraces” and “carries on the profession that she had officially abandoned and remains a woman of the stage in spirit” then she would have to be returned to the stage “without hope of absolution.” The law continued, in a spiteful manner, that she would have to remain on the stage even as “a ridiculous old woman, unsightly through old age, she cannot, indeed, even then receive absolution, although she could not then be anything else than chaste.”\(^{246}\) Like Valentinian’s earlier law this injunction appears to have been an attempt to guard the sanctity of Church offices. As such it enhanced the position of the Church, but at the same time it also enhanced the Imperial office religiously in that the emperor was thought to be of such a position that he could order clerics to withhold one of their primary religious duties (i.e. absolution) from sinners, at least in these cases.

CTh. 9.38.6 of 21 July 381 issued to Antidius the Vicar of Rome, continued this religious language of absolution.\(^{247}\) This law granted another Easter amnesty similar to Valentinian’s CTh. 9.38.3 and 4. Like the earlier amnesties, committers of certain offences remained exempt, but they were described in more grandiose terms than before and some in more religious terms. Committers of incest were described as

\(^{244}\) necdum tamen consideratio sacratissimae religionis et christianae legis reverentia suae idei mancipavit eam enim usque melior vivendi usus vinculo naturalis conditionis evolvit retrahit vetamus.

\(^{245}\) Valerianus 8 PLRE.1.938

\(^{246}\) verum si post turpibus voluptata comple ibus et religionem nam e petierit prodiisse et gerere nod oicio desierat animo tam in scenaica detegetur retracta in pulpituim sine spe absolutionis ullius ibi eos ne permaneat donec anus ridicula senectute de ormis nec tunc uidem absolutione potiatur cum aliud nam casta esse non possit

\(^{247}\) Valerius Anthidius PLRE 1.70
those who have “violated the revered bond of cognate blood by unholy incest”\textsuperscript{248} and forgers as those who “by copying the sacred imperial features and thus assailing the divine countenance has sacrilegiously coined their venerable images.”\textsuperscript{249} The law spoke of those who had committed crimes not exempt from the amnesty as receiving an “absolution” (absolutione).

The law went further than either of Valentinian’s had done in indicating that this amnesty flowed from the emperor himself. The amnesty was an “indulgence of our serenity”\textsuperscript{250} which was from “the kindness of our august generosity.”\textsuperscript{251} In contrast to Valentinian’s 9.38.3 there was nothing in this law to suggest that Christianity or the Church was in any way the inspiration behind the Easter amnesty; all such magnanimity appeared to flow from the emperor.

CTh. 15.7.9 of 28 August 381 was issued to Herasius Proconsul of Africa.\textsuperscript{252} As he had specified in CTh. 15.7.4 so Gratian also specified in this law that actresses seeking release from the theatre would have to be recalled unless they had, in the wording of this law, “not yet been vindicated to the Christian faith by reverence for holy religion and for the secrets of the Christian law.”\textsuperscript{253} Such women would also be regarded as being free from any stain on their character as ex-actresses “if they have obtained exemption from this compulsory public service of an indecent character by a special grant of imperial favour of our clemency.”\textsuperscript{254} The law appears to indicate that the Church had responsibility for admitting an actress from the theatre to its service, but that the emperor had an undefined ability to remove any stains from their characters by \textit{iat} if the actress had made an appeal for release to the emperor. It may

\textsuperscript{248}\textit{ui venerandum cognati sanguinis vinculum pro ano caecus violavit incestu}
\textsuperscript{249}\textit{ant \textit{ui }sacri oris imitator et divinorum vultuum adpetitor venerabiles ormas sacrilegio eruditio inpressit}
\textsuperscript{250}\textit{indulsum nostrae serenitatis}
\textsuperscript{251}\textit{liberalitatis augustae re eraturn humanitas}
\textsuperscript{252}\textit{Herasius PLRE 1.420}
\textsuperscript{253}\textit{necdum tamen sanctissimae religionis et in perenne servandae christianae legis secretorum reverentiae suae idei vindicavit
have been necessary for the actress to appeal to the emperor who alone, rather than the Church, had the power to release them from their liturgy. ut nevertheless, whatever the exact procedure, whenever the emperor was involved and by that very involvement, the released actress was, possibly in some mystical way, removed of all stain on her character.

It is not certain why actresses taking up offices in the Church should have been subject to three laws within just sixteen months. Although two of them appear to be targeted at Rome, CTh. 15.7.9 indicates that it cannot have been a purely Roman concern. Ambrose uses the deportment of actors as an example which Christians should not follow if they wished to be modest. Ambrose was not the only Christian to regard the behaviour of actors with some suspicion; the Synod of Laodicea, which ended no later than 381, indicated that actors were thought of with some prejudice by the Church in general. However, this was not a purely Christian concern as Ambrose was echoing opinions also expressed by Cicero. Therefore these laws are not indicative of a process of Christianisation of either the Imperial office or of law making, but rather indicate the inclusion of an old prejudice to a more recent phenomenon, i.e. legislation for the benefit of Christianity and the Church.255

rati an and heretics

CTh 16.5.4 of 22 April 376 refers to an earlier and now lost law of Gratian which had ordered the confiscation of properties in which heretical “altars were

254 illas etiam eminas liberatas contubernio scenices praerindicii durare praecepimus nae mansuetudinis nostrae bene icio e pertes muneris turpioris esse mererunt
255 Amb. o. 1.18.73; Cic. de o. 1.36; Canon 54 of the Synot of Laodicea ordered that clerics should not witness plays at weddings and banquets.
located,"256 whether in towns or in the countryside. This law ordered that such confiscation should still occur wherever such "forbidden practice should occur, either though the connivance of the judges or the dishonesty of the profane."257 It was addressed to Hesperius, prae ec tum pra et rio, the proconsul of Africa who as Praetorian Prefect of Italy and Gaul had received CTh. 13.1.11.

There is little external evidence as to what might have prompted this law. It is known that Africa, in particular Tripolitania, was under attack from bands of Austoriani, and the lack of defence afforded to the citizens was reportedly a scandal, according to Ammianus. Unfortunately there is no evidence to link this law with the Austorian invasion although Hesperius was later to hear the enquiry into the affair and was commended by Ammianus for his unimpeachableness.258

However the law was reasonably benign and in practice more so than Valentinian's 16.5.3 of 2 March 372 which had been against Manicheans and had ordered their assembly places to be confiscated to the resources of the fisc. Valentinian’s law had also ordered that Manichean teachers should be fined. This latest law, although not specifying an individual heresy and therefore by implication including all heresies, prescribed no punishments for individuals found indulging in heresies and indeed did not condemn heresies nor even have anything to say about them as such.

CTh 16.6.2 of 17 October 377 was against the Donatists. The law gives the addressee as Florianus vicar of Asia. This is probably a mistake and it was almost certainly issued to Flavianus vicar of Africa at that time,259 not least because the subject matter relates to Donatism and therefore Africa and not Asia. This was the first law (or at least the first surviving law from the Theodosian Code) against Donatism.

256 altaria locarentur
257 unde dissimulatio in dicum seu pro anorum inprobitate contigerit
258 Amm. Marc. 28.6; Hesperius’ involvement at 28.6.26; Matthews (1989) 383-387
The law “condemned the false doctrine of those persons who trample under foot the precepts of the Apostles and who do not purify, but defile by a second baptism.” Such “pollutes” those who receive it. Flavianus is therefore ordered to make them “desist from their miserable false doctrines” and to return the churches that they have occupied to the Catholics. Only the teachings of those clerics who “have approved the Apostolic faith” and did not repeat baptism were to be followed. The law then prescribed what should be taught and as such is highly reminiscent of Theodosius’ later and more famous Cunctos opulos law (CTh. 16.1.2) of 380. Gratian stated: “For it is our will that nothing shall be taught except what the uncorrupted faith and tradition of the Evangelists and Apostles have preserved, just as the imperial law of our fathers Constantine, Constantius and Valentinian have decreed.” Noticeably, “our fathers” was a selective list and in particular did not include the still living, but Arian inclined Valens. Whichever member of Gratian’s government who included this clause evidently knew his religious history and was committed to the Nicene version of Christianity. Presumably, the western government was also not averse to implying that Valens’ religious position was not necessarily correct.

It is not clear which “imperial law” or laws this particular law is invoking. It is probably not referring to any particular law, but rather to the general and perceived attitude that the emperors listed were all Nicenes. The uncertain religious position of Constantius had evidently been forgotten and replaced with one more accommodating to that of the present regime. Such a ‘reinterpretation,’ (or at least that is how it appears to us, based on a possibly incomplete record,) would have been aided by the

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259 Virius Nicomachus Flavianus 15 PLRE 1.347-349
260 eorum condemnavimus errorem ut apostolorum praecepta calcantes Christiani niminis sacramenta sortitos alio rursus baptismate non purificant sed incestant lavaci nomine polluentes. Osigitur auctoritas tua erroribus miseriis iubebit absistere ecclesiis nus contra idem reinent restitutionis catholicae.
261 nihil enim aliud praecepit volumus nam nod evangeliorum et apostolorum ides et tradition incorrupta servavit sicut legi divi parentum nostrorum Constanti Constanti Valentiniani decreta sunt.
(then) lack of both legislative records and of a religious history; a deficiency which the Theodosian Code would partially mitigate.

The law then concluded by noting that Donatists were continuing to meet in the countryside after they had been expelled from the churches and it ordered that the estates upon which they were gathering should be “included in the fiscal confiscations if they should provide secret places for the sinful doctrine.”\textsuperscript{262} It then ordered that Donatists were not to impart their doctrine to others: “they shall cherish the poison of their impious doctrine to their own hurt, in domestic secrecy and alone.”\textsuperscript{263}

This law is not strong in terms of derogatory language. It refers to the Donatist practice as an \textit{error} and the effect of imposing that \textit{error} was to cause \textit{malis} to the recipient. ut in contrast to this and more importantly, the law made much of the apparent offence that the Donatists were committing against the Apostles.

Gratian addressed a letter to Aquilinus vicar of Rome in 378 9 (otherwise unknown) entitled \textit{de rebapti atoribus} but which was a general attack on various heresies and schisms and not just an attack on the Donatists.\textsuperscript{264} It was a reply to a petition from Damasus asking that the Bishop of Rome, should have the authority to exercise jurisdiction over recalcitrant bishops throughout the empire and that the Praetorian Prefect of Italy or the Vicar of Italy should be obliged to force any bishop who refused to recognise such authority to attend a hearing in Rome before the Bishop of Rome. An offence committed by a bishop outside Italy would be dealt with by the local metropolitan unless that metropolitan was the offender, in which case he would be brought to Rome to appear before the Bishop of Rome. This was presented as a ‘labour-saving’ procedure for the emperor; he would no longer have to deal with

\textsuperscript{262} \textit{fundorum inlicite frequentantes; quos fiscalis publicatio conprehendet si piaculari doctrinae secreta praebuerint}
\textsuperscript{263} \textit{quod si errorem suum diligunt suis malis domestico ne secreto soli tamen oveant virus impiae disciplinae}
\textsuperscript{264} Aquilinus 2 PLRE 1.91; CSEL 35.13 \textit{Coll. vell 13}
matters of ecclesiastical discipline, Damasus would do it for him. The petition also asked that Damasus, if he were to have such authority over his equals should not be judged by them, and that instead he should be tried by the emperor himself rather than the Church courts.\textsuperscript{265}

The letter was a severe dressing down for Aquilinus for his apparent failure to take action against religious dissidents in Rome and also against other officials in Italy who had apparently failed in this account. Gratian accused Aquilianus of trying his patience by disregarding his orders and thus allowing the dissidents in Rome to flourish.\textsuperscript{266} Gratian also questioned whether the Ursinians were effectively more powerful than he was in Rome.\textsuperscript{267} Despite this implied threat to his authority, Gratian simply continued the policy of Valentinian and ordered that they should be expelled to beyond the one hundredth milestone from Rome.

Gratian appears to depart from the normal and accepted means of performing Imperial business by telling Aquilinus that he would not issue any further legislation on the issue and that Aquilinus should read the orders Gratian had sent to his predecessor Simplicius “and cease to expect a repetition of the mandate, because our Clemency’s propriety should disdain to repeat an instruction.”\textsuperscript{268} Possibly Gratian decided this was a more efficient means of executing government business, in which case he would have been presaging the motivations for the Theodosian Code itself by almost fifty years. He, and his government may also have thought that such a procedural change would make the government appear more powerful because whatever it decided would be permanent. ut whatever the motivations, this change may well have rendered the government less powerful by making it less prevalent.

\begin{footnotes}
\item[265] Damasus’ petition is at PL.13.575-584, Stevenson (1966) 89-91 provides a translation.
\item[266] \textit{noura praecepta ver ce orem neglegentiam destituta} \textit{nae tandem poterit erro patientia} \textit{nam videm dum despectis e citatis} \textit{ut longae tolerantiae desperatos sumat accentus et oicium metu cogat agnosci} \textit{etiam ne vivius est} \textit{nod ruini inv sit amentia} \textit{nam nod serenitas nostra mitibus permasit editis}
\item[267] Flavius Simplicius 7 PLRE 1.844; \textit{et desinat iterationem sperare mandati nia pigendus manseutinins nostrae pudor est instanti praeceptum}
\end{footnotes}
because it’s head, the emperor, would no longer be involved in the routine business of (in this case) suppressing a schism.

The emperor then went on to direct some vitriol against other religious dissidents and at the same time to criticise previous governors in Italy. He first attacked an associate of Ursinus, Hisac and then the bishop of Parma, already deposed by fellow bishops, but who would have been dealt with earlier “if your predecessor i.e. Simplicius had had any devoted energy.” Florentius of Pozzuoli was another religious dissident who had been expelled from the Church fifteen years before this letter had been written but was attempting to reenter the Church because he was able to rely upon “the carelessness of our governors, who surrender imperial instructions to private popularity and patiently permit religion, which we rightly reverence, to be disturbed, because perhaps they themselves neglect it.” The references to Simplicius underlined the harshness of the emperor’s language; Simplicius had probably already been executed by the time this letter was written for an unspecified offence. Ammianus says he was beheaded in his native Illyricum and implies that his execution was somehow a ‘natural’ recompense for his involvement as Vicar in the treason trials at Rome under Valentinian. Evidently, Gratian was making an implied threat: as Simplicius had been a neglectful official and had then been executed (though possibly for reasons quite unrelated to this neglect), so other officials, because they too were neglectful were in danger of following Simplicius’ destiny.

The only reference to the Donatists concerned Gratian’s (attempted) expulsion of Claudianus the Donatist bishop of Rome. Gratian indicates that Claudian had arrived in Rome, performed “erroneous religious rites,” but Gratian had magnanimously given Claudianus a “punishment different from that which he has

269 nem si uid decessor tuus devoti vigoris habuisset
270 nostrorum videscit indicum societatem retus, ui privatae gratiae imperialia praecepta condonant et religionem nam nostrae veneramus, nia ortasse ipsi negligatur in uietari patienter accipiant
271 Amm. Marc. 28.1.57
272 35.13.8 pro anarem sterio
which was that he should be returned to his “fatherland.” Gratian indicates that his orders appear to have had no effect since he was still in Rome continuing with his activities. Gratian’s officials in Rome were unable, or unwilling, to carry out even a simple and mild command of exile.

The presence of such dissidents in Rome and their activities renders them “persecutors of the most holy seat” and disturbers of Damasus who had been “proved of saintliest mind” by the will of God, through examination and had been acknowledged as such by Gratian’s father Valentinian. The emperor will now not allow the “lazy carelessness of the magistrates” to continue; and nor did he need to indicate the consequences for officials if they failed to execute his orders. The “supreme sloth” of the apparitors was to cease and Gratian ordered that “those persons whom the consensus of the holy council of bishops has shown as causing disturbances” should be exiled beyond the hundredth milestone from Rome. Gratian threatened Aquilinus that failure to execute this order would not only damage his reputation but would also result in a “punishment for having disregarded an ordinance;” although in this context ‘atonement’ might be better than ‘punishment’ for piaculum.

Only at the end of his reply did Gratian address the specifics of Damasus’ petition. Gratian did not respond to Damasus’ request that he should only be tried by the emperor, so therefore we may conclude that Gratian tacitly refused that request. But Gratian did accede to Damasus’ request to have jurisdiction over all other bishops in the empire, but with the qualification that his decision was “given with the advice of five or seven bishops.”

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273 dissimili poena ac meruit
274 35.13.9 insetatores sancticissimae sedis, preferring ‘seat’ for sedis rather than Coleman-Norton’s ‘see’.
275 entis sancticissimae
276 35.13.10 sed bactenus steterit iners dissimulatio indicantum
277 supina desidia and nos turbas istiusmodi molientes sancti episcoporum concilii consensus ostenderit
278 piaculum neglectae sanctionis incurses
279 35.13.11 volumus autem ut hic cum concilio quinque vel septem habuerit episcoporum
confirmed as was the arrangements Damasus proposed for bishops and metropolitans outside Italy. Gratian’s silence on the issue of granting Damasus’ the right of trial by emperor only indicates that he was not totally subservient to the Catholic Church, but equally neither he, nor his ministers were able to extricate themselves from this situation other than by ignoring the request; that omission stands incongruously beside the almost complete acquiescence to Damasus’ other requests. However, the refusal to grant this privilege to the Bishop of Rome did mean that in practice Damasus and his successors would not be able to exercise complete authority over all their fellow bishops since Damasus too would in practice remain liable to stricture from other bishops.

Rhetorically, Gratian referred to the Ursinians in the same terms as Valentinian had done. The “madness of Ursinus;” was of “obstinate madness” and he practised a “polluted religion.” Hisac, Ursinus’ follower was “mad.” The Bishop of Parma merely “disturbs the church.” Florentius of Pozzauli was apparently worse and was condemned of a “shameful offence,” in appealing to Gratian from a conviction; he attempted to “form illegal congregations” and “depraves a multitude.” No invective was directed against Claudianus, Donatist Bishop of Rome, but perhaps that he performed “an erroneous religious rite” was sufficient in itself. Notably Gratian does not appear to have been concerned with the wider movements that at least Ursinus and Claudianus represented; in this letter most of his concern is that such people were in Rome and were an affront to Damasus, the accepted leader of the Christian community there.
More interesting though is the attack that Gratian made upon his previous and present officials in Rome throughout the letter. They should have been in no doubt that the emperor was deadly serious about clearing the city of non-Catholic Christians, or at least their leaders. There is no evidence in this letter that Gratian was concerned to maintain correct relations with his fellow elites in Rome based on the appreciation of a shared elite culture, in which Gratian, unlike his father, would have been thoroughly versed. This letter indicates instead that it was more important for the emperor to ensure that he had a correct relationship with the bishop of Rome. In terms of practical effects the letter prescribes nothing worse than that which had been done before; but in practice, because the necessity of taking action had been impressed upon Aquilinus with such vigour, the individuals and communities mentioned in the letter may well have come under greater pressure from the authorities than hitherto.

CTh 16.5.5 of 3 August 379, was possibly (as the letter to Aquilinus is undated), the first law of Gratian on religious affairs to be issued after the battle of Adrianople and the appointment of Theodosius as eastern emperor. It was addressed to Hesperius (who also received CTh. 13.1.11 and CTh. 16.5.4) in his new capacity as Praetorian Prefect of Italy and Africa. This law is considerably longer than most earlier laws on religious affairs, but although it may reasonably be considered to be intolerant, its intolerance relates only to the attitudes that it articulates rather than to what it actually prescribes or demands.

It began with an absolute: “All heresies are forbidden by both divine and imperial laws and shall cease forever.” Any “profane man who by his punishable teachings should weaken the concept of God” was not to teach such “noxious doctrines” to others and “to their hurt.” After this opening sentence most of the rest of the law is apparently directed against the Donatists, although they are never named

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287 See Brown (1992) 89-103 for the rise of bishops in civic politics and the corresponding eclipse of the traditional civic elites.
as such. The injunction against teaching doctrines which were harmful to others was repeated with reference to the Donatist practice of repeat baptism.²⁸⁹ The law went on to pass special injunctions against the Donatists: “All teacher and ministers of this perverse superstition shall abstain from the gathering places of a doctrine already condemned.”²⁹⁰ Despite the condemnations however, there are no punishments prescribed, even in vague terms; the purpose and effect of the law is thus rhetorical rather than practical.

ut although the law lacked some practicality, it does indicate an increase in intolerance towards the Donatists; albeit of a rhetorical rather than practical nature. In his long running dispute with the Donatists, Constantine had initially been concerned with their disobedience and consistently stated his desire to secure “right worship.” Only in his last document on the issue in his letter to the Umidian bishops of 5 February 330 did he infer that the Donatists were heretics which in that letter he equated with schismatics and with evil. ut even in that letter he held out the hope that they would return to the correct path of God. This law however, was not concerned with issues of “right worship” nor of obedience, but with doctrinal matters: the law focused around the practice of repeat baptism and indeed this practice is the only one mentioned in the law.

Arguably, disobedience to the authorities, (Church or state) although a crime, was known to be easily rectifiable through obedience; that is to say, there was nothing intrinsically permanent about the Donatists’ state of disobedience. Constantine realised this and held out the prospect of resolution to the bitter end, albeit a resolution, which by that end would have been based on his terms and those of the Catholic Church. ut a theological error, once identified in the Donatists and now

²⁸⁸ mnes vetitae legibus et divinis et imperialibus haereses perpetuo con uiescant. nis nis opinioneum plectlibili ausu dei pro anus in minuit sibi tantum modo nocitura sentiat aliis ob utura non pandat.
²⁸⁹ Sibi solus talia noverit alios ne arie institutione non perdat.
²⁹⁰ omnes ue perversae istius superstitionis magistri pariter et ministri bi conciliabulis damnatae dudum opinioneis abstinent
stated in this law, would have been more difficult to rectify, for either side. More
difficult because it implied some degree of permanence. The experiences of the
councils and other theological disagreements over the course of the fourth century
should have taught the authorities that doctrinal differences were invariably
irreconcilable.

The law also spelt out the offices of ministers in the Donatist church: bishops,
priests and deacons and doubted whether they could even be considered as clerics:
“whether they defame the name of bishop by the assumption of such priestly office,
or, that which is almost the same, they belie religion with the appellation of priests or
also if they call themselves deacons.”

Valentinian had thought that Donatist bishops were unworthy of the priesthood in his CTh 16.6.1 of 20 February 373, but had not mentioned other Donatist clerics. By contrast, Constantine’s letter to the Numidian bishops had been addressed to all Numidian bishops, including Donatists. However, this law of Gratian went further than either Constantine or Valentinian had done, by suggesting that the Donatist clerics “may not even be considered Christians.”

Evidently there was no longer any sentiment that the two Churches might one day be reconciled. The continuing schism which by this time may have lasted almost seventy years, had possibly reconciled the authorities to its permanence and therefore, and without an emperor who had Constantine’s unitarian vision, even a pretence of reconciliation, or of reconciliation on unspecified terms, was discarded.

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Donatist Church at this time and it seems unlikely that there would have been very
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much, unless the Donatists were actively evangelising among the Catholic population.

293 Therefore the issue of rebaptism may have become little more than a
pointer, a totemic issue upon which the Catholics could vent their opposition to the Donatists. In all other doctrinal respects the Donatist Church was identical to that of the Catholic, and by this stage in its development it would have been indistinguishable from the Catholic Church to an outsider. As such, the only discernible distinction would have been that it was, in effect, the Catholic Church, but beyond the control of the official Catholic Church and therefore and in practice independent from the official religion. As such, the intolerance towards the Donatists evidenced in this law may have been more pertinent to their independence from the Catholics than to their beliefs. ut this is only speculation.

Gratian and Judaism

CTh. 12.1.99 of 18 April 383 was issued to Hypatius, Praetorian Prefect of Italy and Illyricia; it was the only law of Gratian on the Jews.\(^{294}\) It dealt with the liability of Jewish clerics to serve on councils. Although it began with rhetoric not complementary to the Jews, in essence it made both groups equal. It began by referring to “the order with which men of the Jewish faith flatter themselves and by which they are granted immunity from the compulsory public services of decurions shall be rescinded.”\(^{295}\) That order was probably Constantine’s CTh. 16.8.2 of 330 which granted exemption from liturgies to “patriarchs and priests” of Judaism. The law indicated that since not even Christians were able to enter the Church until they had “discharged all the service due to their municipalities”\(^{296}\) then neither should the Jews. Therefore, and with language that indicated that the government regarded Judaism as a perfectly legitimate, even comparable, religion to Christianity, the law ordered “if any person therefore, is truly dedicated to God” he should transfer his

\(^{294}\) Flavius Hypatius 4 PLRE 1.448-449

\(^{295}\) in iussio, qua sibi iudaeae legis homines blandiuntur per nam eis curialium munera datur immunitas rescindatur

\(^{296}\) patriae debita univera persolvant
property to another who would then be able to perform the liturgies for the person who had joined the Jewish priesthood.\textsuperscript{297}

Therefore this law gives the impression of being both tolerant and intolerant at the same time. Tolerant because it applied the same conditions on applicants for the Jewish priesthood as already existed for those to the Christian priesthood, but also intolerant because it appeared to be somewhat dismissive of the Jews and also, more importantly, because in order for Jewish clerics to be “truly dedicated to God” they had to fulfil the same criteria of (effective) poverty as did Christians. The law appears to indicate that the authorities had an attitude that in order for a religion to be regarded as legitimate it had to have the same attitudes and approaches as had Christianity.

At the same time however, it should be remembered that previous laws on this subject have given the impression that the government was more concerned with ensuring that the councils were not unduly drained of manpower and resources by the Church. In all probability therefore, and in action, the primary concern of the government would have been in ensuring that the councils’ were able to function. Nevertheless it is difficult to escape the impression that for Jewish priests to be regarded as such they had to fulfil some of the criteria (i.e. poverty), that Christians also had to fulfil.

\textbf{ratian and postates}

The creation of a category of apostates in the legislation is testament to the growth of Christianity in the fourth century as well as to a desire to ensure that such growth was not impeded through defections. CTh. 16.7.3 of 21 May 383 was Gratian’s only law on apostates and it was also his last on religious affairs. It was addressed to

\textsuperscript{297} \textit{nis nis igitur vere deo dicatus est}
the same Hypatius who received CTh. 12.1.99.\textsuperscript{298} It should be noted that Gratian’s co-emperor Theodosius had already issued two laws against apostates (16.7.1 of 2 May 381 and 16.7.2 of 20 May 383) before this law was issued. The fact that CTh. 16.7.2 and 3 were issued within a day of each other may be evidence of a co-ordinated approach to the problem by the two governments; although the fact that both governments felt impelled to issue a law on broadly the same subject almost simultaneously is testament to the actual dissolution of the empire into what in practice were seen as two separate halves.

The law prevented apostate Christians from making wills and also laid down a hierarchy, through rhetoric and through punishments, of which religious group the government considered to be less unacceptable than another. The law began: “...denying them the liberty to make testaments we avenge the criminal act of Christians who turn to altars and temples.”\textsuperscript{299} The law went on to attack conversion to Judaism: “The disgraceful acts of those persons who have disdained the dignity of the Christian religion and name and have polluted themselves with the Jewish contagion shall be punished also.”\textsuperscript{300} The Manicheans came in for particular attention however and were apparently regarded as the worst of all the three groups: “...ut those who at any time frequent the nefarious retreats and wicked seclusion” of Manicheans were to be “pursued constantly and perpetually” by Valentinian’s CTh. 16.5.3.\textsuperscript{301} The phrase “at any time” (\textit{aliquando}) apparently indicates that this law was not simply directed against Christians who converted to Manichaeism, but was also against Manichaeism in general. “...ut the law went on in a somewhat repetitious manner and dealt specifically with the “authors,” presumably the teachers of Manichaeism within the context of

\begin{small}
\textsuperscript{298} Honoré’s (1998) quaestor W1 183-186
\textsuperscript{299} Christianorum ad aras et templa migrantium negata testandi licentia vindicamus admissum. “Criminal act” being a fairly harsh translation of \textit{licentia}.
\textsuperscript{300} Eorum quoque flagitia puniantur, qui Christianae religionis et nominis dignitate neglecta Iudaicis sem et polluere contagis.
\textsuperscript{301} Os vero ui antichaeorum ne anda secreta et sclerosos ali nando sectari malure secessus ea ingiter at ne perpetuo poena comitetur nam vel divalis arbitrii genitor alentinianus adscripsit vel nostra nihil minus saepius decreta inserunt.
\end{small}
facilitating the conversion of Christians to Manichaism: “authors, moreover of this persuasion, who have deflected unstable minds to their own society, shall incur the same penalty as those guilty of such a false doctrine.” The law then went on to give judges carte blanche when dealing with Manichaeian “authors” who were involved in converting Christians: “Furthermore we decree even heavier penalties, according to the discretion of the judges and the nature of the crime committed, shall in general be extraordinarily imposed upon the nefarious artificers of this crime.” 302 No similar injunctions were made against Jewish or pagan religious leaders.

However, in practical effects (other than those against Manichaean “authors,”) this law was limited; it ordered that the wills of the deceased might only be challenged on the grounds of apostasy within five years of their death: “in order that the dead may not be harassed by the perpetual outrage of criminal accusation.” 303 Such an accusation would have to be proved and the accuser would have to demonstrate to a court that he did not know that the deceased had been an apostate during his life.

Although most of the general rhetoric of CTh. 16.7.3 was directed against the Manichaens, it should be noted that only once throughout this law was Manichaean religion itself described in derogatory or intolerant language; the law called it a “false doctrine” (\textit{rei erroris huiuscemodi}). Nowhere in the law were Manichaens themselves attacked or referred to in derogatory terms. As with Valentinian’s earlier CTh. 16.5.3 of 2 March 372 against Manichaeanism this latest law of Gratian is apparently more concerned with, and intolerant of the Manichean religion itself than with individual Manicheans. There was no derogatory rhetoric against paganism, at most it was a “criminal act” for Christians to apostatise in favour of paganism. Although conversion of Christians to Judaism received less rhetorical attention than conversion to Manichaeism did, it was condemned in terms that were possibly stronger than those

302 \textit{actores vero persuasionis huius \ ni lubricas mentes in proprium de le erant cnsortium eadem \ ne reos erroris huiuscemodi poena comitetur \ in etiam graviora plerum \ ne pro motibus indicum et \ nalitate commissi e \ tra ordinem promi \ ne arios scleris huius arti ices supplicia censemus.
directed against Manichaeanism. Rather than being condemned as an error, Judaism was described as a contagium which may have had connotations of evil. ut this rhetoric was not matched by a corresponding level of punishment; other than the invalidation of wills there was only an imprecise injunction that they “be punished also” (no ne puniatur). Christians converted to paganism received no punishments beyond the invalidation of their wills and thus through a combination of rhetoric and punishments the law indicated that Christian conversion to Manichaism was the worst of the three possibilities, followed by conversion to Judaism and then finally conversion to paganism.

**Conclusion**

Unlike under Valens or Constantius, under Gratian no single figure emerges from the legislative record who appears to have had a commanding role in the running of the state. Hesperius, the son of Ausonius, only received three laws from the emperor, but none of these appear to have any unitary appearance to them other than that two of them were directed against heretics. Similarly, there is no evidence that Ambrose had a dominant position over the young emperor although Damasus does emerge as a figure of some importance. The long letter to Aquilinus responding to Damasus’ petition shows in vivid terms the role and importance that the bishops (at least in Rome) had come to play in the business of ruling the empire over and above that of the secular and traditional elite. However, that did not mean that Gratian was a subservient tool in the hands of Damasus; the emperor was able to ignore (i.e. reject) Damasus’ request that he be granted the supremacy and honour of being tried only by the emperor. His request to have jurisdiction over other bishops in the empire was granted, but qualified by the emperor so that such jurisdiction would have to include the agreement of a council of bishops.

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303 Sed ne vel mortuos perpetua ve at criminationis inuria
Heretics appear to have been the groups most discriminated against, (CTh. 16.5.4) but the authorities were apparently only concerned with their assembly places whereas the Donatists were more roundly condemned for their doctrines, but with little substantive action taken against them. The Church, on the whole, benefited from Gratian. Clerics emerged wealthier (CTh. 16.2.24 and 13.1.11), although their rights in court appear to have been limited (CTh. 16.2.23). The Christian faith and sacraments were protected and enhanced (CTh. 15.7.4, 8 and 9), though that process of enhancement for the Church went in conjunction with a corresponding enhancement for the Imperial office as evidenced in CTh. 15.7.8 in which it was assumed that the emperor had the power to judge who should receive the sacrament. That ‘sacralisation’ was continued in the language of the Easter amnesty of that year which had little to do with Easter, but much to do with the emperor.

Perhaps the most interesting law is the relatively short one on the liabilities for Jewish clerics to serve on councils (CTh. 12.1.99). Although it placed them on an equal status with Christian clerics, it did so in such a manner as to strongly imply that that which made good Christian clerics would also be that which also made good Jewish clerics. Christian values were being applied to other faiths and that indicates the extent of Christianisation by this period and consequent with that is shown (in the case of this law) a partial disregard for whatever existing means of clerical selection that the Jews may already have had.
The death of Valens and his officers, as well as the near total destruction of the eastern army at Adrianople on 9 August 378 obliged the surviving regime to find a replacement from sources that they may not have otherwise considered. They chose Flavius Theodosius, son of the more famous and successful general of the same name who had been quietly living in Spain since his father’s execution in 375.1

Theodosius had a reasonably long reign of almost exactly sixteen years, but until the last two and a half years, when he became sole Augustus, he was the junior Augustus in the imperial college, first to Gratian and after his death in August 383 to Valentinian II until his suicide in May 392. In practice Theodosius was more powerful than the juvenile Valentinian, but in strict theory Theodosius remained junior to Valentinian’s dynasty. He was also the first emperor since the third century whose family was not from the Balkans. Theodosius had to assert his authority over the empire twice; firstly when he was appointed by Gratian and again after the defeat of the temporarily recognised Maximus in 388.2 Theodosius issued sixty-five laws on religious affairs throughout his reign, far more than any of his predecessors. Thirty five concerned or affected to a greater or lesser extent Christianity, the Church and clerics;3 twenty one were directed against heretics and heresies;4 four were directed

1 Theod. 5.5.1-2; Aur. Vict. 47.3 on the accession. Amm. Marc. 31.13.18-19 on the losses suffered in the battle. See Williams and Friell (1994) 13-22 for details of the Gothic situation prior to Adrianople and 23-35 for Theodosius’ background and stabilisation post Adrianople. They provide an analysis of the battle at 176-181; Matthews (1975) 88-100 covers the same ground with a more detailed discussion of why Theodosius was proclaimed emperor. See Errington (1996) who argues that Theodosius was actually recalled in 377 after a power struggle which resulted in his father’s death and in turn the death or dismissal of his father’s enemies. Errington notes that Flavius Eucherius (Eucherius 2 PLRE 1.288), the brother of the murdered Theodosius was Gratian’s Comes Sacrarum largitionum by March 377. Flavius Theodosius 3 is the father, PLRE 1.902-904, Flavius Theodosius 4, the son PLRE 1.904-905
2 McLynn (1994) 109 emphasises Theodosius’ initial military dependence on Gratian and the new regime’s early practice of minimising Gratian’s role.
3 CTh. 16.1.2 of 28 February 380; 16.2.25 of 28 February 380; 9.35.4 of 27 March 380; Const. Sirm. 7 of Easter 380 1; 16.2.26 of 31 March 381; 11.39.8 of 29 June 381; 9.17.6 of 30 July 381; 16.1.3 of 30 July 381; 12.1.104 of 7 November 383; Const. Sirm. 3 of 4 February 384; 11.39.10 of 25 July 385 6; 16.1.4 of 23 January 386; 9.17.7 of 26 February 386; Const. Sirm. 8 of 22 April 386; 12.1.115 of 31 December 386; 16.4.2 of 16 June 388; 2.8.19 of 7 August 389; 9.35.5 of 6 September 389; 12.1.121 of 17 June 390; 16.2.27
against apostates;⁵ nine were on pagans or paganism;⁶ four laws were concerned with the Jews⁷ and two more were concerned with regulating Jewish-Christian personal relationships.⁸ However, it should be noted that although a law may be categorised as one which affects one group, there are a number of laws of Theodosius which actually are directed against, or affect, more than one group.

A number of incidents during Theodosius' reign have come to typify both the power of the Church and (therefore) Christian intolerance in the later empire: the destruction of the synagogue in Callinicum in late 388 by a local bishop and his congregation, for which an order to recompense was apparently reversed because of pressure from Ambrose;⁹ Theodosius' penance following the massacre at Thessalonica in 391¹⁰ and also the destruction of the Serapeum in Alexandria in 392.¹¹ Evidence from his legislation should be sought to establish whether such incidents were in any way related to the fact of Theodosius being emperor or to some other factors, or none. In modern authors, Theodosius himself has a reputation as a zealous and (therefore) pious Catholic Christian, smiting the enemies of the Church, whoever they might have been, and making Catholicism the established, official religion of the Roman

of 21 June 390; 11.16.18 of 5 July 390; 16.2.28 of 23 August 390; 16.3.1 of 2 September 390; 12.1.23 of 28 July 391; 9.40.15 of 13 March 392; 11.36.31 of 9 April 392; 2.8.20 of 17 April 392; 16.3.2 of 17 April 392; 2.8.21 of 27 May 392; 9.45.1 of 18 October 392; 15.5.2 of 20 May 392; 5 and 15.7.12 of 29 June 394
⁴ CTh. 16.5.6 of 10 January 381; 16.5.7 of 8 May 381; 16.5.8 of 19 July 381; 16.5.9 of 31 March 382; 16.5.10 of 20 June 383; 16.5.11 of 25 June 383; 16.5.12 of 3 December 383; Coll. ve. 2 of 383; 4; 16.5.13 of 21 January 384; 16.5.14 of 10 March 388; 16.5.15 of 14 June 388; 16.5.16 of 9 August 388; 16.5.17 of 4 May 389; 16.5.18 of 17 June 389; 16.5.19 of 26 November 389; 16.5.20 of 19 May 391; 16.5.21 of 15 June 392; 16.4.3 of 18 July 392; 16.5.22 of 15 April 394; 16.5.23 of 20 June 394 and 16.5.24 of 9 July 394.
⁵ CTh. 16.7.1 of 2 May 381; 16.7.2 of 20 May 383; 16.7.4 of 11 May 391 and 16.7.5 of 11 May 391.
⁶ CTh. 10.1.12 of 17 June 379; 16.10.7 of 21 December 381; 12.1.112 of 16 June 386; CJ 7.38.2 of 3 July 378 and CTh. 16.10.12 of 8 November 392
⁷ CTh. 13.5.18 of 18 February 390; 16.10.7 of 21 December 381; 16.10.8 of 30 November 382; 16.10.9 of 25 of May 385; CJ 12.1.112 of 16 June 386; 7.38.2 of 3 July 387; CTh. 16.10.10 of 24 February 391; 16.10.11 of 16 June 391 and 16.10.12 of 8 November 392
⁸ CTh. 3.1.5 of 22 September 384 and 3.7.2 of 14 March 388
⁹ All the sources for the Callinicum incident are from Ambrose's letters: p. Coll. 1a; p. 74 and p. Coll. 1
¹⁰ Soz. 7.25; Theod. 5.17; Amb. Ep. 51
¹¹ Soc. 5.16; Soz. 7.15; Theod. 5.22; Ruf. 11.22-30
state. Again, evidence from his prolific religious legislation should be sought to verify this persistent image of the last emperor to rule both halves of the empire.\textsuperscript{12}

**Theodosius and the Church**

The law which has been taken to epitomise Theodosius' religious standing is his first law on Christianity (although not his first law on religion), the famous *Cunctos populos* law (CTh. 16.1.2) of 28 February 380 addressed to “The People of Constantinople.”\textsuperscript{13} The law was straightforward in its terms and because of that all the more dramatic. It clearly prescribed the belief that “all peoples” should now follow and sought to define that belief in what was doubtless the simplest and most accessible means for ordinary citizens: Theodosius' subjects should follow that belief as practised and preached by St. Peter and his successor Damasus and his (recently deceased) colleague Peter of Alexandria. The law also avoided technical and theological terms and stated, “we shall believe in the single Deity of the Father, the Son and the Holy Spirit, under the concept of equal majesty and of the Holy Trinity.”\textsuperscript{14} The law ordered that such people were to be called Catholics “the rest however, whom we adjudge demented and insane, shall sustain the infamy of heretical dogmas” their meeting places were not to be termed churches and they would be

\textsuperscript{12} For conspicuous treatment of Theodosius as a zealous Christian see, for example, Trevor-Roper (1966) 36 terming him the “first of the Spanish Inquisitors;” Coleman Norton (1966) who dedicates his three volume compendium to Theodosius (as well as to Constantine and Justinian); Hanson (1988) 152 accuses him of “ferocious coercion;” Williams and Friell (1994) 53 has him as a “zealous son of the Catholic Church” (albeit after his baptism in late 380); Liebeschuetz is only a little more restrained describing him (and Gratian) as “insisting on being Christian emperors” as opposed to emperors who happened to be Christians; Honoré (1998) 33-38 has a more sympathetic image of Theodosius, depicting him as cautious. Errington (1997b) examines Theodosius' religious legislation within the context of the period by examining its impact, and lack of, in the narratives of contemporary historians and writers. His contribution is crucial and vital in understanding Theodosius' religious policy.

\textsuperscript{13} King (1961) 28-30 refers to it as a “magnificent trumpet blast” with which Theodosius “opened his campaign against all the heresies” (quotes at 28).

\textsuperscript{14} *patris et ilii et spiritus sancti unam deitatem sub parili maiestate et sub pia trinitate credamus*
“smitten first by divine vengeance and secondly by the retribution of our own initiative, which we shall assume in accordance with the divine judgment.”

This law therefore appears to show a marked change in the government’s attitude to the personal religious beliefs of its peoples; hitherto laws on religion were invariably of the format ‘thou shalt not,’ now however there was, apparently, an undeniable element of ‘thou shalt.’ However, exactly what the law prescribed may plausibly have been open to doubt. Its brevity may have made it more dramatic, but that did not necessarily enhance its clarity. The law has been taken to indicate that the official faith of the emperor and of the empire was now, or should be, Catholic.

It has been noted by modern historians that CTh. 16.1.2 did not produce the results that might have been expected from such a dramatic law; i.e. heretics continued being heretics, as did pagans and Jews. King believes that once the noise of the “trumpet blast” of the law was over “nobody paid any attention” to it. Rather, it was simply a token of Theodosius’ intent that had to be tempered as Theodosius “conformed to the ways of thought” of the east. King also believes that Theodosius’ proclamation as emperor would have had an enormous impact on his mind and attitude to the job. Ehrhardt has a complex and unconvincing argument suggesting that Theodosius was attempting to harness eastern dislike of the (Arian) Goths through CTh. 16.1.2. Ehrhardt believes that Theodosius, unable to keep the Goths

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15 reli nos vero dementes vesanos ne indicantes haeretici dogmati in amiam sustinere nec concilia bella eorum ecclesiarum nomen accipere divina primum vindicta post etiam motus nostri nem e caelesti arbitrio sumperimus ultione plectendos

16 The law is often regarded as Theodosius’ “election manifesto” commitment on religion, King (1961) 29: similarly Hanson (1988) 703: “Theodosius, on ascending to the imperial throne of the East, has soon declared himself unequivocally in favour of the pro-Nicene cause.” Hanson 804, also exaggerates the importance of 16.1.2 by stating that it made the “pro-Nicene doctrine of the Trinity the official doctrine of the Roman Empire.” Williams and Friell (1994) 53 attribute it to his zealous Catholicism; Matthews (1996) 122 says Theodosius “imposed upon all peoples under his rule an allegiance of strict western orthodoxy.” Others, notably King (1961) seem to believe that 16.1.2 was the sort of legislation that one should expect from a good Catholic emperor.

17 King (1961) 29-30; such “brash western ways” would have “made hopeless” his “task of bringing peace to the church.” all quotes at 29
out of the empire, was instead attempting to keep them out of Roman society and separate from his other subjects: “the more the people of Constantinople, and of the whole Roman empire, came to know the Goths, the more they learned to hate Arianism.” However Ehrhardt provides no evidence to substantiate his opinion. McLynn suggests that the law should be seen in the context of Theodosius' initial dependence on Gratian and that Theodosius' needed to indicate some degree of “self assertion.”.

Errington has the most convincing reconstruction of the reasons both for the law and its lack of enforcement in the east. He points out that among contemporary historians and theologians the law appears to have made very little impact and indeed only the lawyer Sozomen referred to it. Sozomen indicates that whilst in Thessalonica, Theodosius became aware of the minority status of the Nicenes in the east and in particular in Constantinople. According to Sozomen, Theodosius was unwilling to impose his orders on his subjects and this law was designed to advise his subjects, and especially the Constantinopolitans, as to the new emperor's religious attitude. Errington also indicates that the advisory and expectatory nature of the law is shown by Theodosius' use of *volumus* as opposed to the use of *iubemus* in the second paragraph giving the punishments, or rather, the lack of punishments.

Errington also maintains that Sozomen gives no evidence that he expected the law to go further than Constantinople, but this is in contradiction to Sozomen himself: Theodosius “caused to be published at Constantinople this law, well knowing that the rescript would speedily become public to all the other cities, if issued from that city, which is as a citadel of the whole empire.” However, Theodosius'

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18 Ehrhardt (1964) 11
19 McLynn (1994) 109
20 Errington (1997b) 411-415; McLynn (1994) 108 notes that Gregory Nazianzus also makes no reference to the law in his works, despite being present in Constantinople at the time.
21 Soz. 7.5
expectation for the future progress of the law, reported by Sozomen, indicates further the advisory and expectatory nature that it was intended to convey.

Nevertheless, despite this apparent certainty of Sozomen that the law should indeed be empire-wide, there does seem to be some doubt as to the geographical scope of the law. Indeed it even appears to be contradictory; it is addressed to the people of Constantinople, but then immediately begins “all peoples who are ruled by the administration of Our Clemency” which can only be taken to refer to the whole of the Eastern empire. The lack of clarity may have been deliberate; Theodosius was an unknown quantity in the east and therefore, although he maintained unambiguous clarity in his own religious position, the maintenance of some ambiguity as to the geographical extent of the law and also the degree to which it would be enforced, may have allowed his subjects (outside Constantinople) some time to consider their new emperor’s religious position and, as such, whether they might wish to adjust their own. Similarly the punishments were also vague and probably deliberately so; Theodosius had insulated himself against any negative reaction by safely allowing God to take the initiative which Theodosius would then follow. This ambiguity allowed Theodosius the fullest possible freedom of action in his future religious policy; should there be significant reaction to his religious position, he might follow the (lack of) “divine judgement” and decide that punishment was, therefore, inappropriate.

Although this was a convenient tactic for the government, it would be a mistake to regard it as an excessively cynical one. This tactic marks an increase in ideological power behind the guise of legislation. By allowing God to take the initiative which Theodosius would follow, the Imperial government was aligning itself with the will of God in a most intimate way and was basing its future actions on heavenly wishes. Moreover, God was the “ideal judge,” and in following that judgment Theodosius would thereby become an “ideal judge” and as such would be immune from human weaknesses, including lack of knowledge of the true intricacies
of any case. Finally, this tactic tended to shift somewhat the responsibility for future actions or punishments away from the authorities and onto the accused; if God’s judgement was perfect (which would be followed by Theodosius) all responsibility would logically have to be that of the accused; they would indeed receive their just deserts.\textsuperscript{22}

As noticed above, the lack of theological and technical terms in this law is striking. Most vociferously since the council of Nicaea over fifty years earlier, discussion in the Church had focused on the nature of the relationship of the Son with the Father, and indeed on the nature of the Son’s being as well. The lack of terms such as \textit{homoousion} or \textit{ousia}, or of their Latin equivalents, \textit{substantia} or \textit{persona}, might lead to the conclusion that there was little direct influence from clerics in the composition of this law. However, the law does assign equal status to the Holy Spirit which had hitherto not been the most important concern in theological debates and was only at this point becoming an issue. As such Theodosius must have gained some advice from clerics, or, alternatively, he may have been keeping abreast of theological developments himself.

Also worthy of note is Theodosius’ introduction of the phrase “the concept of equal majesty” (\textit{sub parili maiestate}) to describe the nature of the Holy Trinity. This phrase was not common to descriptions of the Trinity and Theodosius may have coined it in order to present the Nicole, Catholic version of Christianity as being more palatable to non-Catholic Christians.

\textit{CTh. 16.2.25} was issued on the same day as \textit{Cunctos populos}, i.e. 28 February 380. There is no addressee and it reads more like a statement of fact, than a law: any persons who “through ignorance confuse or through negligence violate and offend the

\textsuperscript{22} The concept of the “ideal judge” is from Harries (1999c) 214-218
sanctity of the divine law commit sacrilege.” No religious group was even mentioned and no punishments prescribed. Whereas the previous law was ambiguous, this law appears to be simply vague. However, as with CTh. 16.1.2, the lack of clarity may have served Theodosius’ interests; without specifying the “persons” nor even defining the actions that could be deliberately or inadvertently committed, but which nevertheless led to the crime of “sacrilege,” a larger number of people and religious groups could have fallen foul of this law than would have been possible if Theodosius had specified individual groups or modes of behaviour. As such, despite its brevity and apparent simplicity, this law is one of the most intolerant and potentially most threatening to religious groups who may have incurred the displeasure of the government or one of its officials. As with CTh. 16.1.2, all options of future action were reserved to the government.

Pharr raises the possibility that the divina lex against which persons might offend could be interpreted either as the law of the emperor or the law of God. Again, such ambiguity was probably not accidental. However, contemporaries may have interpreted divina lex as referring to the emperor’s law rather than God’s (assuming that contemporaries would have noted any difference between the two types of law). The crime in CTh. 16.2.25 was sacrilege which had only been mentioned in two previous laws (CTh. 16.8.7 of 352 and CTh. 9.38.3 of 5 May 367 of Valentinian) and one letter (Constantine’s letter to bishop Macarius on the shrine at Mamre). Constantine’s letter said that it would be “sacrilege” (ajsebew) if pagan worship continued on the site after the erection of a church. In Constantius’ CTh. 16.8.7 sacrilege was only used to describe gatherings of Jews; sacrilegis coetibus. More substantive is Valentinian’s CTh. 9.38.3 granting an amnesty except for those who were “guilty of sacrilege against the Imperial majesty” adtamen sacrilegus in maiestate.

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23 Qui divinae legis sanctitatem aut nesciendo confundunt aut neglegendo violant et offendunt, sacrilegium committunt
24 Pharr (1952) 444 n75 notes that offending the “sanctity of the divine law” (divina lex ) could be interpreted as either the law of God, or of the emperor.
Evidently the sacrilege here refers to high treason and that may be the understanding of Constantine's use of it as well. Constantine had authorised the destruction of the pagan shrine and idols and also the building of a church on the site; he had therefore given the site and its religious meaning exclusively to the members of his favourite faith, the Christians. For pagans to have continued to worship there, or returned to worship on the site, could therefore have been considered a violation of Constantine's wishes. Two out of three previous instances of the use of sacrilegium therefore indicate that it is likely to indicate an offence, to some degree, against the emperor.

CTh. 9.35.4 of 27 March 380 addressed to Albucianus, Vicar of Macedonia, prohibited the use of torture in criminal investigations during lent. After Easter torture could presumably be employed again. This law shows only a very limited degree of Christian influence on Theodosius' religious legislation thus far. Valentinian had pardoned all criminals in custody, which may not have amounted to very many persons actually being released, but was at least a permanent measure. This law only suspended torture, although it may have affected a larger number of people.

Const. Sirm. 7 to Eutropius Praetorian Prefect of the East, was issued to Eutropius probably just before Easter 381 and shows a greater acknowledgement by Theodosius of his Christianity. It ordered an Easter amnesty for criminals awaiting punishment and therefore is similar to Constantius' and Valentinian's amnesties. Like them it also excluded those suspected of committing the five major crimes of treason, murder, adultery, rape and magic. However, Theodosius' amnesty does not appear to have been as comprehensive as those of Valentinian's had been. In his CTh.

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25 Albucianus PLRE 1.38, otherwise unknown.
26 Eutropius 2 PLRE 1.317; incorrectly given by the editors of PLRE as PPO Illyrici; repeated by Matthews (1975) 97. However all the laws which he received as PPO were issued from the East by Theodosius. Mommsen (1962) Vol 1 ICL III lists him as Praetorian Prefect of the East. He held his prefecture from January 380 until at least September 381, and was the author of the reviarium. Honore (1998) 45-47 attributes the drafting of this law to the quaestor E2, whom he believes was a Christian.
27 i.e. Constantius' 9.38.2 of 6 September 354 and Valentinian's 9.38.3 of 5 May 367 and 9.38.4 of 6 June 370
9.38.3 of 367 Valentinian had ordered the release of “those persons who are bound by criminal charges or who are confined in prison” which presumably meant those in prison awaiting trial as well as those convicted and in prison awaiting punishment. Similarly, his CTh. 9.38.4 of 370 pardoned those “tormented by the unhappy expectation of judicial investigation under torture and the fear of punishment” which again presumably meant those awaiting trial and those convicted and awaiting punishment. In his amnesty however, Theodosius appears to have excluded those persons not yet convicted, or at least he has not made their pardons so explicit. Const. Sirm. 7 ordered “those persons who are disturbed by the terror of imminent punishment shall be restored by the indulgence of unexpected compassion to perpetual security.” Further on Theodosius announced, “Finally, therefore we remit the punishment of crimes.” So those in prison under suspicion and awaiting trial were apparently excluded from the amnesty.

Nicephorus Gregoras, a later Byzantine source, records the addressee Eutropius as being “a companion and of the same way of thought as the emperor Julian.” Which indicates that Gregoras believed Eutropius was a pagan. However it is unknown what source Gregoras used to come to this conclusion; presumably he used Eutropius’ own Breviarum. However, throughout his work, Eutropius does not directly discuss paganism, or even religion in general. He makes a number of references to religious practices, but only of a very general nature; his most frequent is that upon death an emperor might be deified, he usually uses the phrase “enrolled among the gods,” which was also applied to all three of Valens’ Christian predecessors. Eutropius records that he accompanied Julian on his Persian campaign: “I was also a member of this expedition,” and it seems likely that Gregoras

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28 ut illos quos imminentis supplicii terror e agitat insperatae miserationis indultio securitati perpetuae restitutos
29 ideo denique…noxas remittimus
30 He generally uses the phrase “inter divos relatus est.” 10.8.2 for Constantine’s deification; 10.15.2 for Constantius’; 10.18.2 for Jovian’s. All translations from Eutropius’ Breviarium are those of ird (1993).
31 Eutr. 10.16.1 cui e peditioni ego no ne inter ui
incorrectly assumed that the Apostate would only have co-religionists in his entourage. Eutropius did give a favourable, but measured account of Julian’s reign; he praised him for his education, his treatment of the provincials and for not being avaricious.\textsuperscript{32} However Eutropius criticised him for not being discriminating enough towards his friends and also records that “he persecuted the Christian religion too much, but nevertheless in such a manner that he abstained from bloodshed.”\textsuperscript{33}

Speculatively it could be suggested that if Eutropius had been a Christian then he might have been more likely to refer to Christianity as ‘our religion,’ or in a similar manner. Equally however, Eutropius gives no positive indication that he held pagan beliefs either. Nevertheless, on other subjects Eutropius has shown himself to be partisan if he wished. \textsuperscript{ird} has argued that as a member of the senatorial elite Eutropius was keen to demonstrate the importance of the Senate. As such he has a bias towards Sulla and against Marius and Caesar, and never even mentions the Gracchi. In his treatment of the emperors the best emperors are those who respected the Senate, especially Trajan, and the worst were those who abused or ignored it.\textsuperscript{34} If a public display of the merits of his religion had mattered as much to Eutropius as his concern for demonstrating the importance of the Senate as well as the necessity of the state having ‘good’ emperors, then we should expect to find evidence of such religious concern in his \textit{reviarium}. In short, since we do not have any indication of even a moderate religious agenda from Eutropius in his \textit{reviarum}, we should not expect to find such in any of his legislation.

Therefore the apparent exclusion from the amnesty of persons awaiting trial, in contrast to previous amnesties, cannot be attributed to any anti-Christian or pro-pagan sentiments from Eutropius. Conceivably, if Eutropius was a pagan, Theodosius may

\textsuperscript{32} Eutr. 10.14-10.15.1 on Julian’s campaigns as Caesar in Gaul and his accession and 10.16 for his character.
\textsuperscript{33} Eutr. 10.16.3 \textit{religionis Christianae nimius insectator perinde tamen ut cruore abstineret}
\textsuperscript{34} \textsuperscript{ird} (1993) xxv-xxv
have been disinclined to give him orders which comprehensively reflected Theodosius' Christian position. ut perhaps more likely, from the evidence, is that Theodosius was reluctant to issue to Eutropius, a religiously a-partisan official, orders that might have been interpreted by such an official as being more partisan than he was.

CTh. 16.2.26 of 31 March 381 was issued to Tuscianus, count of the Orient.\textsuperscript{35} It ordered that “all persons who appear to be guardians of the churches or holy places and who devote themselves to religious duties shall not incur the annoyance of any demands. For who would permit that those persons whom he knows to be necessarily dedicated to the aforesaid services should be bound by being enrolled on the capitation tax list.”\textsuperscript{36}

Evidently the law favoured Christians and Christianity by specifically exempting their property from the capitation tax lists if they had a role in maintaining a church or “holy place.” Most notably, it did not specify clerics as the beneficiaries of this law and therefore was presumably also intended to include a wide range of lay workers; indeed it may even have been focused on providing benefits to them rather than exclusively on clerics, although the inclusion of those “devote[d] to religious duties” indicates that clerics were presumably also included.

The reference in the first part of the law to exemption from “demands” \emph{adtemptatio}, is curious; it may be related to the practice by which individuals could exempt themselves from being called upon to provide services to the authorities at random periods by voluntarily enrolling themselves on the \emph{capitatio} lists.\textsuperscript{37} As such the law exempted Church workers (and presumably clerics) from one means of

\textsuperscript{35} Tuscianus 3 PLRE 1.926, otherwise unknown. Honoré (1998) 45 classifies this law as the compositional work of the quaestor E2.

\textsuperscript{36} \textit{nivosus nos consitterit custodes ecclesiarum esse vel sanctorum locorum ac religiosis obse uiis deservire nullios adtemptationis molestiam sustinere decernimus. uis enim eos capite censos patiatur esse devinctos nos necessario intellegit supra memorato obse uios mancipatos

\textsuperscript{37} If, that is, such a system first instituted by Diocletian’s CJ 11.55.1 of (possibly) 290, still existed. See Goffart(1974) 47.
taxation. However, if the law was intended to be mainly for the benefit of the lay workers, who were of low social and economic means, then it was not particularly generous since such people would have had little to contribute to the treasury; if so, then it would have been of more symbolic, than practical, importance.

It should be noted however, that exemptions generally were not just granted to the clergy; secular professionals also enjoyed immunity. Constantine had exempted soldiers, veterans and the close relatives of both from \textit{capitatio} in his CTh. 7.20.4 of 17 June 325\footnote{Constantine appears to have exempted troops even earlier in 311, see Jones (1964) 617.} and Valentinian confirmed the exemption in his CTh. 7.13.6 of 18 September 370. Moreover, whole classes of people were permanently exempt from the \textit{capitatio}. It was a rural tax and therefore the urban plebs throughout the empire were exempt; Valentinian had exempted all the provinces of Illyricum in 371.\footnote{On urban plebs see Goffart (1974) 46, 48-49; for Illyricum see Jones (1964) 147-148 citing CJ 11.53.1} At the same time, abolition of the tax appears to have been a recognised means of courting popularity; Constantine II appears to have abolished \textit{capitatio} at some time before he lost his dominions.\footnote{CTh. 11.12.1 of 29 April 340; see also Goffart (1974) for Maximinus Daja’s intention to abolish the tax in Bithynia.}

Nevertheless, a sympathetic reader of the law could well have interpreted it to refer to pagans and conceivably even to Jews as well. They are not excluded by the law and if Theodosius had intended to include only Christian clerics and exclude those of other religions, then there seems no reason why he could not have simply said so. Such ambiguity was probably not an accident.

CTh. 11.39.8 of 29 June 381 is an example of a law issued for a specific and occasional reason and is, unusually, in the form of a transcript purportedly recording Theodosius’ actual words during a meeting of the consistory. It is almost certainly related to the recent ecumenical Council of Constantinople which had just ended. The
emperor said that “A bishop is not required either by honour or by law to give testimony,” Theodosius then repeated himself saying “it is not fitting for a bishop to be admitted to give testimony, for his person is dishonoured thereby and the privileged dignity of the priesthood is confounded.”

Possibly this ad hominem law was designed to protect Gregory Nazianzus from attack by his numerous enemies. The orthodox Gregory had been appointed bishop of Constantinople just before the accession of Theodosius in order to buttress the position of the Nicenes in the capital. However, Gregory was already bishop of Sasima in Cappadocia and his appointment to a further bishopric was in violation of canon law established at Nicaea. During the council, Gregory made conciliatory approaches to the absent westerners, suggesting that Damasus of Rome’s ally, Paulinus, be appointed to the see of Antioch, vacant due to the recent death of Miletius. However, eastern opponents, notably the sidelined Alexandrians and the Macedonians conspired against Gregory and, tired of the internicene conflicts, Gregory resigned during the council and returned to Cappadocia.

Theodosius may have issued this law if not to protect Gregory, then at least in order to draw a conclusion to part of the controversy surrounding Gregory’s failed patriarchy.

CTh. 9.17.6 of 30 July 381 to Pancratius, Prefect of Constantinople seems to have attempted to enhance the status of the Church establishment more generally. It was an attempt to regulate burials and implies an attempt to elevate the status of saints and martyrs, but it did so in a manner that shows strong and continuing influence of pre-Christian attitudes. In its first part the law ordered the removal of all bodies in urns or sarcophagi, from the city. Anyone who ignored the law or conducted a burial within the city would be fined one third of his wealth. Pancratius’ office staff would also be fined fifty pounds of gold. The second part warned people not to think that

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41 papis nec honore nec legibus ad testimonium flagitatur. Episcopum ad testimonium dicendum admitti non decet nam et persona dehonoratur et dignitas sacerdotis excepit conunditur. Honoré (1998) 39-40 notes the repetition. He also notes that there is only only one other example of a law in this form, CTh. 11.39.8 of 381.
42 Pancratius 4 PLRE 1.664
43 Or 3,600 solidi – with 72 solidi to the pound. See Jones (1964) 108
“the resting places of apostles and martyrs are granted for the burial of bodies.”\textsuperscript{44} The law thus appears to be an attempt to disassociate the Constantinopolitans, in some physical terms at least, from the increasingly popular cult of the martyrs. At the same time its demand that burials be conducted only outside the walls demonstrates the continuance of ancient prejudices against burials within cities. The law shows a degree of disassociation between the attitude of the Imperial government towards Christianity and at least one of the directions in which popular Christianity was drifting.\textsuperscript{45} Paradoxically therefore this law has both pro and anti Christian elements. The penalty of fifty pounds of gold seems severe, but Pancratius’ staff commanded enormous incomes for performing their administrative services and were the highest paid officials in the east and therefore the penalty may have been a significant, but not unduly severe dent in their collective resources.\textsuperscript{46}

CTh. 16.1.3, known as the \textit{piscopis tradi}, is of the same date as CTh. 9.17.6 (30 July 381) and has been presumed to have been influenced by the decisions of the Council of Constantinople.\textsuperscript{47} The Council began in May and concluded on 9 July 381, in theory it was ecumenical, but in practice only eastern bishops attended and the bishop of Rome, Damasus, was not even represented. Only four, possibly seven canons, have survived from the council and these do so in a letter addressed to Theodosius. The council also produced a creed based on the Nicene creed and described as the “Faith of the 150 fathers” during the council of Chalcedon.\textsuperscript{48}

\begin{footnotes}
\item[44] \textit{apostolorum vel mart rum sedem humandis corporibus aestimet esse concessam}
\item[45] See Markus (1990) 144-149 on the slow growth of the desire of ordinary Christians to be buried close to martyrs, or their relics. See also rrown (1981) 4-8 on the changing facade of late Roman towns due to the rise of the martyr cults and briefly on the importance of the martyrs to Christians of the late fourth and early fifth centuries.
\item[46] Kelly (2004) 66-68 esp. 67 for the Urban Prefecture; Jones (1964) 509 and 692 citing a salary of 10lb of gold for the middle ranking \textit{praetor plebis}
\item[47] Jones (1966) 165-166; King (1961) 44-46;
\item[48] Kelly (1972) 296-331 discusses the origins of the creed. The text of the creed and the canons are translated in Stevenson (1989) 114-118; for a longer discussion and in particular of the theological aspects of the council as well as some of the ecclesiastical machinations in the years before the council see Hanson (1988) 791-823
\end{footnotes}
Constantinople council also arranged for the replacement of Gregory of Nazianzus who had unexpectedly resigned from the see of Constantinople.

The law was issued to Auxonius the proconsul of Asia and ordered the transfer of all churches to “those bishops who confess that the Father, the Son and the Holy Spirit are of one majesty and virtue, of the same glory and of one splendor; to those bishops who produce no dissonance by unholy distinction, but who affirm the concept of the Trinity by the assertion of three Persons and the unity of the Divinity,” after which there followed a list of eleven bishops, by diocese, who were deemed orthodox. Somewhat repetitiously the law then ordered that those bishops in communion with such “acceptable priests” should take control of the churches. Those who “dissent from the communion of the faith of those who have been expressly mentioned in this special enumeration not included in this law and therefore possibly edited out by the commissioners shall be expelled from their churches as manifest heretics and hereafter shall be altogether denied the right and power to obtain churches, in order that the priesthood of the true Nicene faith may remain pure.” The law proclaimed itself to be a “clear regulation” after which there would be “no opportunity for malicious subtlety.” Evidently it was clear and followed the same simple tactic of Cunctos populos in naming those bishops who were orthodox. Unlike Cunctos populos it did not lay down any promise of even vague penalties although the requirements of the law were arguably easier to enforce as they targeted ownership of buildings rather than the religious practices of the emperor’s individual subjects.

The canons of the council of Constantinople make no mention of any claims to property and therefore any direct connection between the council and the law is weak.

49 Auxonius 2 (otherwise unknown) PLRE 1.143; Honore (1998) 45 again attributes this law to E2;
50 *ni unius maiestatis ad *ne virtutis patrem et ilium et spiritum sanctum con itentur eisdem gloriae claritatis unius nihil dissonum pro ana divisione a cientes sed trinitatis ordinem personarum adsertione et divinitatis unitate
51 *omnes autem *ni ab eorum nos commemoratio specialis e presit idei communione dissentiunt ut mani estos haereticos ab ecclesiis et pelli ne ne bis penitus posthac obtinendarum ecclesiariarum ponti icinm acullaten ne permitti ut verae ac i caenae idei sacerdotia casta permaneant
Sozomen does give a summary of the law (7.9.5-7) and states that Theodosius issued the law to indicate his agreement with the clerics’ decisions and also to validate the faith of the clerics assembled there, as they had asked him to do in a letter. Sozomen can only be correct in this regard in the most tangential manner i.e. that the law was issued because Theodosius and his government felt that ‘something should be done’ simply because the council had taken place.\textsuperscript{52} Errington points out that the three provinces which came under Auxonius’ responsibility had sent no bishops to the council;\textsuperscript{53} therefore there were presumably no orthodox bishops, or not any of sufficient importance, to send to the council. Therefore the law listed the bishops known to be orthodox and acceptable in order, Errington argues, that Auxonius would know those who would be acceptable incumbents for the vacated churches; i.e. whether the new incumbents were in communion with those listed in the law and whose orthodoxy had just been confirmed by the council.\textsuperscript{54}

However, Errington overemphasises the administrative nature of this law; its provisions still demanded the expulsion of religious dissidents from their property, presumably by force if necessary, and denied them the “right and power to obtain churches.” Therefore, and insofar as it goes, this law does appear to be particularly intolerant; although it may essentially an administrative and technical ruling rather than a law by which Theodosius “finally and decisively rendered the pro-Nicene version of the Christian faith the official religion of the Roman Empire.”\textsuperscript{55} Its administrative thoroughness indicates the depth of intolerance that lay behind such a ruling; by listing eleven bishops as benchmarks of orthodoxy, the law had gone to great lengths to ensure that only priests of the “true Nicene faith” would be able to operate in the Asian proconsulate and as such he had left little room for mistake or uncertainty. This list of eleven bishops also indicates that a cleric almost certainly

\textsuperscript{52} For Sozomen’s treatment of this law see Errington (1997a) 419-421
\textsuperscript{53} The provinces being Insulae, Hellespontus and Asia, i.e. the south west third of Asia Minor.
\textsuperscript{54} Errington (1997b) 64-66
\textsuperscript{55} As claimed by Hanson (1988) 821
contributed to its composition. Indeed, this technique of naming representatives of orthodoxy, established by *Cunctos populos*, was almost certainly more useful in ensuring the success of orthodoxy than would have been possible if the government had required clerics to submit to a doctrinal formula which would have been open to arguments, interpretation and reemphasis and would also have been time-consuming. The law also empowered bishops, since only they knew with whom they were in communion and so they effectively had the power to remove heretics from their churches. It was a simple law, but well designed for maximum effectiveness and efficiency.

At the same time however, it should be noted that the area affected was only a fraction of the empire, and probably issued only because Asia had failed to send any bishops to the council with the result that no one in that diocese would have had any immediate and first hand knowledge of the results of the council. Moreover, the law does not indulge in any extreme rhetoric against the heretics, indeed, only calling them heretics once. The fact that no punishments are prescribed for any heretics that might have (illegally) “obtained” a church should also be balanced against the underlying intolerance of the law. Essentially, it may be said that this law was particularly intolerant, but only towards a small geographical area and contained no instrument by which that intolerance could be visited upon dissidents, beyond that of the confiscation of their churches.

CTh. 12.1.104 of 7 November 383 was addressed to Postumianus, Praetorian Prefect of the east,56 and was the latest of many laws attempting to prevent decurions evading their municipal duties by joining the Church.57 The law suggests that decurions were joining the clergy and keeping their property: “if they wish to be what they pretend, they shall hold in contempt those goods which they stealthily

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56 Postumianus 2 PLRE 1.718
57 Honoré (1998) 52-53 attributes this law to his quaestor E5 who held office briefly from 30th August 383 to 8th November 383 and then again for two years from 30th December 383 to 18th December 385
Previous laws on this subject had consistently been concerned with supporting the councils against the interests of the church or the new clerics. However this law, ostensibly at least, was concerned with guarding the personal integrity of clerics: “indeed, it is not seemly for spirits bound by divine worship to be occupied by desire for patrimonies.” The result was of course the same; decurions entering the clergy should not do so with their wealth intact and this may have been the genuine intent of the law, but the sentiment as expressed indicates concern for clerics, not councils. Equally however, this sentiment could have been a piece of cynicism designed to negate any clerical reaction before it happened by appealing to their own spiritual welfare (rather than the practical needs of councils). This palliative approach might also explain why the law contained no direct orders to clerics to surrender any, or a part, of their wealth; as well as the lack of punishments. Rather, the law gives the impression of being a strong suggestion that they should surrender all their wealth which was possibly as good as a direct order, but nevertheless and at least in strict theory, it allowed them the initiative of doing the right thing.

Furthermore, this law indicates a desire by the government to involve itself more intimately in ecclesiastical affairs. Emperors had convoked Church councils before of course, but they had not attempted to intervene in the lives of individual clerics to such an extent as to order that they should be poor nor to dictate of what personal and moral quality they should be. Such an intervention by Theodosius indicates that he was well attuned to the nature of Christianity at this time which had begun to emphasise poverty as a virtue in itself.

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58 Curiales ni ecclesiis malunt servire nam curiis si volunt esse nod simulaut contemnant illa nae subtrahant
59 nippe animos divina observatione devinctos non decet patrimoniorum desideris occupari
60 Constantius’ CTh. 12.1.49 of 29 August 361 had ordered that the lives of clerics should be “outstanding and pure in every virtue” but had not gone detailed the requirement of poverty which this law does.
Const. Sirm. 3 of 4 February 384 to Optatus, Prefect of Egypt granted bishops the right to be tried only by other bishops in ecclesiastical affairs.\textsuperscript{61} The law indicates that persons who called themselves bishops (presumably heretics) had “committed certain deeds with rash and wicked lawlessness in violation no less of the divine laws than of the human laws”\textsuperscript{62} by harassing orthodox clerics “they have exhausted such clerics with journeys and have delivered them to torturers.”\textsuperscript{63} Therefore Theodosius ordered that clerics of all ranks should have their “own judges and shall not have anything in common with the public laws” as regards to ecclesiastical matters.\textsuperscript{64} Theodosius specifies that in Egypt such cases should be heard by Bishop Timotheus “who is both to be venerated because of the high esteem of all the priests and one who has already been approved by our judgment also.” This was not a new right and is first recorded as having been granted by Constantius in his CTh. 16.2.12 of 23 September 355. No punishments were proscribed against any future offenders and Constantius’ law has more derogatory rhetoric.

It seems clear that the impetus for this law came from the clerics of Egypt rather than from any report from Theodosius’ officials in Egypt. Theodosius makes no reference to Optatus having done so (as Constantine had done in his Sirm. 1 to Ablavius). Moreover, the law says that “supplications have been read in the imperial consistory whereby the episcopal piety makes some plea and contests in that tribunal.”\textsuperscript{65} Socrates describes Optatus as “a pagan in religion and a hater of the Christians.”\textsuperscript{66} From both the evidence of the law and Socrates’ statement it seems clear that in this case the addressee of the law was not also the suggerens. As for Optatus himself, as a pagan (even if he were not a “hater of the Christians”) we can speculate that he may not have thought that he should concern himself with inter-Christian

\textsuperscript{61} Optatus 1 PLRE 1.649-650; Honoré (1998) also attributes this law to the quaestor E5, in his second period as quaestor.
\textsuperscript{62} perpetrata et contra leges non minus divinas quam humanas inproba temeritate comissa
\textsuperscript{63} atigatos itineribus quaestionariiis deditos
\textsuperscript{64} abent illi indices suos nec nici nam his publicis commune cum legibus
\textsuperscript{65} demis lectis in constitoria precibus nunc episcopalis pietas aliuid postulans rerum regatur in eo
\textsuperscript{66} Soc 6.18.19
problems. However, and more definitely, since Optatus was necessarily involved in the law (as prefect) then the lack of vitriol in it may reflect his own innate lack of interest in, and concern for, clerical matters.

CTh. 16.1.4 of 23 January 386, issued to Eusignius Praetorian Prefect of Italy and Illyricum. This is the famous law of Valentinian II giving Arians the right to worship. Curiously, it equated the decisions of the 359 Council of Ariminum with those of Constantinople of 381, although Ariminum had been regarded as a defeat for the Nicenes. This crude attempt at a compromise was probably due to Valentinian's government attempting to satisfy its own Arian supporters, notably Valentinian's mother Justina, whilst attempting to placate Theodosius in the East who alone had the ability to remove the usurper Maximus who had occupied Gaul, Spain and Britain. For this reason it also ordered that those who had been granted the right to assemble should not suppose that only they had the right to assemble and should not “provoke any agitation against the regulation.” This could be a reference to Nicenes or Arians. It was later repealed by Theodosius' 16.5.15 of 14 June 388.

CTh. 11.39.10 of 25 July 386 to was issued by Theodosius to Paulinus, Augustal Prefect and was concerned with the torture of priests. It granted the privilege of giving witness in court without having to undergo torture to clerics with the rank of presbyter or above; all those lower down in the hierarchy “shall be heard just as the

67 Flavius Eusignius PLRE 1.309-310; The laws latter provisions are repeated as CTh. 16.4.1 of the same date and addressee.
68 Jerome, Dialogue against the arians 19 in Frend (1965) 157
69 damus copiam colligendi bis ui secundum ea sentiuntiae temporibus divae memoriae constanti sacerdotibus convocatis omni orbe romano e posita ne ide ab his ipsis ui dissentire noscuntur ariminensi concilio constantinopolitano etiam con irmata in aeternum manura decreta sunt. conveniendi etiam nihilo minus eos supplicio scituris bis ui sibi tantum e istimant colligendi copiam contributam nod si turbulentum nippiam contra nostrae tran nihilitas praeceptum acientum esse temptaverint ui seditionis auctores pacis ne turbatae ecclesiae, etiam maiestatis capite ac sanguine sint supplicia luituri, manente nihilo minus eos supplicio ni contra banc dispositionem nostram obreptive ant clanculo supplicare temptaverint.
70 Honoré (1998) 145
71 Paulinus 8 PLRE 1.677; Honoré (1998) 54-55 attributes this law to his quaestor E6 who held the office from 19 January 386 to 27 October 386
laws prescribe” i.e. with torture.\(^{72}\) Because this gives priests a “higher position,”\(^ {73}\) if they were “involved in a secret crime, then all the more are they worthy of punishment.”\(^ {74}\)

CTh. 9.17.7 of 26 February 386 attempted to regulate burial places and also the trade in martyrs’ relics. It was addressed to Maternus Cynegius, Praetorian Prefect of the East, who was later (in 388) to tour the east suppressing paganism and destroying temples.\(^ {75}\) This law ordered that bodies should not be transferred between sites, and the sale and trafficking of relics was now forbidden. \(^ {76}\) Evidently the authorities felt they should exercise some control over the cult of martyrs; why is unknown, either, presumably, such cults were causing some problems at a local level, or the government simply wished to intervene in Church affairs in order to extend its control over the cult. The lack of any justification in the law coupled with the blanket permission for people to erect any building on martyr sites may suggest the latter.

Sirm. Const. 8 of 22 April issued to Antiochus ordered an Easter amnesty.\(^ {77}\) However, Theodosius did not restrict the amnesty to those awaiting trial in prison as earlier amnesties had apparently done, but rather extended it to include all those convicted and moreover to all such since the last amnesty: we “free almost all persons whom the severity of the laws has held bound. Furthermore, throughout all the intervening time which flows between such venerable and celebrated days, We relieve such persons from their chains, We free them from exile, We remove them from the

\(^{72}\) pront leges praecipiunt
\(^{73}\) superioris loci
\(^{74}\) multo magis etenim poena sunt digni
\(^{75}\) Maternus Cynegius 3 PLRE 1.235-236; also attributed by Honoré to E6
\(^{76}\) haberant vero in potestate si ulibet in loco sanctorum est ali vis conditus pro eius veneratione uod mart rium vocandum sit addant uod voluerint abricarum
\(^{77}\) Antiochus PLRE 1.70; Again, attributed by Honoré to his E6
mines and we liberate them from the exile of deportation.”

As well as those convicted and sentenced the amnesty also included the accused: “it is not seemly that the dissonant voices of the unfortunate should resound; that accused persons, with their dishevelled hair should be dragged as objects of the common pity.” and later on he reiterates: “We open also the prisons.” Like the earlier amnesties, this law also omitted from pardon the five most serious crimes.

All this was in honour of God: “it is not fitting, in the midst of the serene words of the prayers and the pious voices dedicated to the eternal Divinity, to feel, to hear or to see anything sad.” The law resonates with Christian rhetoric: “a sacred day is renewed with festive celebration throughout the entire world.” Theodosius was also keen to indicate his own clemency: “for the extension of Our indulgence in accordance with custom and Our natural kindness.” “We pour forth humanity abundantly, and We extend the aid of Our sacred imperial mind.” Furthermore, the motivation for Theodosius to grant the amnesty came from his faith, it was the time for him to “exercise the devotion by which We are always inspired, even beyond the custom of Our established and annual clemency.”

Theodosius addressed Antiochinus as “spectabilitas tua” and therefore it is likely that he was a vicar (the other addressees of the amnesties are all ranked as vicar or above). Unfortunately Antiochinus is otherwise unknown and since there are gaps for 386 in each of the eastern dioceses (except Asia) we cannot be certain of his diocese. Although previous amnesties had apparently been confined to the city of Rome,

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78 liberandis paene omnibus usque inter legem severitas strinxit. Nunc per omne hoc nod inter venerandos et celebres dies medium init temporis catenis levamus et ilio solvimus a metallo abstrahimus deportationibus liberamus.
79 ne enim convenit strepere in elici consilis dissonas voces trahis ad communem misericordiam horrentibus passis eraliter crinibus reos
80 perimus nunc etiam carcerem
81 non decreat inter serena votorum ac dicatas aeterno numinis pias voces aliuid triste sentire audire conspicere
82 orbe terrarum sacer dies estiva solemnitate reparatur
83 e more indulgentiae naturali bene icio semper animamur desideratum bonis mentibus tempus advenit.
84 usa penitus humanitatis operam sacrae mentis e serimus
85 ad propagandas e more indulgentiae naturali bene icio semper animamur
because this amnesty refers to freeing prisoners in mines as well as those in exile, it must have had a wider applicability than previous laws and therefore Antiochinus must have been vicar of either Thrace, Macedon or Pontus, rather than of Constantinople.\textsuperscript{86} As such this amnesty shows greater Christian influence than previous amnesties.

CTh. 12.1.115 of 31 December 386 addressed to Cynegius, (the addressee of CTh. 9.17.7 of 26 February 386) attempted to buttress the resources of the councils against the liturgical exemptions enjoyed by clerics.\textsuperscript{87} Theodosius’ previous law on the relationship between clerics and councils (CTh. 12.1.104 of 7 November 383 to Postumianus) had granted the clerics no room for manoeuvre and informed them that the emperor did not regard as suitable for the priesthood those who sought financial gain. In this latest law to Cynegius, Theodosius avoided any moralising language, but at the same time seemed to imply much. The opening words “Clerics who belong to municipal councils” appears to imply fairly unambiguously that membership of the clergy did not automatically mean exemption from the councils and as such, despite their status in the Church, clerics were still on the councils and therefore liable to perform liturgies.\textsuperscript{88} Earlier legislation had tended to give the impression that clerics (once rendered of slender resources) were exempt from the councils.\textsuperscript{89}

The law then continued to say that if clerics wished “to remain exempt from services, by their patrimony they must make others adequate to replace their presence and their persons in undergoing compulsory public services when they withdraw to

\textsuperscript{86} The \textit{Notitia Dignitatum} is deficient on the city of Constantinople and does not record whether it had a vicar; however since it was the ‘New Rome’ it seems extremely likely that it had an official structure parallel to that of Rome. See the 1962 reprint of Seeck’s 1876 edition of the Notitia, 229-243
\textsuperscript{87} Also attributed by Honoré (1998) to his quaestor E6
\textsuperscript{88} \textit{clerici ad curiam pertinentes}
\textsuperscript{89} See in particular Constantine’s CTh. 16.2.3 of 18 July 320 and to a lesser degree Valens’ 16.2.19 of 17 October 370
the Church." Therefore the law appears to imply that there is no inconsistency for clerics to serve as councillors in principle, but at the same time, it reinforces the earlier practice, that clerics should transfer their wealth to others in order that the councils might continue to function. Thus the likeliest scenario that can be reconstructed from this law is that clerics desired membership of the councils, and did indeed serve as *curiales*, but also wished to avoid the financial obligations. Hence, individuals could be both clerics and also council members, provided they had enabled someone else to carry their financial burdens. Therefore, only clerics from wealthy backgrounds could also serve on the councils; clerics from poor backgrounds were excluded. It should be noted that potential clerics only had to transfer enough funds to "make others adequate to replace their presence and their persons," so presumably they were still allowed to keep some of their wealth, as had been stated before.

CTh. 16.4.2 of 16 June 388 was to Tatianus, Praetorian Prefect of the East. It ordered that no man should "go out to the public and to argue about religion or to discuss it or to give any counsel." If anyone did this with "flagrant and damnable audacity" or should "persist in his action of ruinous obstinacy" then he would be given a "due penalty and proper punishment." Presumably it allowed private discussions to continue, i.e. between priests, especially in councils, but not public ones which appear to have been rife in this period. It is difficult to understand how this law could have been enforced, although it was directed at 'persistent offenders.'

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90 In full this law reads: *clerici ad curiam pertinentes sciant ex patrimonio suo si ipsi immunes cuipiunt permanere alios idoneos esse aciendo seu recedentiam praeuentam personam ne restituant in publicis munerebus subenidis*

91 This may be a consequence of the close mirroring between the Imperial structure of organisation and that of the Church, see Hunt (1998) 241

92 By Constantius’ CTh. 12.1.49 of 29 August 361

93 Flavius Eumolius Tatianus 5 PLRE 1.876-878; Honoré’s (1998) 56-57 E8

94 *nulli egresso ad publicum vel disceptandi de religione vel tractandi vel consilii aliuid de erendi patessat occasio. et si nis posthae ans gravei ad ue damnabili contra huianmodi legem veniendum esse crediderit vel insistere motu pesti erae perseverationis adebit competenti poena et digno supplicio cobercatur.*

95 See Gregory of Nyssa’s experience in Constantinople in his *De deitate Filii et Spiritus Sancti* (PG 46.557); Jones (1964) 964-965
reaction to a perceived assault on the much cherished ideal of harmony in the ancient city.⁹⁶

CTh. 2.8.19 of 7 August 389 was issued at Rome to Albinus, Prefect of Rome.⁹⁷ Theodosius had been in Rome since at least mid June having marched west to defeat the sometime legitimate emperor Magnus Maximus in the previous August. Although there was no formal reallocation of territories following the defeat of Maximus, and Rome remained under the jurisdiction of the eighteen year old Valentinian II’s western government, Theodosius still felt able to issue laws for such territories outside his own formal area of responsibility.⁹⁸ Honoré has demonstrated fairly convincingly that the quaestor responsible for issuing this law was his E9, the pagan senator and westerner Virius Nicomachus Flavianus. Whether or not that is indeed so is not particularly relevant to these purposes, but what Honoré has demonstrated is that law issued under this quaestor were sent to both western and eastern officials, indicating that the empire was for the moment ruled by a single government and administration.⁹⁹

The law was addressed to Albinus, Prefect of Rome and indicated which days were to serve as holidays on which courts should not sit.¹⁰⁰ Theodosius ordered that all days were court days except during two (unspecified) months of summer because of the heat and for harvesting, the first of January, the “natal days of the greatest cities Rome and Constantinople, to which the law ought to defer, since it also was born of them.”¹⁰¹ Also to be holidays were the “holy Paschal days, of which seven precede and seven follow Easter; likewise the Days of the Sun.”¹⁰² The birthdays and accession

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⁹⁶ On which see Lim (1995a) 150-151
⁹⁷ Ceionius Rufius Albinus 15 PLRE 1.37-38
⁹⁸ For Valentinian II’s disputed, but likely age of eighteen see Lenski (2002) 91 n144
¹⁰⁰ Ceionius Rufius Albinus 15 PLRE 1.37-38
¹⁰¹ *is adicimus natalicios dies urbium ma imarum o ma at ne Constantinopolis aibus debent iura di erri uia et ab i pis nata nunt*
¹⁰² *Sacros no ne paschae dies ui septeno vel precedunt numero vel se nuntur in eadem observatione numerarum nec non et dies solis*
dates of the three emperors were “also to be held in equal reverence.”

This is the first time that Easter has been given as a reason for a holiday in the code.

The law reads in a functional manner with minimal rhetoric and no reference to religion other than listing Easter as a holiday. This may be due to the fact that the addressee, Albinus, was a pagan, along with Flavianus and therefore Theodosius may have been unwilling to blatantly demonstrate his own Christianity and thereby risk the possibility of offending Albinus, or Flavianus. Theodosius rejected the phraseology contained in an earlier law regulating court days, issued by Valentinian II’s government which referred to “the day of the sun, which our ancestors rightly called the Lord’s Day;” a clear reference to Christianity. Equally however the law did not elevate any pagan festivals to the same status as Easter; thus in this law Christianity has a symbolically higher status than that of other cults and religions.

Such reasons for the lack of references to religion in this law would appear to chime with Theodosius’ manner of dealing with the western provinces after his defeat of Maximus. He has been acknowledged to have behaved in a conciliatory manner towards the Senate and others who had until recently been supporting Maximus; Symmachus had publicly delivered a panegyric to Maximus, took refuge in a church after his defeat, but after a successful intervention by the (Novatian) bishop of the church and after delivering a speech of apology and a panegyric before Theodosius he was forgiven and became consul in 391. Equally the impetus for the law may have come from Albinus himself. Albinus was one of a number of officials appointed to the western provinces after the suppression of Maximus and he was appointed Prefect of Rome when Theodosius made his adventus to Rome in the summer of 389. During his prefecture, Albinus commissioned statues of the emperors in order to demonstrate his

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103 * arem necesse est habere reverentiam
104 CTh. 2.8.18 of 3 November 386: *solis die* nomen dominicum rite di cei maiores see above.
105 Symm. p. 2.13; Lib. p. 1004; Soc 5.14
loyalty to Theodosius. It would be justifiable to view this law in conjunction with the statues; both served to enhance Albinus’ reputation with Theodosius.\footnote{Statues: Matthews (1975) 227}

CTh. 9.35.5 of 6 September 389 to Tatianus, Praetorian Prefect of the east was also issued by Theodosius’ administration whilst he was in the west.\footnote{Flavius Eutolmius Tatianus 5 PLRE 1.876-878; also attributed by Honoré to his quaestor E9, i.e. Flavianus} As it survives, the law is short and in full ordered: “On the consecrated days of the Quadragesima, during which time the absolution of souls is awaited, there shall be no corporal punishment.”\footnote{Sacratiss quadragesimae diebus nulla supplicia sint corporis nubis absolvitio e .pexitur animarum} Evidently, there was a significant Christian element in this law issued to Tatianus, a pagan, less than a month after the religiously neutral language of CTh. 2.8.19.\footnote{For evidence of Tatianus’ paganism see Lib. pp. 855, 899, r 30.53 and 56.16} As can be seen, the law did not, even in the slightest, indulge in any extremes of religious rhetoric; but nevertheless the references to the “absolution of souls” was unnecessary and was (probably quiet deliberately) blind to Tatianus’ own religious inclinations, which (as will be shown below in relation to CTh. 16.2.28 and 29) were often anti-Christian. It appears that Theodosius did not feel obliged to be as conciliatory or as sensitive in his language towards his pagan eastern officials as he was towards his western pagan officials. The reasons for such appear to have been purely practical; there were no threats to the east, for the moment. An Ostrogothic incursion (of 386-7) had been defeated and the survivors settled in Phrygia; after long negotiations (384-387) a settlement with Persia over Armenia had been reached. Therefore with the east secure Theodosius appears to have been able to be insensitive to Tatianus’ religion.

At the same time, the Christian language of this law should give cause for caution when considering Honoré’s interpretation of the role of quaestor in drafting the laws; i.e. it seems unlikely that a pagan quaestor (Flavianus) would have used Christian language and allusions in a law addressed to another pagan. The influence of

\[\text{\footnote{Statues: Matthews (1975) 227}}\]
\[\text{\footnote{Flavius Eutolmius Tatianus 5 PLRE 1.876-878; also attributed by Honoré to his quaestor E9, i.e. Flavianus}}\]
\[\text{\footnote{Sacratiss quadragesimae diebus nulla supplicia sint corporis nubis absolvitio e .pexitur animarum}}\]
\[\text{\footnote{For evidence of Tatianus’ paganism see Lib. pp. 855, 899, r 30.53 and 56.16}}\]
the quaestor on the religious details of the laws is, at least in this case, evidently less than Honoré generally suggests.

CTh. 12.1.121 of 17 June 390 was issued to the same Tatianus who received CTh. 9.35.5. The law was Theodosius’ third on the movement of personnel from the councils to the Church and was both more and less favourable to clerics than the previous two. His previous laws had ordered that clerics should not be concerned with their wealth (CTh. 12.1.104 of 7 November 383) and later that they should make adequate provision to ensure that others could fulfil their duties on the councils (CTh. 12.1.115 of 31 December 386). This law imposed a time limit on the liability to which decurions’ wealth was to be subjected after they had joined the clergy of only two years: “If any person of the order of decurions, before the second consulship of My Clemency i.e. 388 has either achieved the rank of priest or has performed the service of deacon or has undertaken the duty of exorcist” then all his patrimony would be exempt “and free from the bonds of decurions.” Those who had undertaken “the religious duties of divine worship, under any title whatsoever” after such date “shall know that all his patrimony must be surrendered.” It should be noted that the phrase “duties of divine worship, under any title whatsoever,” could, conceivably, refer to pagan priests who were also decurions.

So the law was strict in stripping decurions of all their wealth, which had not been done before; legislation of previous emperors had usually ordered a return of decurions from the church or had ordered that they should make adequate provision

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110 Honoré (1998) 63 attributes this law to his E9, Flavianus, but with the suggestion that his E10 may also have had a part in its composition 70 n137. Honoré considers that E10 may be Aurelianus (Aurelianus 3 PLRE 1.128-129) who was a Christian of some devotion since he built a shrine to the protomartyr Stephen.

111 *ui ante secundum consulatum mansuetudinis meae e ordine curiali vel presbyteri estigium vel ministerium diaconi vel e orcisae suscepsit officium omne eius patrimonium immune a curialibus ne ibus habeatur ac liberum.*

112 *Is vero, *ui se de religiosa divini cultus obserui nuncum ne sub nomine post memorati consulatus tempora praeciribta contulerit omni sciati edendum esse patrimonio.*
The conciliatory clause of the law was to allow ex-decurions to retain all their wealth if they had been clerics for just two years, which was considerably more advantageous to them than the six year limit imposed by Valentinian’s CTh. 16.2.21 of 17 May 371. It would appear that the imposition of total poverty on all decurions who had become clerics was not a viable policy, thus many of them, and probably most, were allowed to retain all their wealth. The concern that clerics should be poor (as laid down in Theodosius’ CTh. 12.1.104) is no longer so apparent, rather the emphasis (although not actually articulated) is on the ability of the councils to function. The law is religiously neutral in its language to this pagan Tatianus and without any of the apparent insensitivity shown in CTh. 9.35.5 of nine months earlier. However, there is a streak in this law which appears more vindictive than purposeful: it does not even make a passing reference to the necessity of the councils being able to perform their duties adequately, rather, it appears to be solely concerned with stripping clerics of their wealth.

CTh.16.2.27 of 21 June 390 was also issued to Tatianus in Milan. It was the longest of Theodosius’ laws on religion thus far and is divisible into two parts. The first deals with the estates of deaconesses apropos bequeathing them to the Church or to clerics, and the second is concerned with shaven-headed women entering churches. It is generally against the interests of the Church, although in a subtle way. It was another first for Theodosius’ government and enacted into law advice that St. Paul had given to Timothy (1 Timothy 5.9-10). It ordered that “according to the precept of

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113 Such as for the former CTh. 16.2.3 of 18 July 320 or 12.1.63 of 1 January 370 and for the latter CTh. 12.1.49 of 29 August 361 and Theodosius’ own CTh. 12.1.115 of 31 December 386.
114 Or indeed the ten year limit which had been imposed by Valens’ CTh. 16.2.19 of 17 October 370.
115 Also attributed by Honoré to his E10, although with a distinct possibility that it may have been “largely or wholly E9’s” i.e. Flavianus; Honoré (1998) 63, 70 (quote at 70 n.134) Honoré suggests that E10 may have been Aurelianus 3 PLRE 1.128-129 who is known to have been a Christian.
116 1 Timothy 5.9-10: “No widow may be put on the list of widows unless she is over sixty, has been faithful to her husband, and is well known for her good deeds, such as bringing up children, showing hospitality, washing the feet of the saints, helping those in trouble and devoting herself to all kinds of good deeds.”
the Apostle”\textsuperscript{117} a woman should not “be transferred to the society of deaconesses unless she is sixty years of age and has the desired offspring at home.”\textsuperscript{118} The law also ordered that on becoming a deacon, she should entrust management of her wealth to a third party and that she should only receive income from her estates, thereby, possibly, to prevent her receiving an income from the Church and therefore being influenced by the Church. Her estates and income would remain her property and she would have full rights to dispose of her wealth and estates during her life and at her death as she decided.

At the same time however, she “shall expend none of her jewels and ornaments, none of her gold and silver and other embellishments of a sumptuous home, under the pretext of religion.”\textsuperscript{119} Pharr’s translation of \textit{consumat} as “expend” is cautious and “waste” or “fritter away” may be better in this context. The law continued: “Rather, she shall transfer in writing all her property intact to her children or next of kin or to any other persons whatsoever, according to the judgment of her own free will. However when she dies, she shall designate as heirs no church, no cleric or no pauper.”\textsuperscript{120} If she were to do so, her will would be void. The law felt it necessary to reinforce these clauses by stating that it was forbidden for people to try and evade them. However, no punishments were sanctioned for any infringements.

This first half of the law, rather than being purely against the material interests of the Church and clerics, may also have been intended to support families and ensure that their wealth did not pass out of the family.\textsuperscript{121} Although, the use of \textit{consumat}, if in this context its truer meaning is fritter away, would indicate some derogatory or

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{117} \textit{Secundum praeceptum apostoli}
\item \textsuperscript{118} \textit{nulla nisi emensis se aginta annis cui votiva domi proles sit secundum praeceptum apostoli ad diaconissarum consortium transeratur}
\item \textsuperscript{119} \textit{nihil de monilibus et superiectilii nihil de auro argento ceteris ne clarae domus insignibus sub religionis de ensione consumat}
\item \textsuperscript{120} \textit{sed universa integra in liberos pro imos vel in uscum ne alios arbitrii sui etostimatione transcribat ac si nando diem obierit nullam ecclesiam nullum clericum nullam pauperem scribat heredes.}
\item \textsuperscript{121} As may also have been the case with Valentinian’s CTh. 16.2.20 of 30 July 370
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dismissive attitude towards Christian customs and therefore, the primary motivation for the law may well have been to serve against the interests of the Church and only secondarily in favour of the interests of the family.

The second half of the law also seems to have been inspired by St. Paul, from his 1 Corinthians 11.5-6, but without stating as such. The law stated that this was “contrary to human and divine laws” and women who did cut their hair “at the instigation and persuasion of some professed belief, shall be kept away from the doors of the churches.” They would not be allowed “to approach the consecrated mysteries, nor shall they be granted, through any supplications, the privilege of frequenting the altars which must be venerated by all.” Any bishop who allowed such a woman to enter his church and behave as indicated above, or even if such things happened without the bishop taking action to prevent them, would be expelled from his church. The law ended with a grandiloquent sentence, replete with Christian imagery: “This shall indisputably serve as a law for those who deserve correction and as a customary practice for those who have already received correction, so that the latter may have a witness, and the former may begin to fear judgment.” That last sentence is as close as the law came to prescribing a punishment and therefore, presumably, denial of the sacraments and admission to church was considered sufficient. Quite why Tatianus included a section on shaven headed women is unknown; but he may have been employing a longstanding prejudice against such women in order to ease through his possibly more controversial measures. Equally, but far more cunningly, it may have been a means for the pagan Tatianus to score

122 “And every woman who prays or prophesies with her head uncovered dishonours her head it is just as though her head were shaved. If a woman does not cover her head, she should have her hair cut off; and if it is a disgrace for a woman to have her hair cut or shaved off, she should cover her head.”
123 CTh. 16.2.27.1: contra divinas humanas ne leges
124 eminae uae crinem suaui instinctu persuasae pro esuionis absiderint ab ecclesiae orbis arceantur
125 non illis as sit sacra adire m steria ne ue ullis supplicationibus mereantur veneranda omnibus altaria
126 occ abs uedubio emandadis pro lege erit emandatis pro consuetudine ut illi habeant testimonium isti
incipient timere iudicimum
some points against the Church. Coleman-Norton refers to a practice recommended in Deuteronomy 21.12-13 in which gentile women, if they were captured in war by Jewish men and were taken as wives, then according to Deuteronomy, they had to shave their heads and mourn for their parents. After a month she would become the wife of whoever had captured her, and also presumably, a Jew. If female converts to the new Israel were indeed following Deuteronomy and shaving their heads then Tatianus was successfully employing traditional prejudice against what had become a Christian (because biblical) practice.

However this law, or at least its first half, was repealed two months later by Theodosius' CTh. 16.2.28 of 23 August 390, again addressed to Tatianus. Through its repeal, this latest law informs us further as to the concerns of the earlier law and lends strength to the argument that much of the motivation for this law lay in anti-clerical sentiment, rather than in pro-family sentiment. CTh. 16.2.28 stated that the earlier law had ordered that “no cleric as a despoiler of the infirm sex should appropriate slaves and household goods as plunder, not even under the name of the Church, and that in the absence of kinsmen by marriage or by blood he should not conduct himself as an heir of the living, under pretext of the Catholic discipline.” It seems therefore to be more concerned with the dignity of the Church and clerics than with family finances; although at the time, contemporaries may have realised that it was also concerned for the family, and that concern did not have to be clearly articulated. This latest law mentioned nothing about shaven headed women, but since the law said “All litigants shall know that this law shall not be utilized to their

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128 Deuteronomy 21.11-12: “suppose you see among the captives a beautiful woman whom you desire and want to marry, and so you bring her home to your house: she shall shave her head, pare her nails, discard her captive’s garb, and shall remain in your house a full month, mourning for her father and mother; after that you may go in to her and be her husband, and she shall be your wife.”

129 Cutting off one’s hair appears to have been a practice in earliest Christianity as well; Acts 18.18 records that St. Paul had his hair cut off in fulfilment of a vow.

130 Attributed by Honoré (1998) 70 to his E10

131 ne quis videlicet clericus neve sub ecclesiae nomine mancipia superlectilem praeda velat in irmi se us dispoliator invaderet et remotis ad inibus ac propin nisipse sub praete tu catholicae disciplinae se ageret viventis heredem
advantage and all judges that it shall not be executed" then presumably the earlier clause on shaven headed women was also not to stand. The fact that in CTh. 16.2.27 this clause was substantial (ninety words as has survived), but merited no mention in CTh. 16.2.28 may indicate a sense of embarrassment in the government as to how they should deal with a practice long reviled in the classical world, but which was sanctioned by the bible.

Presumably, clerical opinion would have sought to stop Tatianus’ initial law immediately, but since they were unable to, they had to wait, albeit for only two months, for it to be repealed. This is curious. There must have been sufficient knowledge in Theodosius’ government and consistory to discern that CTh. 16.2.27 was anti-clerical, but apparently they were unable, or unwilling, to prevent Tatianus getting his way. Therefore, this first law would appear to be further evidence that the emperors were highly reliant on their governors and prefects ‘in the field’ for information and that emperors and their advisors at court were highly reluctant to countermand any actions that such officials asked for. Equally, it seems likely that clerics with contacts in the imperial court would have known that Tatianus’ proposed legislation was proceeding through its bureaucratic channels, but either because of lack of influence or because of the reasons just stated with regard to Imperial reliance on distant officials, they were unable to prevent it becoming law. Whichever of these scenarios is closest to the truth is not most relevant here; what is important is the fact that Theodosius and his government were by no means the compliant ‘tools’ of the Church that often they have been presumed to be. Admittedly the Church had won in this situation, but it had taken some time for it to do so.

CTh. 11.16.18 of 5 July 390 was issued to Tatianus between the issuing of the above two laws.\textsuperscript{132} The law dealt with exemptions from liturgies and went into great detail as to who was exempt and precisely from what they were exempt. The law was

\textsuperscript{132} Honoré (1998) 70 n 137 attributes this to his E9, but with the strong possibility that E10 had some influence in its composition.
long and verbose and began by ordering that “no person whatever shall obtain the special privilege of immunity from extraordinary public services;” whatever is required is the “common duty” to be “fulfilled by all.” Then the law gave the exemptions, but in a guarded manner that gave the impression that such exemptions were to be granted on an *ad hoc* basis; as such the law appears to be a clarification and consolidation of the general rules and regulations surrounding exemptions and not a law as such. “Of course, occasions are not lacking when We vindicate the privileges of merits and of high rank from the common lot, since indeed We prohibit persons excepted by law from undertaking those compulsory public services which are called menial.” The law then listed those of sufficient rank to be exempt: senior officials in the Imperial bureaucracy, “by a similar grant of privilege We bestow such rights upon the churches” as well as upon Greek and Latin teachers. After that list, there followed a list of the actual liturgies from which they were to be exempted: from bread making, from timber requisitions, from extra wagons and horses for the Imperial post except for those required “by the Raetian border, by the Illyrian expeditionary army, and by the transport of military food supplies, either on account of necessity or in accordance with established custom.” They were also exempt from the repair of roads and buildings and from supplying charcoal, unless it was to be used for minting or weapons manufacture. At the same time the law clearly spelt out that the exemptions were only applicable to the persons listed: “they shall understand that such rights are not conferred upon the property of their wives or upon their own patrimonies” nor were heirs exempt.

Evidently, Tatianus was attempting through this law to demonstrate three significant aspects surrounding the exemptions given to various groups. Firstly, the exemptions were extraordinary privileges, granted by the emperor in accordance with the law; exemptions therefore, were not a right inherent to rank or position, but instead were (almost) a gift of the emperor. Secondly, those holding exemptions were supposed to undertake some duties if requested. In the same manner, and most
interestingly, the law (or more accurately regulations) made no mention of the
councils, membership of which had been a constant concern in earlier legislation on
the exemption from liturgies enjoyed by clerics. Rather the law tended to indicate that
the exemptions were a personal affair, granted to individuals, and a sense of
individuality pervades the law: “no person” or “if any man is protected by our law.”
The fact that the councils were not mentioned might have meant that any individual
belonging to one of the groups listed was still liable to perform liturgies through
(perhaps compulsory by wealth) membership of the council; that is, he had a collective
responsibility along with his fellow councillors, even if and by the letter of this law, he
was personally exempt.

Thirdly, Tatianus had not actually mentioned clerics as one of the groups
exempt; “by a similar grant of privilege We bestow such rights upon the churches.”
“The churches” did not enjoy an identical privilege, but “similar.” Although
admittedly, and in practice, clerics’ exemptions may have been the same as other
exemptees, the use of “similar” imposed an ambiguity on the clerics’ liability and thus
ensured that in the future some effort would have to be employed to remove such
ambiguities. Of the three groups of people listed as exempt, only this group was
identified in such vague terms, rather than what they actually did (as in “rhetoricians
and grammarians of both branches of learning”), or even to what institution they
belonged (as in “those at the summit of the imperial service and the counts of the
imperial consistory”). In view of the subtleties which Tatianus had employed in his
earlier legislation, it seems likely that he was again attempting to make life as difficult
as possible for the clerics; the use of “the churches” in this definitional manner, was in
practice, meaningless, and it would have been necessary (at least potentially) for any
cleric claiming exemption to have to prove that the exemption granted to the
somewhat anonymous “the churches” actually applied to him.
CTh. 16.3.1 of 2 September 390 was also issued to Tatianus. It was another of Tatianus’ laws against ecclesiastical interests. It ordered monks to “seek out and to inhabit desert places and desolate solitudes.” The law is evidence therefore, both of monks entering cities and also of the respect they were earning and of the influence that came from that respect. Just as Tatianus had exploited long standing prejudices in his CTh. 16.2.27.2 against shaven headed women, so he was able to exploit contemporary concerns to restrict access to the cities by monks. There was an elite prejudice against monks and that prejudice was exacerbated in the East in the later fourth century by an apparent growth of unemployed, but fit, men who had migrated to the cities to escape famine and the disruptions caused by the barbarian incursions. Caner points out that the east had suffered food shortages in the decade leading up to this law, including, Antioch, most recently in 388-389. As a result of the shortages Libanius had attempted to persuade his fellow councillors to expel beggars from the city. He was not successful; though his dislike of “homeless, single and idle” was one shared by others and extended to monks as well. There is also evidence that in some places the number of monks was numerous and may have been a destabilising factor in some cities. Antinoe is recorded as having twelve monasteries and Oxyrynchos apparently had more houses of monks than lay people.

There is evidently a degree of intolerance of monks in this law. Tatianus could have directed his law against all beggars and expelled them from the cities, as Gratian had done in his CTh. 14.18.1 of 20 June 382, although that would have demanded a lot more work and also, as monks were distinct from other beggars through their behaviour, it would have been easier to expel just them. Yet even as it stood, this law would have involved a considerable degree of disruption; Sozomen records that

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133 Honoré (1998) 70 n 137 attributes this to his E10, possibly Aurelianus 3.
134 See Valens’ CTh. 12.1.63 of 1 January 370; Caner (2002) 164-166 on the growth of unemployment in the later fourth century.
135 Food shortages noted by Liebeschuetz (1972) 128-129; Libanius’ plea r 41.6; all collected by Caner (2002) 167-168, quote at 168.
136 Butler (1967) 419-420
monasteries had been established in Constantinople during the reign of Constantius II. At the same time, and in his defence, and with his customary cunning, Tatianus could quite plausibly have claimed that this law was merely regulating the behaviour of monks to ensure that they remained attached to their ascetic ideal. A view even expressed by John Chrysostom who was concerned at monks being mistaken for vagrants through their common practice of begging. Sozomen also records that John Chrysostom tried to keep his monks in the monastery in Constantinople, rather than wandering through the city.

However the law was viewed as controversial, and was repealed nineteen months later by CTh. 16.3.2. of 17 April 392. However, the demand for repeal probably did not come from the orthodox Church establishment as may be evidenced by the concerns of Chrysostom noted above. Rather the repeal was more likely to have come from the Christian secular elite and from their new fashion to cultivate their own ‘personal’ ascetics. Victor and Saturninus, officials in Valens’ government, competed with each other by building hermitages in the grounds of their houses in order to attract Isaac, the prominent Syrian monk of Constantinople; Saturninus won the contest. Admiration for ascetic ideals extended into the heart of the Imperial court and even family; Arsenius, tutor to Theodosius’ two sons left his prestigious position in 394 to become a monk in Egypt, where, despite his comprehensive

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137 Soz. 4.2.3
138 Caner suggests (199-200) that the banishment of monks from cities was in some way associated with Theodosius’ earlier legislation preventing clerics or the Church in general from inheriting anything from widows (CTh. 16.2.27). Since that law was repealed (by 16.2.28) possibly Tatianus was having another attack on legacy hunting clerics by simply attempting to prevent contact between one type of cleric and elderly widows. If so, the law would appear to be particularly clumsy as monks could still cultivate wealthy widows in the countryside, where there may well have been more of them (resident on their estates) than in the towns. See Whittaker and Garnsey (1998) 301-304 for elites spending time on their estates.
139 John Chrysostom In I. 171
140 Soz 8.9.4
141 Honoré (1998) 73 attributes this law to his E11, the last quaestor of Theodosius’ reign.
knowledge of Greek and Latin literature, he famously had to start his education from the beginning.¹⁴³

CTh. 12.1.123 of 28 July 391 was issued before the repeal and was also addressed to Tatianus. It dealt with obligations to the councils.¹⁴⁴ It is divided into six sections, plus an introductory paragraph. The introductory paragraph recalled Theodosius' previous legislation on the subject (CTh. 12.1.121 and 122) and indicated, with reference to the former law, that clerics' property was still liable to “public assessment” if (section one) the cleric had left the council since Theodosius' consulship of 388. The new law reinforced the earlier rulings and, in section three, closed a potential loophole: if any decurion had given his property to another individual that property still remained “obligated to the denarismus, or uncial tax, in that portion which is held in the name of the author of such generosity.”¹⁴⁵ Evidence on the denarismus or uncial tax is lacking, evidently it was a tax on property. However it is likely that the name of the tax is just that and almost certainly has no relevance to the now defunct denarius. Jones notes that papyrus records from Egypt used “denarius” as a unit of accounting rather than to refer to actual pieces of coin, and similarly this tax is not actually connected with the denarius as a coin, only as a unit of accounting, or in this case, the name of a tax.¹⁴⁶ As instances of the use of denarius in this way come mainly from Egypt, it seems reasonable to infer that this tax may have been the name of a tax in Egypt and that therefore this law was directed to Egypt. Unfortunately, it is unknown just how severe this tax was, but imposing a tax on the transferred property was better than confiscation, which had been the requirement of CTh. 12.1.121, although that was confiscation of the defector's own property, not what he had transferred to someone else. So this part of the law closed a loophole and was

¹⁴³ Brown (1992) 73; Ward (1975) 7-17
¹⁴⁴ Again attributed by Honoré to his E10, possibly Aurelianus 3
¹⁴⁵ *denarismo vel unciis habeatur obnoxium in ea parte in sa auctoris sui nomine nerat retentatum*
¹⁴⁶ See Jones (1964) 440-441
disadvantageous to clerics, but at least it was not as disadvantageous as CTh. 12.1.121 had been in stripping them of all their wealth.

Sections three and four refer to CTh. 12.1.86 and 122 and were directed towards decurions who had become senators and reinforced the existing rulings that they were still obligated towards the councils, despite being elevated to the senate. Section five reasonably demanded that sons of decurions, if not already in the Church were obligated to the councils with their fathers’ property if their fathers were “occupied in divine worship and in giving service to the sacrosanct mysteries.”

The law finished (section six) by giving ownership to the councils of any unoccupied estates.

CTh. 9.40.15 of 13 March 392, also to Tatianus, ordered that if anyone had been “convicted of a very great crime and sentenced” then the judgment should be fulfilled, and any “clever trickery” such as “the assertion that the defendant has been snatched away by clerics or the pretence that he has appealed” was not to be employed. Curiously, no penalties were prescribed for any defendant engaging in such “trickery,” but penalties (of thirty pounds of gold) were to be levied against senior bureaucrats (proconsuls, counts, prefects and vicars) if, being charged with executing the law, they failed to enforce it. Similarly, judges would be fined fifteen pounds and their staffs the same amount if they failed to advise the judge of the law or even if “they had not used physical force to prevent the accused person from being taken away” and if they had failed to ensure that the sentence was carried out.

Evidently, there is an element of drama in this law; it conjures up images of convicted clerics being dragged away by their colleagues, (and presumably hidden somewhere, beyond the reach of the law) and the court staff jostling with the clerics in

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147 divino cultu occupati et sacrosanctis misteriis servientes
148 Honoré (1998) 72, 74-5 suggests this law was drafted by E10, but finally issued during the quaestorship of E11 (whose name is unknown) since it contains features common to both.
an unholy attempt to prevent the defendant’s removal to ensure that he heard, and therefore had no excuse for ignoring, the verdict of the court. Effectively however, the law (quite reasonably) placed the clergy on the same level as other defendants making clear that they were unable to ignore the jurisdiction of Imperial courts. Therefore the law was not intolerant against the interests of either the Church or clerics as such, but the mere fact that Tatianus had brought the fact of such disreputable practices in Imperial courts to the attention of the Imperial government is further evidence of Tatianus’ basic hostility to the Church and its clerics. It seems unlikely that disruption of Imperial (court) proceedings, even by clerics, necessitated a new law or ruling from Theodosius; such behaviour could never have been regarded as acceptable. Moreover, the law did not have to mention the apparent “clever trickery,” nor the fact that defendants were being “snatched away by clerics.” If Tatianus had not been fundamentally anti Christian, he could have avoided such negative rhetoric and instead have simply indicated that court proceedings were being disrupted and asked for a ruling. Effectively, Tatianus was providing bad publicity for Christianity. That said however, the disruption of Imperial proceedings was a serious, even treasonable offence and that no punishments were directed by the law towards future disruptive elements may indicate that disruptive clerics were indulged to a greater extent by the Imperial government than disruptive lay people.

CTh. 11.36.31 of 9 April 392\textsuperscript{149} to Hypatius, \emph{praefectus Augustalis} (vicar) of Egypt reinforced the previous law.\textsuperscript{150} Tatianus remained Praetorian Prefect of the east until September, so this law probably passed through his office and with a different textual transmission the law may well have come down to us as being addressed to

\begin{footnotesize}
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\item\textsuperscript{149} Honoré’s E11 (1998) 73-76 the “last discernible quaestor of Theodosius’ reign.” E11 had an unusually long term of almost three years. Honoré reckons him to be a Christian. \textsuperscript{73} note at 73
\item\textsuperscript{150} Hypatius 3 PLRE 1.448; Honoré (1998) 137-138 indicates that there is a spate of laws addressed to middle ranking officers from 379 to February 398, eighty-eight out of 446 or 20\% of the total for that period.
\end{enumerate}
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Tatianus.\textsuperscript{151} The law prohibited appeals from defendants who had been convicted and also from those who had confessed, and if the office staffs reported an appeal then they would be collectively fined thirty pounds of gold. The governor himself would also be liable for the same amount “unless he performs his duty after decision has been rendered.”\textsuperscript{152} Moreover “nor shall it be suggested that any person of the bishops or clergy or anyone of the people are intervening or have intervened.”\textsuperscript{153} Curiously, appellants were not to be punished. This law would appear to be similar to CTh. 9.40.15 in that it was not necessary for the law to mention clerics and bishops and thus imply that they were attempting to evade or manipulate justice; therefore, like the previous law, this law was also somewhat anti-clerical in tone and sentiment, if not in practice.

CTh. 2.8.20 of 17 April 392 was issued to Proculus, Prefect of the City of Constantinople, and son of Tatianus.\textsuperscript{5} It ordered that circus games were to be prohibited on Sundays, except on the birthdays of the emperors “in order that no concourse of people to the spectacles may divert men from the reverend mysteries of the Christian law.” There is epigraphic evidence suggesting that Proculus, like his father, was a pagan and therefore this pro-Christian law appears out of place.\textsuperscript{155}

However, this was only six months before Proculus was dismissed from his post and executed due to the machinations of Rufinus who had been Theodosius’ agister iciorum since 388.\textsuperscript{156} Rufinus had accompanied Theodosius to the West to suppress Maximus in 388 and returned with him in 391 to Constantinople. Rufinus appears to have been an ambitious individual; he may have enhanced the position of

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\item \textsuperscript{151} Sirm. 9 indicates that laws to be cascaded down from the receiving Praetorian Prefect to the governors under his jurisdiction. See Matthews (2000) 186; Honoré (1998) 137-138 discusses the different sources from which the compilers of the code may have obtained the laws.
\item \textsuperscript{152} on ignaro ipso etiam indicante nisi post sententiam dictam impleverit suas partes eadem se multa na o icio esse plectendum
\item \textsuperscript{153} ec nulla episcoporum vel clericorum vel populi suggeratur intervenire aut intervenisse persona
\item \textsuperscript{154} Proculus 6 PLRE 1.746-747
\item \textsuperscript{155} SEG 7.195 records, \textit{inter alia}, that he celebrated a pagan cult in Heliopolis in Phoenice.
\item \textsuperscript{156} Flavius Rufinus 18 PLRE 1.778-781
\end{itemize}
\end{footnotesize}
his magisterium which according to CTh. 6.9.1 appears to have ranked lower than the quaestorship, but in the oitia Dignitatum of 395 ranked higher. He schemed against Theodosius' generals Timasius and Promotus; in 391 he managed to ensure the disgrace of the former and the removal of the latter from Constantinople to a command in Thrace after Promotus had assaulted Rufinus in the consistory. Promotus was attacked on his way to Thrace by a group of barbarians and killed. Rufinus was supposed to have arranged his death.\(^{157}\) Both Timasius and Proculus were also removed by September at the very latest and more probably in August.\(^{158}\) Therefore this law may well have been an attempt by Proculus to curry favour with Theodosius during a period of conflict within the consistory.

Before his dismissal however came Tatianus' last law on religious affairs, CTh. 2.8.21 of 27 May 392;\(^{159}\) a short one line law it ordered that “all legal actions whether public or private shall be excluded from the fifteen Paschal days.”\(^{160}\) Only one previous law of Theodosius ordered a court holiday for Easter (CTh. 2.18.19 of 7 August 389 to Albinus Prefect of Rome), which was also for fifteen days. Curiously, both Albinus and Tatianus were pagans and both these laws were issued during times of uncertainty for both individuals; for Albinus in the first twelve months of Theodosius' arrival in the West after his suppression of Maximus and Tatianus, at the end of that cycle when Theodosius returned to the East bringing the ambitious Rufinus with him. Therefore, like his son Proculus, Tatianus may have been attempting to ingratiate himself with the emperor.

CTh. 16.4.3 of 18 July 392 to Potamius, Augustal Prefect, was similar.\(^{161}\) It ordered that anyone who “disturbed both the Catholic faith and the people” and who

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\(^{157}\) Flavius Timasius PLRE 1.914-915; Flavius Promotus: PLRE 1.750-751; os. 4.51.1-3

\(^{158}\) Tatianus’ last law is CJ 11.25.2 of September 392; more likely he was removed earlier since a series of evenly spaced laws end with CTh. 7.4.19 of 31 July 392; the September law was probably issued, but not received, when Tatianus was still in office. Proculus’ last law is CTh. 14.17.10 of 25 June 392

\(^{159}\) Honoré’s E11 (1998) 73

\(^{160}\) etus omnnes seu publici seu privati diebus unidecim pas cabalibus seuestrentur

\(^{161}\) Potamius PLRE 1.720; Honoré’s (1998) 73-76 E11
also “ignored the admonition of the general law,” should be deported. The law appears to be directed against repeat offenders since it indicates that such people had failed to be “chastened by a due sentence.” The vague punishment prescribed in the previous law on the subject, CTh. 16.4.2 of 16 June 388, make it difficult to determine whether the specific punishment in this law was worse, but if it was indeed directed against repeat offenders, then, on that basis, it would appear to be more tolerant.

CTh. 9.45.1 of 18 October 392 was addressed to Romulus, Count of the Sacred Imperial Largesses. It ordered that “public debtors” if they sought sanctuary in a church should be “either dragged out of their hiding places at once, or payment of their debts shall be exacted of the bishops who are proved to have harbored them.” The law went on to address Romulus personally (as “our Eminent Authority”) and then to essentially repeat the earlier provisions, making it clear that “no debtor shall be defended by clerics or else the debts shall be paid by the clerics for a debtor who they suppose ought to be defended.” Romanus was a Christian, but, if he suggested this law, he evidently had no desire to enhance the status of the Church whenever money was involved. Noticeably the law does not discuss the status of sanctuary, but is solely concerned with recovery of funds, which should come from the debtor or from the cleric involved.

CTh. 15.5.2 of 20 May was issued to the Rufinus who replaced Tatianus as Prefect of the East, probably in 393. Amongst other secular concerns, it repeated the provision of CTh. 2.8.20 that no games were to be held on Sundays in order that divine worship would not be “disturbed” (con undat).

162 deportatione dignus est, ni nec generali lege admonitus nec competenti sententia emendatus et idem catholicam turbat et populum.
163 Flavius Pisidius Romulus 5 PLRE 1.771-772. Also attributed by Honoré (1998) 73 to his E11
164 publicos debitores, si con ugiendum ad ecclesias crediderint aut ilico e trahi de latebris oportebit aut pro his ipos, ne eos occultare probantur: episcopos e igit. sciat igitur, prae cellens auctoritas sua, nem inem debitorum posthac a clericis de endendum aut per eos eius, nem de endendum esse crediderint debitum esse solvendum.
165 Honoré’s E11 (1998) 73
CTh. 15.7.12 of 20 May 394 also to Rufinus with actors and performers in the games. It began by ordering the removal of pictures of actors and other performers from locations in which Imperial portraits were also displayed. In its second half it restricted the dress of virgins dedicated to God to that group and prohibited “actresses of mimes and other women who acquire gain by the wantonness of their bodies” from wearing it. Also, a Christian “woman or boy” shall not be “tainted by consorting with a man of the stage.”

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166 Honoré’s E11 (1998) 73
167 *is illud adicimus ut mimae et uae ludibrio corporis sui uaeestum aciunt publice habitu earum virginum uae deo dicatae sunt non utantur et ut nulla emina nec puer th melici consortio inbuantur si christianae religionis esse cognoscitur
Conclusion: Theodosius and the Church:

In conclusion therefore, there is little evidence in Theodosius’ legislation on the Church and Christianity to justify the persistent image of Theodosius as a staunch defender of the Church, standing at the vanguard of its interests and inexorably advancing them towards the summit of power and prestige which it is regarded to be on the very edge of acquiring at the end of this period. Rather, the Church does not appear to stand in a significantly more privileged position in 395 than it had in 379. However, what does emerge in Theodosius’ legislation are a number of tendencies which are often apparent in his legislation: one is that of subtlety, which at times appears to border on the vague and a second, less common, is that of a heightening of rhetoric. A good example of both these tendencies is the most famous and emblematic of Theodosius’ laws, the *Cunctos populos* of 28 February 380; short and dramatic in its requirements, as well as novel in its descriptive forms, but unclear in its geographical scope, hopeful, rather than imperative in terms of compliance, and with undefined punishments that would take their initiative from God.

In these laws, ambiguity appears to work in two ways: in the case of CTh. 16.2.25 of 28 February 380, which reads like a statement of fact, was potentially highly intolerant, because it stated that it was sacrilege to offend, either through negligence or even through ignorance, the “divine law.” The law failed to define “divine law,” as well as what negligence or ignorance of it might be, and therefore an almost limitless number of people could have been subject to the caprices of this law. Perhaps the most significant and concrete contribution of this law to the religious agenda of Theodosius’ government lay in the atmosphere which it may have created amongst the recipients; it may have been perceived to have reduced the bounds of acceptable behaviour in religion and hence made more specific (and equally intolerant) legislation in the future more acceptable. Alternatively however, ambiguity could work the other way. CTh. 16.2.26 of 31 March 381 was ambiguous in exempting “guardians of
holy places” from demands and such “holy places” could quite plausibly have referred to synagogues and temples as well as to churches.

Another tendency is exactness; in particular *piscopis tradi* (CTh. 16.1.3) of 30 July 381 and to a less extent *Cunctos populos*, are both precise as to whom (and therefore by implication what) in the Church should be regarded as Orthodox; indeed the comprehensiveness of *piscopis tradi* is as much an indicator of intolerance as any other criteria since it ensured that there was room only for Nicene churches (at least in this diocese). At the same time however it avoided making martyrs, it did not condemn any particular cleric and indeed did not even provide some punishments of which aspiring martyrs could have availed themselves.

Thoroughness could also work against the interests of the Church. Tatianus’ CTh. 16.2.27 of 21 June 390 was, like many of Tatianus’ laws, contrary to the interests of the Church and of clerics. It was also long and detailed, and to such a degree that the only way in which the Church could circumvent its provisions was with the complete repeal of the law. The legislation which is addressed to Tatianus on the Church and Christianity deserves special attention. It could be argued that much of the legislation which is addressed to him was actually inspired, proposed and then issued to others, i.e. the provincial governors under his jurisdiction in the eastern prefecture, and that it is only by chance that the copies sent to Tatianus were the versions that the commissioners decided to include in the Code. But there are also indications to suggest that a single hand lay behind many of the laws addressed to him. They are often markedly longer than other laws, length is problematic when dealing with edited texts, but it may reasonably be proposed that if edited texts are longer than other edited texts, then in their original states they would also have been longer. Similarly, they are often more detailed than laws on similar subjects (e.g. CTh. 11.16.18 and 12.1.123). Also, they are sometimes concerned with unusual subject matter; shaven headed women and deaconesses in CTh. 16.2.27 for instance and all of
the legislation on monks in the code (albeit only two laws) was addressed to Tatianus. Moreover, whilst Tatianus was the recipient for a disproportionate amount of the total legislation on the Church and Christianity (ten and possibly eleven or twelve out of a total of thirty) he received (as will be shown below) only three laws on heresy, one on Judaism and none on paganism; if it is mere chance that the surviving copies of these laws on the Church were addressed to Tatianus, (rather than anyone else) then it would be reasonable to expect a similar disproportion in laws on other subjects.

Also, elements in this body of legislation appears to make a determined effort to undermine the Church, insofar as was possible; and maintaining that possibility necessitated balance and subtlety: Tatianus had to blend anti-Christian with pro-Christian measures. That said, however, his first law, CTh. 9.35.5 of 6 September 389, actually advanced the cause of Christianity by banning corporal punishment during Lent without any apparent anti-Christian measures. His next law, CTh. 12.1.121 of 27 June 390 on clerics and councils was similarly balanced; it provided clerics with immunity for their property if they had left the councils more that two years previously, but for those who had done so since that date it was particularly severe and took the unprecedented, and arguably vindictive, step of stripping them of all their wealth. Tatianus CTh. 11.16.18 of 5 July 390 listed those granted exemptions from most, but not all, liturgies. Its anti-Christian nature lies it its subtlety; it had a sense of personalism throughout it, referring to individuals as exempt because they were engaged in a particular profession, except for the clerics, who were not mentioned by their profession; as far as the law reached in exempting them was to refer to “the churches” as enjoying “similar” grants. Moreover, the law presented exemptions as being almost gifts of the emperor and not inherent to any particular office or rank.

With his CTh. 9.40.15 of 3 March 392 Tatianus did not have to give any quarter to the Church since it was concerned only with preventing abuses committed by clerics. However, it may be reasonably doubted whether an unpartisan approach
would even have bothered with this law condemning patently illegal practices by clerics, still less to have included references to the “clever trickery” of the clerics performing such actions. It is interesting that Tatianus’ last law affecting the Church (CTh. 2.8.21 of 27 May 392), like his first, advanced the Christianisation of the empire, and was issued when he may have regarded his position as being under threat from Rufinus and therefore sought to find favour with the Christian emperor with this cost-free measure with only one precedent (CTh. 2.18.19 of 7 August 389), which may well have been suggested for the same reasons. If this is correct, it is further evidence of the multifarious ways in which the legislative process could be harnessed to serve the immediate aims of an individual.
Theodosius and heretics.

As has already been noted, some of Theodosius' legislation may be classified as affecting primarily one particular group, but it might also affect another group as well. One good example of this is his *piscopus tradi* (CTh. 16.1.3 of 30 July 381) which benefits the orthodox to the direct detriment of other Churches. Similarly CTh. 16.5.6 of 10 January 381 was addressed to Eutropius, Praetorian Prefect of the East, and was Theodosius' first law that was focused on heretics, but also contained a provision which benefited the orthodox.\(^{168}\) It should be noted that this law, sometimes termed the *nullus haereticis*, was passed before the Council of Constantinople met in May 381.

The law is divided into three main parts, prefaced by an introductory paragraph. The introduction was in bombastic terms and began: “No place for celebrating their mysteries, no opportunity for exercising the madness of their excessively obstinate minds shall be available to the heretics.” The law then appears to make the obvious statement that any apparent concession “impetrated by that kind of men through any special rescript” was invalid if “fraudulently elicited.” Possibly this clause was designed to impose upon any heretics who had rescripts, an obligation to prove that they were genuine; it may also have been designed to encourage the orthodox to bring cases against heretics to force them to prove that their rescripts were valid.\(^{169}\)

The first paragraph dealt with two issues, practical and doctrinal: the practical was an order that “crowds shall be kept away from the unlawful congregations of all the heretics” which tends to give the impression that heretical spectacles were almost

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168 Eutropius 2 PLRE 1.317 who also received Sirm. Const. 7 of Easter 381. Honoré (1998) 45-47 attributes this law to his quaestor E2 whom he believes was a Christian and may have been a lawyer.

169 *nullus haereticis* *m* *steriorum* *locus* *nulla* *ad e* *recendam* *animi* *obstinatio* *is* *dementiam* *pateat* *occasio*.

sciant omnes etiam si *uid speciali* *volibet rescripto* *per randem elicit* *ab huinsumodi hominum* *genere* *impetratum* *est* *non valere*
regarded as a ‘tourist attraction’ for the ordinary citizens of a city or perhaps, more plausibly, that the actual heretics that the laws was targeting and referring to were the clerics and leaders of the heretical movements and that those who attended services conducted by such were the “crowds” and not regarded as heretics as such. However, a less charitable translation of the text could be “the crowds of all heretics are to be kept away from illegal congregations.” Even if that is closer to the original intent of the law, however, it indicates that there was nothing inherently illegal in being a heretic, according to this law, but rather the illegality rested in the practice of heresy in a group, or congregation.

In the second sentence of that first paragraph the law appears to change direction somewhat and turns to the second and doctrinal issue which stated what should be the case. “The name of the One and Supreme God shall be celebrated everywhere; the observance, destined to remain forever of the Nicene faith, as transmitted long ago by our ancestors and confirmed by the declaration and testimony of divine religion, shall be maintained.” The law then changed direction again and went on to condemn three named heresies: “the contamination of the Photinian pestilence which held that Christ was born a man and only later became the son of God via the descent of the Holy Spirit, Who was in turn part of God, the poison of the Arian sacrilege, the crime of the Eunomian perfidy which held that the Son was unlike the Father, and the sectarian monstrosities, abominable because of the ill-omened names of their authors, shall be abolished even from the hearing of men.” These three heresies were all essentially of the Arian type.

The second paragraph dwelt on the positive and defined those of the “acceptable religion” but did so through dogma and theology, rather than through
giving a list of bishops as had been the case with CTh. 16.1.2 and CTh. 16.1.3. The
dogma given followed, with some variations, the Nicene creed of 325, and indicated
that a “defender of the Nicene faith and a true adherent of the Catholic religion” was
one who confessed that “Almighty God and Christ the Son of God are One in name,
God of God, Light of Light.” The law then went on to deal with the still unresolved
question of the Holy Spirit in the Godhead. Cunctos populos (CTh. 16.1.2) had been
direct and simple, affirming the “single Deity of the Father, the Son and the Holy
Spirit, under the concept of equal majesty.” This law was also direct, but also more
technical than Cunctos populos; it affirmed that a true Nicene did not “violate by denial
the Holy Spirit.” A true Nicene would also “with inviolate faith” believe in the
“undivided substance of the incorrupt Trinity, that substance which those of the
orthodox faith call, employing a Greek work, ousia.” All of these beliefs were “surely
more acceptable to us and must be venerated.”

The final and third paragraph dealt with punishments and future courses of
action. Those who were not “devoted to the aforesaid doctrines shall cease to assume,
with studied deceit, the alien name of true religion” and “they shall be branded upon
the disclosure of their crimes.” They were also forbidden access to churches since “we
forbid all heretics to hold unlawful assemblies within the towns.” Any “factions”
attempting to “do anything, we order that their madness shall be banished and that
they shall be driven away from the very walls of the cities” so that all churches could
be restored to Nicene bishops.

172 Is autem nicaenae adsertor idei catholicae religionis versus cultur accipiendus est ui omnipotentem deum
et christum ilium dei uno nomine con itetur deum deo lumen e lumine ui spiritum sanctum nem e
summo rerum parente speramus et accipimus negando non violat apud nem intemeratae idei sensu viget
incorruptae trinitatis indivisa substantia. ui graeci adsertione verbi ousia recte credentibus dicitur. haec
pro euo nobis magis probala haec veneranda sunt

173 Qui vero isdem non inservunt desinat ad ects dolis alienum verae religionis nomen adsumere et mix
aperitis criminius denotentur, ab omnium submoti ecclesiastarum limine penitus arceantur cum omnes
baereticos illicitas agere intra oppida congregationes etemus ac si uid eruptio actioa temptauerit ab ipsis
etiam urbium moenibus et terminato urore propelli in hambus us cunctis orthodox is episcopis ui nicaenam
ideem tenent catholicae ecclesiae totu orbe reddantur
In some ways this law is a retreat on the doctrinal certainty of *Cunctos populos* of just under a year before. That law had treated the three persons of the Trinity as of “equal majesty” in a “single Deity.” This law said nothing of the specific nature of the Holy Spirit, as it did about Christ and God, rather it restricted itself to decreeing that a Nicene would not deny the Holy Spirit which “we hope for and receive from the Supreme Author of all things.” At the same time it articulated more explicitly and theologically the unity of substance between the three members of the Trinity, through the phrase “undivided substance the ousia of the Trinity,” than had *Cunctos populos*. More interestingly, the law appears to bear a remarkable similarity to the theology and thought of Gregory Nazianzus, the bishop of Constantinople. Gregory had spoken of the “procession” of the Holy Spirit from the Father, which this law echoes with its expectation of the Holy Spirit being received by the faithful from God. The hesitancy of the law in fully stating the complete divinity of the Holy Spirit is also typical of Gregory’s approach; although believing in the full divinity of the Holy Spirit, a belief that is apparent in his works, Gregory had been reluctant to fully articulate his beliefs and to push them to their logical conclusion in order not to provoke further schisms. Gregory had also written against those who reckoned, either in thought or in worship, the Holy Spirit to be less than the other members of the trinity, a theology which this law rejects by stating the “undivided substance of the incorrupt Trinity.”

Anyone who did not agree to these doctrines would be reckoned not to be a Nicene and should “cease to assume, with studied deceit the alien name of true religion.” Upon “disclosure” of their crimes the heretics would be branded and “completely barred from the threshold of all churches since we forbid all heretics to

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174 Greg. Naz. *r.* 31.8 explains his hesitancy in the form of a semi-dialogue: “if you will explain the Father’s ‘ingeneracy,’ I will give you a scientific account of the ‘generation’ of the Son, and the ‘procession’ of the Spirit; and thus let us both go crazy through peering into the mysteries of God.” Translation by Bettenson (1977) 114
175 For Gregory on those who deny the Holy Spirit either by reckoning Him to be in a third, subordinate place to the other two, or by not bothering to assign Him any place at all, see his *r.* 31.5; for his explanation of the Holy Spirit “proceeding from the Father” see his *r.* 31.8-11
hold unlawful assemblies within the towns.” They were also not to be allowed to return “if factions should attempt to do anything, we order that their madness shall be banished and that they shall be driven away from the very walls of the cities;” this would ensure that all “Catholic churches” would be restored to “orthodox bishops who hold the Nicene faith.”

Branding was the only actual punishment prescribed by this law so it is not particularly intolerant on that measure. It is more intolerant on the language and rhetoric used and in particular that directed towards the three named heresies of Arian, Photinian and Eunomian. These three groups would not be able to accept the consubstantiality of Father and Son, as decisively given in this law, but other heretics, such as the Macedonians (who accepted the latter, but did not accept that the Holy Spirit was consubstantial with the other Two), would not, according to the letter of this law, be unable to accept it. The law may also be observed to be essentially intolerant by requiring Eutropius to take further action against any heretics who attempted to conduct services in towns in the future, so there was a degree of permanence in its provisions; it was not designed just to meet an immediate problem, but was designed to deal with a problem in perpetuity.

CTh. 16.5.7 of 8 May 381 was also to Eutropius and was longer.\textsuperscript{176} Like the previous law it is divisible into three parts and was directed against the Manicheans and prevented them from receiving bequests or gifts. As such it appears to have been designed to make the Manichean community poor; possibly to prevent them from supporting their churches, priests and worship. It began by recalling an earlier law (Valentinian’s CTh. 16.5.3 of 2 March 372) but without such specific reference, merely calling it “the law as previously and originally issued by our fathers.” Valentinian’s law had ordered that Manichean teachers should be punished and properties on which they assembled should be confiscated; there is no surviving reference in it to wills,

\textsuperscript{176} Honoré’s (1998) E2
bequests or gifts. This latest law could be taken to imply that Valentinian’s earlier law, CTh.16.5.3, had prevented Manicheans from making wills and receiving bequests.

Theodosius’ law prevented Manicheans from making wills and gifts and ordered that any gifts, by bequests or “through any form whatever” made, should be confiscated by the treasury after due investigations. It also reinforced the earlier ruling that Manicheans were not allowed to make wills: “we deprive the aforesaid persons under the perpetual brand of just infamy of all right to make a will.” ut bequestees were only prevented from inheriting “provided that they are connected by participation in the misdeeds of the aforesaid criminal life.” Moreover, this was to affect such transfers and bequests made since Valentinian’s law of over seven years earlier. Denying the Manicheans the right to make gifts rendered them second class citizens in this respect, putting them on a par with other groups who were denied such a right such as slaves, lunatics, children and women.  

After the introduction, the first part of the law ordered that its provisions should be “valid not only for the future, but also for the past.” Retrospective legislation appears harsh and this was acknowledged by this law “Imperial laws are not customarily prejudicial to previous acts, nevertheless, in this sanction only, since it is our will that it shall be especially forceful, we recognize by our sense of just inspiration what an inveterate obstinacy and a pertinacious nature deserve.” That previous law must also have prohibited assemblies of Manicheans since the continuance of “unlawful and profane assemblies, in violation of the aforesaid law” was given as a further reason for the harshness of this law. Such persons were held “as guilty of sacrilege” and therefore, the “severity of the present statute” was sanctioned and justified “not so much as an example of a law that should be established, but as one that should be avenged.” The fact that the law feels the need to say this is further evidence to support the view that Roman legislation was issued on an ad hoc basis, to

177 Lieu (1985) 111-112 discusses this law.
respond to an immediate need and was not, generally, intended to be permanent. Nevertheless, the government was evidently growing impatient with Manicheans and believed that they were of such a nature as to deserve especially harsh, and possibly unconstitutional, legislation.

The second paragraph made clear one provision that had been hinted at in the introduction; that children of Manicheans were allowed to inherit if they were “immune from such a crime” and had been “admonished” and a desire for “their own salvation” had disassociated themselves form the “aforesaid life and profession” and embraced the “true religion.”

The third and final paragraph repeats the provision of Valentinian’s CTh. 16.5.3; that Manicheans were not to assemble. The law uses somewhat peculiar language to express this. It orders that Manicheans “shall not establish in the conventicles of the small towns or in renowned cities their accustomed tombs of feral mysteries.” The law also echoed the previous law, CTh. 16.5.6 of 10 January 381, and ordered that Manicheans should be kept out of the public sight: “they shall be kept completely from sight of the throngs in the municipalities,” which may possibly be a very oblique reference to exile, at least from cities. The Manicheans were also ordered not to disguise “with dishonest fraud” their activities and beliefs “under the pretence of those deceptive names and signed as of approved faith and chaste character” such as the Encratites, the Apotactites, the Hydroparastatae and the Saccophori.

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_178_ Illud etiam huic adicimus sanctioni: ne in conventiculis oppidorum ne in urbis claris consuetas eratium m. steriorum sepulcrorum constituant a conspectu celebri civitate penitus coherecantur. nec se sub simulatione allaci eorum scilicet nominum ubibis plerii ne ut cognoscamus probatae idae et propositis castoriis dici ac signari volent maligna rande de endant cum praesertim nonnulli e his encratitas apotactitas

_179_ Ascetic vegetarians of Asia Minor, with some communities as far away as Rome and Syrian Antioch. They were opposed to wine, marriage and clerical orders. Epiphanius indicates that they granted a ministerial role to women. He also says that they believed that the devil was not subject to God and that they accepted a number of Apocryphal books. He also indicates that they accepted only some of
This law is highly intolerant, and is so on several levels. Intolerance shines through in the detail of the law; its clauses on Manicheans transferring property left no room for any exceptions, gifts by the living and bequeaths by the dead were covered. Also, not only were they forbidden from assembling in cities, but were also forbidden from doing so in “small towns.” That clause on “small towns” had not been used before and closed a potential loophole which may have been of benefit to Manicheans. The thoroughness of the law in including any pseudonyms by which Manicheans may have been known also indicates the extent to which the authorities were prepared to go in order to deprive the Manicheans of their wealth. Moreover, the law appears to depart from the practice of the contemporary Church. Fifteen years earlier, St. Basil of Caesarea had written (to Amphilochius) that Manicheans were heretics, but Hydroparastatae and Encratites were not; they were merely schismatics and, although the Holy Spirit had departed them, their baptisms should still be accepted, even though they were not technically valid.

Also indicative of the intolerance in this law the rhetoric used of the Manicheans; they are disobedient and guilty of a crime just from being Manicheans, they were pertinent and obstinate. But this rhetoric is the visible result of the government’s underlying anger at the wilful disobedience of the earlier legislation issued under Valentinian. That disobedience was the reason for the retrospective legislation which is the most intolerant aspect of the law; Manicheans were ignoring CTh. 16.5.3 and were continuing to assemble, so therefore not only did this law

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the Old Testament, and apparently, only some of the New Testament, reviling st. Paul as a drunkard. Epiph. 47.1-3 in Amidon (1990) 168-169, Pharr (1952) 582
182 “Renunciators” a general term for members of a number of sects of the third and fourth century concentrated in southern and western Asia Minor. They renounced marriage and private property in an apparent attempt to rediscover the first Apostolic Christian community. Pharr (1952) 582
181 They preferred water to wine in the Eucharist. Manicheans were also averse to wine. Pharr (1952) 582; Mitchell (1993) 2.100
182 A Manichean sect. They also preferred water to wine in the mass. Pharr (1952) 584. See also Mitchell (1993) 2.102 who regards the two sects as “very closely related, if not identical.”
183 asil p. 188, cf his p 199
reinforce the illegality of such assemblies, but sought to punish simply the offence of disobedience. As such they were rendered unable to make wills or receive gifts or bequests. This substantial part of the law appears to be punitive simply as vengeance for the fact that they had disobeyed a previous law.\(^\text{184}\)

Against these indices of intolerance however should be balanced the lack of punishments for any Manichean caught receiving or bequeathing property or gifts; indeed, although the harshness of the law is explained by the fact that its predecessor had been utterly ignored by the Manicheans, from which we may presume that there was some degree of anger in the Imperial government against the Manicheans, still, no punishments were prescribed for those who may have broken that previous law. The lack of practical punishments and vengeance stands in striking contrast to the rhetoric employed; in this instance, the Imperial bark appears to have been worse than its bite.

CTh. 16.5.8 of 19 July 381 was issued to Clicherius, Count of the Orient and probably after the end of the Council of Constantinople.\(^\text{185}\) Clicherius was of course Eutropius’ deputy, so this law may well have been originally addressed to him. The provisions of this law follow on from those of CTh. 16.5.6. That previous law had banned Arians and Eunomians from holding assemblies in towns and had ordered the transfer of churches to the Nicenes; this latest law ordered that Arians and Eunomians were forbidden from building churches “in the municipalities or in the country.” Presumably, Arians and Eunomians had followed the provisions of CTh. 16.5.6 and surrendered their churches and places of worship, only to commence construction on replacements. The third group of heretics mentioned in the previous law, the Photinians, were not mentioned in this law, which presumably means that they may

\(^{184}\) See Jones (1964) 421 however, who suggests that the fines imposed on heretics by Theodosius’ legislation provided a source of income for the government which possibly replaced that which had once been provided by Augustus’ Lex Papia Poppaea.

\(^{185}\) Clicherium in the text; Mommsen suggested Glycerius in his edition of the code and that spelling has been adopted by the editors of the PLRE 1.397; Glycerius is otherwise unknown. Honoré (1998) 45-47 believes CTh. 16.5.8 to be the work of his E2
have both surrendered their churches and followed the a perceived spirit of the law in not building replacements.

The law ordered that if anyone had “rashly presumed” to build a church in a town or in the country, then the “house” as well as the land it stood on would be confiscated to the treasury. If in the countryside then the estate would be confiscated. The law ordered that “all places which have received either the abode of the ministers of this sacrilegious doctrine” would also be confiscated to the treasury.\(^{186}\)

This law tends to give the impression that the authorities were engaged in a systematic programme against heretical groups; CTh. 16.5.6 had forbidden them from assembling and possessing churches, CTh. 16.5.8 prevented them from building new churches, which, based on the absence of the Photinians in this law, may have been implied (at least by the authorities) in that previous law. The punishments, confiscation of property, is probably milder than that applicable to the Manichean community, i.e. the prohibition on receiving and giving property and gifts; moreover, this latest punishment was focused on the institutions of the Arian and Eunomian communities, rather than on individuals of those groups: it was an institutional punishment, although, admittedly, the Arian or Eunomian whose property may well have been confiscated probably did not perceive the punishment as institutional. Also, the final clause, confiscating the property where heretical clerics had lived is, implicitly, retrospective, unlike the rest of this law.

CTh. 16.5.9 of 31 March 382 issued to Florus, Praetorian Prefect of the East again concerned Manicheans.\(^{187}\) It appears to address Manicheans involved in

\(^{186}\) *nullum eunomianorum at ne arrianorum vel e dogmate acti in civitate vel agris abriandarum ecclesiarum copiam habere praecipimus. uod si temere ab ali no id praesumptum sit domus eadem ubi haec constructa uerint uae construi prohibentur undus etiam vel privata possesio protinus isci nostri viribus vindicetur at ne omnia loca ica]icia statim iant uae sacrilegi bnius dogmat is vel sedem receperint vel ministros.*

\(^{187}\) Florus 1 PLRE 1.367-368; also attributed by Honoré to his E2
monasticism. In its introductory paragraph it referred to Manicheans fleeing “the company of the good under the false pretence of the solitary life” and choosing “the secret gatherings of persons of the lowest classes.” Anyone who did so would be regarded as “a profaner and corrupter of the Catholic discipline, which we all revere.” Such persons would not, as consistent with earlier legislation, be able to give anything to other Manicheans during his life or at his death; not to “such unworthy persons, but he shall restore all his possessions to those persons who are akin to him, not by character, but by nature.” In the absence of “statutory successors” or of next of kin his property would be sequestrated to the treasury. This section of the law concluded with a dismissive, “so much for the hermits.”

The next paragraph left the Manicheans proper and directed attention to other heretics, some of which were on the fringes of Manichaism. The Encratites were a “monstrous appellation, together with the Saccophori and the Hydroparastatae” and once convicted in court “betrayed by crime, or discovered in a slight trace of this wickedness” then they were to be punished with the “supreme penalty and with inexpiable punishment.” This presumably meant torture followed by death. The law also reinforced the provisions “with respect to their goods” of an earlier law which presumably refers to CTh. 16.5.7 of ten months earlier, i.e. these named were not able to give away their property in life or, presumably, upon their rapidly approaching deaths.

In the final paragraph the law detailed what actions Florus was now to take. He was ordered to “appoint investigators” in order, presumably, to identify Manichean

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188 quis quos manichaeorum vitae solitariae alsitatem cöternum honorum uigit ac secretas turbas eligit pessimorum, ita ut pro anatus at ne corruptor catholicae. nam cuncti suspicium disciplinae legi subintegret ut intestabilis vivat nihil virum impendat illicitis nibil moriens relin. nulli dignis omnia non moribus sed natura resituate ant pro imis si deest legitima successio melius regenda dimitat. 189 Ceterum quos encratitas prodigiali appellatione cognominant cum sacco oris sive b droprastatis re utatos indicio proditos crimine vel in mediocris vestigio. a cinoris bauis inventos summum suplicio et in piabili poena inimexus ad ligi manente ea condicione de bonis nam omni huic officinae imposimus a latae dudum legi et ordio
and other named heretics in this law, to “open court” and even “receive informers and
denouncers, without the odium attached to informants.” There was also to be no
‘statute of limitations.’ Again, the law repeated that such “secret and hidden
assemblies” were not to take place either in cities or in the countryside. The law
finished with another change of direction, which reads more like a hastily added
addendum, and ordered Florus to conduct investigations “with the greatest care” into
those who did not celebrate Easter on the normal days; they were to be treated “as
persons whom we have condemned by this law.”

The repeated provisions against Manicheans disposing of their goods as they
saw fit, indicates that the government was engaged in a sustained campaign against this
particular religious group. The beginning of the law, directed against Manichean
ascetics, may be evidence that the government was keeping a close watching brief on
Manichean activities and responding appropriately. However, this section of the law
at least restrained from any derogatory rhetoric and more importantly, it did not
increase the penalties on Manicheans. Indeed the lack of derogatory rhetoric could be
used to suggest that at this point, this law is less intolerant than CTh. 16.5.7.
Moreover, monks of all religions were regarded with prejudice and suspicion.

The next section of the law however is particularly intolerant and was the
thirteenth time that the death penalty had been laid down for a religious offence since
the conversion of Constantine. The earlier laws prescribing death were all related to
specific and unique circumstances; Constantius’ CTh. 16.10.6 of 20 February 356 was
against sacrifice and the worship of images, and was issued shortly after he had taken

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190 sublimitas ita ne tua det in visitores aperiat orum indices denuntiatores ne sine invidia delationis
acciapit. nemo praescriptione communide ordium accusatione huius in ringat. nemo tales occultus cogat
latentes ne conventus agris et in moenibus sed publica privata ne damnamus. e
summae e pluramone rimetur ut nunc ne in unum paschae die non obsi nium religione convenerint tales
indubitante nales hae leges damnnavimus habeantur.
Lieu (1985) 113-114 discusses this law, especially the unusual (and probably controversial) clause on
admitting informers.
control of the west from the usurper Magnentius and arguably therefore he needed to firmly stamp his authority on his newly acquired provinces. Similarly Valentinian's CTh. 16.1.1 was issued at the very beginning of his reign and when he had (probably) just received word of Procopius' revolt against his brother and so similarly he too had to stamp his authority on the state and the situation. However, no such drastic circumstances are known at this time which might be advanced in mitigation, other than continuing problems with the Goths. The only mitigating factor is that the different names used by the Manicheans might have frustrated and annoyed the authorities when attempting to identify them and so this harsh measure may have been employed in an attempt to 'categorise' them more successfully. CTh. 16.5.7 of ten months earlier had warned Manicheans not to disguise their activities under aliases. Nevertheless, the death penalty for such perceived deceit seems extremely harsh, and is indeed death not so much for being heretics as for using, as far as the authorities were concerned, aliases. At least, however, it indicates the dedication and purpose of mind that the authorities now had when wishing to identify heretics.

CTh. 16.5.10 of 20 June 383 was addressed to Constantianus, Vicar of Pontus and was considerably milder. It was possibly originally addressed to the appropriate Praetorian Prefect, Florus.\(^{191}\) It was directed against the Tascodrogitae, another name for the rigorist, ascetic sect better known as the Montanists; the most famous Montanist was Tertullian in his later life.\(^{192}\) The brief instructions surviving in this law appear fairly mild and ordered that they should not “be evicted from their own habitations,” which presumably means from their homes, rather than from their places of worship; laws against the Arians and others had not mentioned confiscation of their homes. It may be a reference to the measures against the Manicheans who were (at death) deprived of their properties; perhaps enthusiastic officials were seeking to apply

\(^{191}\) Florus 1 PLRE 1.367-368

\(^{192}\) Constantianus 2 PLRE 1.222. Tascodrogitae is a Phrygian word meaning ‘peg’ and ‘nose’ as they were supposed to pinch their noses with their fingers while praying “in order to display their downcast spirit and affected rectitude.” Epiph. 48.14 in Amidon (1990) 172; See Mitchell (1993) 2.93; Pharr (1952) 584
similar measures to the Tascodrogitae as well. However, the law did call them a
“crowd of heretical superstition” who should not be allowed to “convene at any
church.” More intolerantly, the law implies that they should not be granted their own
places of worship; if a crowd of Tascodrogitae were to convene “it shall be driven out
of its conventicles without any delay.” Essentially, the law appears to treat the
Tascodrogitae in the same manner as Arians and other Christian heretics and better
than Manicheans were to be treated.

Epiphanius records that the Tascodrogitae were thought by some people to
engage in an illegal act during one of their festivals in which they would “pierce a very
young boy in every part of his body with brass needles and take his blood to use at
sacrifices.” He went on to state that they would “partake” of the blood and that “this
is an initiation into the name of Christ.” Epiphanius was writing his Panarion in the
late 370’s and its contents would probably have been know to the administrators in
Theodosius’ government, but despite this apparent knowledge, this law did not seek to
take the allegations and use them against the Tascodrogitae in this law. There was no
desire to capitalise upon the dubious, but possibly widely and popularly believed,
practices attributed to these heretics by Epiphanius.

CTh.16.5.11 of 25 July 383 was issued to Postumianus, Praetorian Prefect of
the East. It was written in a grandiloquent style and, on Honoré’s estimation is one
of only two of Theodosius' laws that departs from Theodosius' normally cautious
approach. If it had achieved the fame of other Theodosian legislations, such as
*Cunctos populos* and *piscopis tradi*, it too might have been known by its dramatic

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193 Epiph. 48.14.6  15.1 pai`da ga;r komidh`/ nhpion o[nta kata;  ejorthvn tina
di J o{lou tou` swvmato~ katacentou`nte~ caikai`~ rjayivsi to;ai ma
aujtou` prosporivzontai eJautoi`~, eij~ ejpithvdeusin dh`gen qusiva~.

194 Postumianus 2 PLRE 1.718. Honoré’s (1998) E4 48-52 whom he believes was Maternus Cynegius,
and whose style Honoré defines as (at 48) “in the Curzon manner: grandiloquent, sonorous, repetitive.”

195 Honoré (1998) 50-51 The other law being CTh. 15.1.22 of 11 June 383
opening: *omnes omnino* “all persons absolutely.”\(^{196}\) It ordered that those who were “tossed about by the false doctrine of diverse heresies” the Eunomians, Arians, Macedonians, Pneumatomachi, Manicheans, Encratites, Apotactites, Saccophori and the Hydroparastatae were not to assemble, nor to “collect any multitude” which may be a reference to the apparent practice of curious onlookers coming to view the heretical assemblies which may have been referred to in CTh.16.5.6 of two years previously. They were also not to “attract any people unto themselves” which may mean they were not to carry out any conversions. They were also not to construct churches: “not to show any walls of private houses after the likeness of churches” and they were to “practice nothing publicly or privately which may be detrimental to the Catholic sanctity.” Anyone who “transgresses what has been so evidently forbidden” was to be expelled “by the common agreement of all good men, and the opportunity to expel him shall be granted to all who delight in the cult and the beauty of the correct observance of religion.”\(^{197}\)

This is evidently another intolerant law from Theodosius’ government in terms of detail and thoroughness. The fact that nine sects are listed shows a degree of comprehensiveness in the government’s approach to the problem. Equally comprehensive are the provisions listed against carrying out conversions, converting (though not specifically erecting) buildings into churches and finally the general catch-all terms against doing anything detrimental to the Catholic faith. Against the intolerance however, should be balanced the lack of punishments, other than, presumably, exile, which for a time not specified. Also, some of the sects listed are

\(^{196}\) Pharr’s (1952) 452 translation “All persons whatsoever” does not appear to do justice to the full strength of the Latin. The translation “all persons absolutely” is mine, the rest of the translation given is Pharr’s.

\(^{197}\) With reference to this last passage, Honoré (1998) 51 regards the law as “blatantly populist.”
identical: Macedonian is another term for the Pneumatomachi and similarly the Saccophori were, as mentioned, a sect of the Manicheans. So the actual number of heretics listed by this law would, in practice, have been less than the law might lead one to believe; but equally, Manicheans would have been unable to hide behind another name by claiming to be something other than Manicheans. At the same time, few heretics would have defined themselves by the often derogatory names given in this law; for information purposes this law was directed towards the Nicene Catholics, heretics may well not have regarded its provisions as being binding on them.

Postumianus was also the addressee of Theodosius’ next law on heretics, CTh. 16.5.12 of 3 December 383.\(^{198}\) It repeated and extended the provisions against church building that had been established by CTh. 16.5.6 and CTh. 16.5.8. It named four heresies, Eunomian, Arian, Macedonian and Apollinarian as “vicious doctrines hateful to God and man” and also included “all other sects which are condemned by the sincere faith of the true religion, according to the venerable cult of the Catholic discipline.” Such were not “to assemble congregations or to establish churches, either by public or private undertakings” either within towns or in the countryside, which is rather flowerily expressed as: “the fields and the villas.”\(^{199}\)

Just to reinforce the prohibition on assemblies, the law also ordered that the heretics should not perform their liturgies: “they shall not practice the ritual performance of their own perfidy or the ceremonies of their dire communion.” It also appears that they were not allowed even the liturgical forms necessary for ordaining priests: “they shall not usurp and have any ordinances for creating priests.”\(^{200}\)

\(^{198}\) Also attributed by Honoré (1998) to his E4, Maternus Cynegius.

\(^{199}\) *vitiorum institutio deo atque hominibus exosa, eunomiana scilicet arriana macedoniana apollinariana ceterarum ut sectarum ut verae religionis venerabilis cultus catholicae observationis ides sincera condemnat nee nee publicis nee privatis additionibus intra urbium ad eagorum ac villarum loca aut colligendarum congregationum aut constitendarum ecclesiaram

\(^{200}\) *nec celebratatem per idiae saec vel sollemnitatem dirae communio an e creat nee eulias creandorum sacerdotum usurpet ad eabeat ordinationes
The law then went on to detail the punishments. Properties “where crowds of such teachers and ministers are collected at the time of Easter” were to be forfeited to the treasury, whether they were “in cities or in any places whatsoever” where such heretics gathered. Moreover, the law was to be actively enforced: heretics “who are accustomed to practice either the doctrines or the mysteries of such assemblages shall be diligently sought out from all cities and places.” Once found, they were to be “constrained by the vigour of the published law,” expelled from the assemblies and ordered to “return to the countries of their origin in order that none of them may have the power to go to any other place whatsoever, or to wander away to any cities.” The law also obliged “the office staffs of the provincial judges and the chief decurions of the cities” to suffer a “sentence of condemnation” if it was “proved” that an assembly had taken place in an area under their jurisdiction.201

This law was intolerant because it sought to ‘strangle’ heresies by denying them the ability to perpetuate themselves through ordaining their own clergy. Thus, unlike earlier laws which were more concerned with the actual practice of heresy, this law implies, though does not specifically state, that there something objectionable simply in being a heretic; or at least a heretic cleric. As such there is a degree of permanence in this law, as there had been in CTh. 16.5.6. Furthermore, it appears that Postumianus was required to actively seek out heretical activities: heretics and their “assemblages shall be diligently sought out” as Florus had been required to do in his CTh. 16.5.9, although admittedly the order to Postumianus was not as definite as that to Florus had been. However, against all this is the fact that the order to confiscate houses, in which heretics assembled, ends with the words “at the time of Easter.” This sentence gives the impression that buildings in which heretics met would only be

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201 _eaedem quo ne domus sen in urbibus sen in nibiscum ne locis paschae tuebte pro essorum ac ministerorum talum colloquentur isui nostri dominio iuri ne subdantur iti nii ni vel doctrinam vel m stria conventionum talum e eccere consuenunt per usiti ab omnibus urbibus ac locis propositae legis vigore constricti e bellantur a coeitibus et ad proprias unde oriundi sunt terras redire inbeatur ne nis eorum aut commenadni ad naelibet alia loca aut evagdi ad urbis habeat potestatem. ne si neglentueus ea uae serenitae nostra constituit impleuntur o icia provincialium indicum et principales urbium in nibus coitio vertiae congregationis reperta monstrabitur sententia damnationi ne subdantur_
confiscated if heretics convened in them during Easter. Since Easter was, and is, the most important festival in the Church, perhaps just preventing heretics from performing then was considered sufficient, in which case, this law is considerably more tolerant than it might appear. However, the purpose of the ban at Easter may have been a further attempt to 'strangle' the heretic churches, by preventing them from admitting new members, if, that is, new members were admitted at Easter, as tends to be the practice today, at least in the Roman Catholic Church. Such an attempt would be in harmony with the prohibition against ordaining new priests in this law, and also with the financial restrictions imposed on Manicheans by CTh. 16.5.7 of two and a half years earlier.

The only other punishment was directed against the office staffs of provincial judges and the chief decurions and those were undefined. Most notably, the heretics were only punished with deportation to their places of origin, other than the confiscation of properties. This is evidence of leaders and clerics of heresies moving around the empire preaching their message and maintaining communities of believers in the same way that St. Paul had done in the early decades of the Church. Equally it might be a reference to the Manicheans, who had considerable links to the Persian empire.

Collectio Avellana 2.a is Theodosius' next ruling on heretics and is only preserved there, not in the Theodosian Code.\textsuperscript{202} It was issued in response to a petition received by Theodosius from the Luciferians, (know in short as the \textit{ibellus recum}) asking for Imperial protection from persecution by Arians. The sect was named after the founder Bishop Lucifer of Calaris (Cagliari) in Sardinia who believed that clerics should be disbarred from the priesthood and excommunicated if they had ever been Arians, regardless whether they had renounced their Arianism. The same applied to

\textsuperscript{202} \textit{Coll. ve.} 2a; Honoré (1998) 40, 53 does not assign this law to any quaestor, instead he assigns it as being Theodosius’ own work, or that of a “close religious advisor.” Note at 53. The text is given in CSEL 35:45-46; Coleman-Norton (1966) 390-392 gives a translation.
bishops if they had fraternised with Arians, even under compulsion. His ultra orthodox stance earned him exile under Constantius along with only two other bishops. The dating of Theodosius' reply is uncertain, either 383 or 384, but since the Luciferians were concentrated in Sardinia and since Theodosius' ruling was addressed to Maternus Cynegius, it is likely that it was given in 383 when Maternus was still *Comes Sacrorum Largitionem* and before he became Praetorian Prefect of the East in 384 in which capacity he would obviously have no jurisdiction over Sardinia. Sardinia was, of course, under the nominal control of Valentinian II’s government, but evidently the petitioners felt that they would have a better chance with Theodosius' eastern government than with the Arian-sympathetic western government. Theodosius evidently thought he had the right to respond to their concerns.

In contrast to many of the laws above, Theodosius' response to the petition is quite reasoned. He begins by stating that there should be “no greater reverence for human hearts than for the divine law,” and also indicated that nothing should be added to that law; which may be an indication that the Luciferians practice of anathematising anyone who had fraternised with heretics was not acceptable. Indeed, Theodosius states that no one “should decide for Catholic teachers what ought to be followed;” which may be a reference to the fact that Luciferians did not, presumably, accept the practice of leading Church figures in associating with ex-heretics or their apostolic successors. Equally, the injunction against adding anything to the faith could also be taken to be a statement against the Arians. As such, this ruling displays an ambiguity consistent with much of Theodosius' legislation on the Church and Christianity.

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203 Coleman-Norton (1966) 390 has a brief introduction to the sect. Lucifer was regarded as a saint, although his position now appears to be uncertain. The petition of his successors, Marcellinus and Faustinus, to Theodosius is given in the CSEL 35:5-44; See Hunt (1998b) 26-27 for the exile; The two other exiled bishops were Dionysius of Milan and Eusebius of Vercallae. Theodosius' reply follows the petition in the CSEL 35 (2.a) at 45-46 and is the text given here.

204 2a.1 *tu nulla humanis pectoribus maior nam bivinae legis debet esse reverentia nec adici nic nam ad eam posit*

205 2a.3 *nemo enim nam tam pro anae mentis uit ni cum se ni catholicos doctores debeat uid se nundum sit doctoribus ipse constitutat.*
Theodosius supported the petitioners’ request that they should not be attacked by the Arians and at the same time did not order specific punishments against the Arians.\textsuperscript{206} Cynegius was therefore ordered to “let them the Lucifersians enjoy their own way of life wherever they shall wish; let them enjoy divine love in respect to the Catholic faith.”\textsuperscript{207} Some implied action appears to have taken place against the Arians; Theodosius referred to the “patience of Almighty God has been moved to so great an extent that the punishment, which is due to guilty persons after death, they should suffer before death in an example for all.” ut then he said that this apparent action has not succeeded and that they, the Arians, were still “assailing Catholics.” Thus, the law implies that some action had indeed been taken against heretics, in a manner following that of God’s, as outlined in the \textit{Cunctos opulos} law of two years earlier, but quite what, remains unknown.

The ruling gives some indication of how contemporaries viewed the doctrinal controversies that had occurred thirty years earlier under Constantius. At that time the Arians had “perverted the minds of many persons by detestable ingratiating” which is probably an observation on the diplomatic success of the Arians in securing positions in the Imperial court. It also refers to the “antiquity of the whole age” which had been altered “at the persuasion of certain persons” the result of which had been “the innocent driven into exile for the faith” who, it exaggerates, “laid down their life.”\textsuperscript{208}

Theodosius left the reader in no doubt as to his full belief in the Catholic version of Christianity; “heretical superstition” was “contrary to the Catholic faith”\textsuperscript{209}

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\textsuperscript{206} King (1961) 52 believes that Theodosius, like the Lucifersians, had a rigorist attitude towards religion and in particular against those who had erred from the faith. \\
\textsuperscript{207} 2.a.7 \textit{tantur non in loco volverint proposito suo utantur ad catholicam idem amore divino.} \\
\textsuperscript{208} 2a.3 \textit{am et unde e orta et e proiecta autore nisi sit aperuit nipped cum persuasum norunt et totius saeculi anti nitate mutate acti pro ide in e ilium innocents vitam cum summa laude powerunt.} \\
\textsuperscript{209} 2a.3 \textit{hereticae superstitionis nuae contraria est idei catholicae}
\end{flushleft}
and without the Catholic faith “we cannot be saved.” However, whether this version was, in his eyes, authoritatively followed by the Luciferians may be open to doubt with regard to his opening remarks against adding anything to the faith. The Luciferians’ petition gave Theodosius the opportunity of expressing his support for the Catholics and with that his disapproval of Arians. However, he does not mention, still less support, the ultra orthodox stance of the Luciferians; other than supporting the Catholic position, his most affirmative action was to order Cynegius to ensure that the Luciferians could practice their beliefs without being attacked and the preservation of peace may have been the most prominent concern in Theodosius’ calculations, rather than expressing solidarity with the Luciferians as King believes.

CTh. 16.5.13 of 21 January 384 was addressed to Cynegius, now in position as Praetorian Prefect of the East. Again, the Eunomians, the Macedonians, the Arians and the Apollinarians were specifically targeted, all of whom were “infamous for their false doctrines,” but in particular, the law also appears to target the teachers of these sects. It ordered that those who “vindicate for themselves the pontificate or the ministry” of such sects, the names of which had “been outlawed,” and became “ministers of a criminal religion” or “who say that they teach those doctrines which it would be seemly either not to know or to unlearn shall be driven from all the hiding places of this city without the intervention of any favouritism.” Their hiding places were to be “spied out with a diligent search.” No punishments were given and the law ordered that the heretical clerics were to “live in other places.”

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210 2a.8 sine qua salvi esse non possumus.
211 Honoré’s (1998) 52-53 E5 whom he believes was probably a lawyer and possibly a Christian and who had, according to Honoré a “plain style, with brief sentences that eschew literary ornament.” Note at 52.
212 pro suis erroribus amosa sunt nomina; “false doctrines” is quite a harsh translation for erroribus, “errors” might be better.
213 omnes itaque, qui harum professionum vel pontificium sibi vel ministerium vindicarunt, qui se fugati nominis adserunt sarcndates, qui ne in criminosa religione ministeriorum sibi nominem inponunt, qui docere se dicitur, non aut necire aut dedicere sit decorosum omnibus binitus urbis latebris indagine curiosore perspectis sine ultra gratiae interventione pellantur.
214 In aliis locis vivant ac penitus a honorum congressibus separantur.
The previous law against these four named heresies, CTh. 16.5.12 of six weeks earlier, had been directed against their meetings and their clerics and with the probable intention of ‘strangling’ them. Much of this latest law repeats the previous provisions of expelling clerics and extended it to teachers of the faiths. However, this law only ordered that they should be expelled from “this city” whereas the previous law had ordered their expulsion from all cities and returned to their home regions. In that sense therefore, the law was less intolerant than the previous, but it was equally intolerant in terms of requiring the addressee to actively identify the “hiding places” of the clerics and teachers. Again, like the previous law, this one contained no punishments for the heretics, other than that they be expelled from the city.

There was now a gap of over three and a half years until the next Theodosian law affecting heretics and to have had nine laws or rulings on heretics in three years and then none for almost four requires some explanation. Magnus Maximus had been proclaimed emperor by his troops in Britain in summer 383 and had secured the western portion of the emperor with the murder of Gratian in August 383 until he was himself defeated by Theodosius' forces and killed on 28 August 388. However, this important event does not appear to have left any impact on the laws themselves nor even on the pattern of legislation since laws were issued at the beginning of the Maximus’ revolt and at the end, periods which must have been the most uncertain and busy for Theodosius' government during this revolt.

Perhaps more convincing is the suggestion that the legislation was considered by contemporaries to amount to a whole; to an homogenous unit of work, at least in retrospect, that is at the beginning of 384, if that had not been the actual intention of Theodosius’ legislators at the beginning of his reign in 379. It has been noted that two of these nine laws have an air of permanence to them (CTh. 16.5.6 of 10 January 381, Theodosius' first law on heresies, and CTh. 16.5.12 of 3 December 383) and there appears to be a unity of purpose and intent behind these nine laws passed at the
beginning of Theodosius' reign. Firstly, it should be noted that two of the laws were devoted in part (CTh. 16.5.7 and 9), and one wholly devoted (CTh. 16.5.10), to ascetics or to those who appeared to have practised an ascetic lifestyle; and against them, they were to be denied the ability to bequeath or inherit, and possibly exile (CTh. 16.5.7), no assembling in churches (CTh. 16.5.10) and, probably for the apparent crime of using different names, rather than for being heretics as such, death (CTh. 16.5.9). Hence, there appears to be a disproportionate concern with ascetics; they can only have been a small minority and against them (or a at least against a sizeable proportion of them) the highest penalty was imposed.

Secondly, the legislation against other named heretics has a logic and a progression about it. Postumianus’ CTh. 16.5.11 against nine named heresies forbade them from worshipping, from having churches and from converting outsiders; five months later Postumianus repeated the provisions of the last law with his CTh. 16.5.12 (against just four named heretics) which advanced the anti heretical cause further, by forbidding ordinations; finally Cynegius’ CTh. 16.5.13 of seven weeks later continued the assault by including teachers. By a process of preventing meetings and worship, followed by the prevention of legitimate successors through ordination and finally, effectively prohibiting the learning and teaching of the faiths through prohibiting the teachers, indicates that the authorities were doing all they could to eliminate the actual heresies without actually eliminating the individual heretics themselves.

CTh. 16.5.16 of 9 August 387 was Theodosius' first law after the gap and was issued to Cynegius, still Praetorian Prefect of the East. It was against the Arians who, the law states, had been putting forward “a general rule of our regulations” which appeared to state that “they are permitted to usurp those practices which appear to them to suit their advantage”\(^\text{215}\). The law ordered that any such “rule” was to be

\(^{215}\) The date for this law is given in the text as 388 and the place of issue as Constantinopel; however as Theodosius was on his way to the west in August 388, it seems safer to date this law to the previous year, 387
“abrogated” and that no such order had come from Theodosius. If any Arian were to continue to cite such “pseudo regulations, he shall be held guilty of forgery.”

CTh.16.5.14 of 10 March 388, extended the injunctions listed in CTh. 16.5.12 and 13 to the Apollinarians; it was also addressed to Cynegius and was delivered at Thessalonica when Theodosius began his march westward to eliminate Maximus. The Apollinarians, and “all other followers of diverse heresies shall be prohibited from all places” and specifies that one of these places was to be the cities; no specific mention of the countryside was made. They were also forbidden to ordain clerics and bishops, and their bishops were not to call themselves bishops, nor were they to assemble congregations “in public or private churches.” Furthermore, unlike CTh. 16.5.12 no festival (such as previously Easter) was specified. The law ordered rather vaguely that the clerics should “go to places which will seclude them most effectively, as though by a wall, from human association,” which presumably meant exile in a rural, isolated location; this was the only punishment or penalty proscribed. Finally the right of appeal to Theodosius was denied. The denial of appeals, combined with the repetition of the provisions of those earlier laws, may indicate that (possibly in particular) the Apollinarians, one of the four named heresies in Cynegius’ CTh. 16.5.12 and 13, were appealing against the provisions of those laws, and possibly with some success. As such this law may have been intended by Cynegius as the final word on this matter: no churches, no clerics or bishops for the heretics, and no arguments;

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216 nonnullos arrianorum ornам nostrarum talem pro erre insinionum comperimus ut bis liceat usurpare
217 attributed by Honoré (1998) 56-57 to his E8; Seeck (1919) 273, 275 for Theodosius’ march westward in 388
218 apollinarionos ceteros nec diversarum haeresum sectatores ab omnibus locis inferius in hiberi a moenibus urbium a congresso bonestorum a communione sanctorum
219 clericorum non habeant potestatem colligendarum congregationum vel in publicis vel in privatis ecclesiis careant aculate nulla his episcoporum aciendorum praebeatur auctoritas ipsi non eis episcopi nomine destituit apellationem dignitatis eius amittant
220 adeant loca uae eos potissent nasi vallo nodam ab humana communione scindant
221 bis etiam illud adnectimus ut supra memoratis omnibus ademundi at ete interpellandi serenitatem nostram aditus denegetur
although it should be noted that no mention of teachers was made, as had been done in CTh. 16.5.13. If this is an accurate reconstruction of circumstances surrounding this law, then it is further evidence of the manoeuvrings by individuals that went on behind the throne to secure outcomes that suited their own individual desires.

CTh. 16.5.15 of 14 June 388, was addressed to Trifolius, Praetorian Prefect of (probably) Illyricum, and was issued at Stobi as Theodosius continued westward. Although it was short, it was also a general ‘catch-all’ law against heretics and arguably excelled its predecessors in rhetoric. It began: “All members of diverse and perfidious sects, who are driven by the insanity of a miserable conspiracy against God,” were not to hold assemblies anywhere, nor to “participate in discussions, not to hold secret meetings” and not “to erect impudently the altars of a nefarious treachery by the offices of an impious hand, and to present the false appearance of mysteries, to the outrage of true religion.” In order that the law was to reach its “appropriate effectiveness,” Trifolius was ordered to appoint “watchmen” to “restrain the aforesaid persons and to arrest them and to bring them before the courts.” On conviction, they were to “pay the severest penalty both to God and to the laws.”

This may mean death; if so, it would be Theodosius’ second law on heretics (the previous was CTh. 16.5.9 of 31 March 382) to order capital punishment.

The brevity of the law and its comprehensive nature may well be related to the fact that Theodosius was leaving his part of the empire (Stobi is modern day Skopje in Macedonia) to deal with Maximus (the most successful usurper since Constantine) and

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222 Also Honoré’s E8; Trifolius PLRE 1.923 who was later to become PPO Italy once Theodosius had defeated Maximus. The editors of the PLRE believe he received this law as PPO Italy, however Maximus was still in control of Italy at the date of this law, so Trifolius was probably PPO of Illyricum, which was an appointment that the editors also believe he held.

223 omnes diversarum perfidarumque sectarum, quos in deum miserae vesania conspirationis e erect nullum
us nam sinantur habere conventum non inire tractatus non coetus agere secretus non ne ariae
praerigationis altaria manus impiae o iciis impudenter adtollere et m steriorum simulationem ad
inuriam verae religionis aptare, nod ut congruum sortiatur e ectum in specula sublimititas tua idissimos
nos ne constitutui et exhibere hos possint et deprehensos 0 erre indiciis severissimum secundum
praeteritas sanctiones et deo supplicium datus et legibus

236
therefore his government had little time to fully consider whatever problem Trifolius had raised. Probably, for this reason, specific injunctions against teachers and bishops calling themselves bishops are absent, although such injunctions were probably regarded as extant and covered under the prohibitions of assembling and discussing. Similarly the brevity of CTh. 16.5.16 of 9 August 387 to Cynegius. The severity of the punishment in CTh. 16.5.15 was also probably due to Theodosius’ impending absence from the east and reflected a desire to firmly stamp his authority on his empire, which he was about to leave for the first time.

Theodosius defeated Maximus on 28 August 388 and restored Valentinian II as nominal emperor of the West. At the same time, Theodosius installed a number of his own Eastern officials into the administration and bureaucracy of the West. As such, although the following laws are issued from western cities, and are place Valentinian as first in the Imperial college, since he was elevated to the position of Augustus before Theodosius, they are effectively Theodosian laws. From this point until his death on 17 January 395 the empire was, essentially, again under a single government; the last time it would be so, and for the longest period since Constantine. It should be noted that only now was Gratian’s name removed from the other names in the Imperial college which headed each law, although he had been dead for four years.

CTh. 16.5.17 of 4 May 389 to Tatianus, Praetorian Prefect of the East and successor of Maternus Cynegius; the law was, as usual, issued in the names of all emperors and was issued from Milan.224 It was directed against the Eunomians, whom it refers to as “Eunomian eunuchs.” Honoré believes that this reference to eunuchs is not to be taken literally, i.e. the law was not against Eunomians who happened to have been castrated, but rather the phrase “Eunomian eunuch” refers to their belief that the Son was not “begotten from the Father” as stated in the Creeds, but instead had been produced in some other way. It is difficult to be certain whether Honoré is correct or

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224 Honoré’s E9 (1998) 58-70 whom Honoré believes, as stated, to be Virius Nicomachus Flavianus 15 PLRE 1. 347-349
whether the law should indeed be taken literally and was directed solely against Eunomians who were also eunuchs.

If Honoré is right however, then it would appear to be the first time that such a curious, and even somewhat pedestrian insult had been included in any law on religious matters. Moreover, the connection appears to be incongruous, as Honoré presents it: according to him, Eunomians in this law were so named because they disbelieved in the doctrine that the Father had “begotten” the Son. However, if this is an insult, as Honoré believes, then that belief must rest upon the premise that the insult would be recognisable to contemporaries. Following Honoré’s logic therefore, we must (presumably) assume that during this period Christians in general conceived of the Father as, in some way, physically, perhaps even in a manner that corresponds to human sexuality and reproduction, begetting the Son. Therefore, the Nicenes must presumably have believed (again following Honoré’s logic), that in some sense, the Son came from the Father in a physical act corresponding to the manner of human reproduction and hence, logically, that the Father was not a eunuch and that the Eunomians, because they did not believe in the ‘begetting’ must (from a Nicene point of view) have believed that the Father was, in some sense, a eunuch, at least insofar as His ability to beget. However, there is no evidence that Christians, of whatever definition in this period, ever believed that the Son was begotten in any sort of way, figuratively or otherwise, that could equate to the normal sexual activity of creating children; indeed such an analogy would have had a temporal element to it which would have implied that the Son was not co-existent with the Father from the very beginning (as the Nicenes) believed. In short, such concepts simply do not fit with what is known about Christianity at this time; the manner of ‘begetting’ or some other verb to broadly express the same concept, was not a matter of concern at this time. Moreover, if one takes the position that the phrase “Eunomian eunuchs” was intended to be deliberately and gratuitously insulting, then such an insulting position is not borne out by the rest of the law which does not tend to indulge rhetorical
extremes, sentiments or punishments. As such, it would probably be safer to draw the conclusion that there were indeed Eunomian eunuchs whom this law was specifically targeting.

The law itself substantially consists of only one long (seventy two word) sentence, but with an opening sentence of nine words that effectively summed it up: “the Eunomian eunuchs shall not have the liberty either to make a testament or to take under a testament.” Moreover, the law was to be retrospective; it was to include all those “still living and no person shall be protected by the privilege of any past will.” It also implied that Eunomian eunuchs were not even allowed to possess property: they “shall not have the liberty to possess property or to petition for the possession of such property.” Pharr indicates that the end of this clause should also read “as heirs;” perhaps that is the sense of the law, but it does not actually say that. He says the same when at the end of the law which orders: “all property which may appear to belong or to be about to belong to such persons shall be vindicated as caducous to the resources of our fisc.” The use of caducous (caduca) appears to imply that Pharr is right. Although it has survived as quite a short law, it was quite thorough and named the types of inheritors who would be ineligible: “as a beneficiary of a trust, as a legatee, as beneficiary of a secret trust fund, or under any name which the order of the law has established in such matters.” Finally the law stated that “the aforesaid persons shall have nothing in common with the rest of mankind.” No punishments were given for any infractions of this law.

So the Eunomian eunuchs were to be treated even worse than the Manicheans (CTh. 16.5.7) with regard to their ability to inherit and bequeath.

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225 eunomiani spadones nec acendi nec adipiscendi habeant licentiam testamenti. nec circa omnes nos vivos le inveniri volumus custodiri nec nem nam praeteritae cuinipiam voluntatis privilegio de ensari cum seu acta prins testamenta seu in ecta doceantur post banc nostri oraculi sanctionem non habeant possidendis licentiam non petendi non etiam velit uterum nomine principali non ideicommissario non legatario non tacito ideiconmissario vel namcum ue in huiusmodi negotiis uncinationem inris ordo constituit sed omnia nae talium esse vel utura esse constiterit ut caduca iaci nostri viribus vindicentur. nihil ad summum habeant commune cum reli nis
property. Like that previous law, this law was retrospective; it effectively nullified wills made before it was issued. However, unlike the previous law, it did not seek to justify itself on the basis of the outrageous behaviour of the targets; evidently, once the disinclination to pass retrospective had been overcome for one group of heretics, it became easier to do the same to another. This law also differed from the anti-Manichean law by ordering that no one, heretical or otherwise, was allowed to receive any property from a Eunomian eunuch, instead, it would be confiscated to the treasury and this is severer than CTh. 16.5.7.2 which had allowed children of Manicheans to inherit property of their next of kin if they were not Manicheans themselves. The severity of the law may be further evidence that it was indeed directed against actual eunuchs. As is already known eunuchs were widely reviled in late antiquity and therefore a particularly harsh, and even unconstitutional law against them, which did not seek to excuse itself, may have been though to be perfectly acceptable and proper.\footnote{For eunuchs see Kelly (2004) 166-167 and Hopkins (1963) 64-69 and 78-80}

CTh. 16.5.18 of 17 June 389 was issued to Albinus, Prefect of the city of Rome by Theodosius whilst he was in Rome.\footnote{Ceionius Rufius Albinus 15 PLRE 1.37-38; also attributed by Honoré (1998) to his E9, Virius Nicomachus Flavianus} It was directed against the Manicheans. Like the previous law issued by Theodosius, it was relatively short and equally comprehensive; it was also more rhetorical. It ordered that if “any person should disturb the world under the name of Manicheans, they shall indeed be expelled from the whole world, but especially from this city, under threat of judgment.” The sentence ordering expulsion from the whole world would read as a reference to the death penalty were it not for the reference to “this city of Rome.” The law then ordered that the Manicheans “shall not have the force of testaments” as the latter law had stated and also that “the property itself shall be confiscated to the people, nor shall it be lawful that any property be left through them or to them.” The last sentence of
these two laws is almost identical; the last sentence on this law reads: “In short, they shall have nothing in common with the world.”

To a large degree this law is repeating the provisions of CTh. 16.5.7 of 8 May 381 and applying them to the city of Rome. It differs in the respect that it went further and did not allow children of Manicheans to inherit if they themselves were not Manicheans, nor for that matter, any other non-Manichean. Like the previous law on Eunomian eunuchs (CTh. 16.5.17), it could be taken to imply that all property belonging to them was to be confiscated, but also like that law, the sense of this law seems to imply that the property would only be confiscated upon the deaths of the Manichean owners. Like that previous law, no punishments were given, other than confiscation of property.

CTh. 16.5.19 of 26 November 389 was addressed to Tatianus; it was directed against eastern heretics. Like the previous, it has survived as a short law (one reasonably long sentence) but it was also comprehensive, even if it did lack specific details. It was directed towards the leaders of heretical groups and ordered that “if any persons retain the leadership of perverse dogma, that is bishops, priests, deacons and lectors, and if any under the pretence of the clergy attempt to impose a blot upon religion, or if any are established under the name of any heresy or false doctrine whatever, they shall by all means be driven from their funereal meeting places” whether in “the City” or in any suburban district.

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228 *quicumque sub nomine manichaeorum mundum sollicitant e omni quidem orbe terrarum sed nam ma ime de bac arbe pellantur sub interminacione indicii. oluntates autem eorumdem unim immo ipsis etiam acultates populo publicatae nec vim testamentorum teneant nec derelin ni per eos aut idem as sit. nihil ad summum bis sit commune cum mondo.*

229 Also Honoré’s (1998) E9

230 *qui scaevi dogmatis retinent principatum hoc est episcopi presb teri diacones ad ue lectores et si ni clericatus vel aline religioni maculam conantur in ligere sub cuiuslibet haeresis sive erroris nomine constinti e unestis conciliabulis seu intra urbem seu in suburbanis esse videantur omni modo propellantur.*
Although it does not actually say so, the law was, presumably, concerned with heretics gathering to worship and ordered their expulsion from “the City.” As such it was similar to earlier Theodosian legislation on heretics worshiping in cities and it followed the previous laws in ordering their expulsion. It should be noted that they did not have to be tried and convicted of being heretics, but only of being “established” as heretics, although in practice this may have amounted to the same thing; it should also be noted that the law was only directed against the leaders of the heresies, not the laity. Also, it was only apparently applicable to one unnamed city and as such is more tolerant than previous laws.

CTh. 16.5.20 of 19 May 391, was termed by the commissioners a “Copy of a Sacred Imperial Letter,” and was issued from Rome and, like the previous two laws was short, but also comprehensive.²³¹ It was a general law against heresies, without specifying any particular group and therefore it is not possible to reconstruct the area for which it was applicable. It ordered that “polluted contagions of the heretics shall be expelled from the cities and driven forth from the villages.” That first sentence contained the substance of the law; the next two sentences of the law reinforced the point: “no opportunity shall be available to them for any gatherings, so that in no place may a sacrilegious cohort of such men be collected. No conventicles, either public or hidden shall be granted to the perversity of such persons as retreats for their false doctrines.”²³²

The law appears to follow on from the previous one to Tatianus (CTh. 16.5.19); that law had expelled heretical leaders from an unnamed city and this one expelled their congregations from all urban areas. As such, therefore, CTh. 16.5.20 may have been issued to Tatianus, prefect of the east. Evidently, the law is intolerant

²³¹ Honoré (1998) 70-73 assigns this law to his E10, whom he thinks may have been the Christian Aurelianus 3 PLRE 1.128-129
²³² em plam sacrarum litterarum, haereticorum polluta contagia pelli urbis vicis proturbari ac nullis penitus inbemus patere conventibus ne in no nam loco sacrilega cohors talium hominum colligatur, nulla eorum perversitati vel publica conventica vel latentiora erroribus secreta tribuantur
on the criteria of rhetorical excess and of coverage, but, like the other anti-heretical 
laws issued at this time, it effectively repeats the provisions enacted before Theodosius 
began his campaign against Maximus (CTh. 16.5.12 – 15). Like the other immediately 
contemporary laws, it contains no punishments (unlike the earlier laws) and, like them 
it contained no provision for the appointment of investigators nor that heretics should 
be sought out, which had been a requirement in some of the earlier laws (CTh. 16.5.13 
and 15).

Only once Theodosius was back in Constantinople, more detailed, longer and 
innovative legislation on heretics was again issued. Theodosius returned to 
Constantinople in July 391, but did not issue another law on heresy (CTh. 16.5.21) 
until 15 June 392. The appointment of a new quaestor in (at the earliest) February 392 
may have been influential in the return to more detailed and innovative legislation, but 
a truer impression from the legislation is that Theodosius was content to ‘hold the 
line’ whilst in the west and not to push forward with any new initiatives whilst he was 
away from his eastern base.  

CTh. 16.5.21, the first law issued from the east since June 388, was sent to 
Tatianus, Praetorian Prefect of the East, and was against all heresies: “heretical false 
doctrines,” although perhaps “heretical errors” might be preferable. It ordered that 
any heretic who had “ordained clerics” or any heretic who had “accepted the office of 
cleric” was to be fined ten pounds of gold each.  

Also, the property on which the 
ordination took place was to be confiscated by the treasury, if it took place with the 
“connivance of the owner.”

If the owner was ignorant of the ordination however, 
the “chief tenant” of the estate was to pay ten pounds, if he was “freeborn.”  ut if he 
was “descended from servile dregs” and was too poor to pay, then he was to be “beaten

233 Honoré’s (1998) E11 73-76.  Honoré thinks E11 was a professional lawyer and bureaucrat and 
probably a Christian.

234 *In haereticis erroribus nostum ne constiterit vel ordinasse clericos vel suscepisse o icerum clericorum denis 
libris auri viribus multandos esse consemus*

235 *locum sane in  no vetita temptantur si coniuentia domini patneret  ici nostri viribus adgregari*
with clubs and condemned to deportation.” The law also gave particular provisions if the ordination had occurred on an Imperial villa, or on a “villa subject to any public right” and as such it may have been issued in response to a particular problem or occurrence of heretical ordinations. On Imperial properties therefore “the chief tenant and the procurator,” if they had given permission for the ordination, were to be fined ten pounds of gold each. The final sentence of the law repeated the provisions of the beginning, that is, that heretical clerics and ordinands “who have been found to perform such mysteries” were to be fined ten pounds of gold each.

The punishment of a fine of gold was only the fourth instance of such since Theodosius began his reign. It was also the first that fined the actual offenders of the law that is, those who had actively participated in the illegal activity; admittedly, CTh. 9.17.6 of 30 July 381 had fined those who broke burial regulations by burying the dead within the city and next to martyrs’ and saints’ relics one third of their wealth, but had not specified that the amount should be paid in gold. That law had also levied a collective fine on bureaucrats if they failed to enforce the law. The practice of levying collective fines (again in gold) was repeated in the two further laws (CTh. 9.40.15 of 13 March 392 and CTh. 11.36.31 of 9 April 392), but only for the office staffs concerned, who had not prevented from taking place the actual offence specified in the law. Interestingly, these two previous laws, and the present law, CTh. 16.5.21 were all issued to Tatianus and were all issued within three months of each other. It has been noted that the fines imposed in the previous laws (50 pounds, 30 pounds and again 30 pounds respectively) would probably not have been an unduly severe amount on the collective resources of the bureaucrats concerned.

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236 nod si id possessorum nipped clanculum gestum ignorasse constiterit conductorem eius undi si ingenuus est decem libras isco nostro in erred praecipimus is dervili acce descendens panpertate sui poenam damnii ac vilitate contemnit casus ustibus deportatione damnabitur.

237 um illud specialiter praeceavemus ut si villa dominica uerit sue cuistlibet publici iuris et conductor et procurator licentiam dederint colligendi denis libris auris proposita condemnatione multentur.

238 erum si nos talibus repetos obsecundare mysterii ac sibi usurpare nomina clericorum.
However, this law specified a personal fine and in the case of tenants and estate supervisors, ten pounds of gold (or 720 solidi) would have been a crippling, and practically impossible, amount for such an individual to bear; plus, of course, any defendant would also have been liable for court costs. The annual salary of an “estate administrator” (pronohthv-) has been given as two and a half solidi. However, Jones indicates that a certain Serenus paid an estate twelve solidi for being appointed as estate supervisor and therefore, Jones concludes that “estate administrators” were able to earn considerably more “on the side” than just their salaries. Nevertheless, even if an administrator had received a ten-fold return on his investment (which is probably unlikely) the fine would still be equivalent to six years’ gross salary. The apparently astronomical levels may have been designed as a deterrent, and this is likely to have been the case in the collective fines levied on the bureaucrats in the previous three laws. However, the sums are plainly grossly disproportionate and, moreover, the offenders themselves, as well as their collaborators, were (uniquely) targeted.

CTh. 16.5.22 of 15 April 394 was an eleven word sentence issued to Victorius, Proconsul of Asia, but may have been originally addressed to Rufinus, who was by now the Praetorian Prefect of the East. In full, the law reads: “Heretics shall have authority neither to create nor legally to confirm bishops.” This law therefore repeats the provisions of CTh. 16.5.14 of 10 March 388 and made the prohibition on bishops more explicit than that earlier law which had specified Apollinarians and other “diverse heresies.” Like that previous law, no punishments for creating or confirming bishops were given.

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239 Jones (1986) 806-807; See Curchin (1986) 177-187, esp. 179 for the official wage (25 denarii a day) of an agricultural worker according to Diocletian’s price edict. On purchasing power of a solidus see Kelly (2004) 139-142 who reckons that “a single working person could live for several months” on a solidus. Kelly also gives costs for litigation.

240 Victorius 2 PLRE 1.965; also Honoré’s (1998) E11

241 aeretici ne epi scopi acieudi potestatem ne epi scoporum con irmations licitas habeant.
CTh. 16.5.23 of 20 June 394 was issued six months before Theodosius' death and was addressed to Rufinus.\textsuperscript{242} It was the only Theodosian law on heretics that was obviously and positively conciliatory towards the named group. It was directed towards the Eunomians, the semi Arian heretics who maintained that the Son was unlike the Father, and referred to Theodosius' CTh. 16.5.17 of 4 May 389 which had prevented Eunomians from bequeathing any property in a will or from receiving any property from an Eunomian; it was also retrospective. This latest law stated: “on fuller deliberation, indeed, we now revoke the aforesaid law. They shall live under the common law; they may appoint and likewise be appointed as heirs in written wills.”\textsuperscript{243}

CTh. 16.5.24 of 9 July 394 to Rufinus was Theodosius' last law on heretics. It was again apparently directed against all heretics, although it does not say as much, and was again directed against teachers of heresies as well as their clerics.\textsuperscript{244} It ordered that the “madness of heretics shall not attempt further to perpetrate the criminality which they have devised nor to hold unlawful councils. Nowhere shall they attempt to teach or learn their profane doctrine.”\textsuperscript{245} Also, heretical bishops “shall not dare to teach a faith which they do not have and to create ministers who are not ministers.”\textsuperscript{246} The law finished by warning that “such audacity shall not be neglected nor increase through the connivance of judges or any person to whom the care of this matter was entrusted through the constitutions of our father.”\textsuperscript{247}

This law therefore echoes the provisions of previous laws against the ordination of clerics and against the teaching of heretical doctrines, most notably, it recalls CTh.

\textsuperscript{242} Also Honoré’s E11
\textsuperscript{243} \textit{quam quidem nunc consilio pleniore revocamus. vivant iure communi scribant pariter ac scribantur heredes}
\textsuperscript{244} Honoré (1994) 78-80 does not assign this law to any single quaestor, since he identifies only four from this period (of Theodosius' absence from Constantinople) and he believes that this is too few to identify the hand of a individual quaestor.
\textsuperscript{245} \textit{haereticorum dementia nec ulterius conetur perpetrare nec repérerit nec illicita habere concilia nus nam pro ana praecpta vel docere vel discere}
\textsuperscript{246} \textit{ne antistites eorundem audiant idem insinuare nus non habent et ministros creare nus et non sunt ne per coniventiam indicantum omni nus ubi nus per constitutiones paternas super hoc cura mandata est eiusmodi audacia neglegatur et crescat}
16.5.13 of 21 January 384. Although this law only appears to target bishops in regards to the teaching of heretical doctrines, it is quite revealing as to the attitude that the authorities had developed towards heretical beliefs. As noted, it orders that bishops should not “teach a faith which they do not have.” Self evidently, the heretical bishops did have “a faith” (their own) which they could teach if they were allowed to, but they did not have the Nicene faith itself and therefore they had no faith at all; no faith of any description or of anything worth the designation of faith. Therefore, according to this law, Nicene faith is the one and only faith, the only true and proper vessel for worship of God. Nothing of which the heretics have therefore, can approximate the truth of religion as uniquely shown through and by the (Nicene) faith.

**Conclusion: Theodosius and heretics.**

Much of Theodosius’ legislation on heresies does not support the conclusion that he was a Christian “fanatic.”

Although it cannot be disputed whose side he was on, much of the details of the laws does not indicate that he was a zealous crusader for the Catholic Church. Nevertheless, Theodosius does emerge from the legislative record as being more intolerant than his predecessors with the result that heretics were possibly in a worse position in 395 than they had been in 379. Much of this impression formed by the sheer volume of legislation that he passed on heretics, twenty laws and one ruling in his sixteen years compared to a mere two under Constantine (plus twelve letters on the Donatist dispute), none from the reign of Constantius, two from Valentinian’s reign (with a further eight dealing with the Ursinian phenomenon), and none from Theodosius’ immediate predecessor Valens. Such a volume suggest that there was a greater concern apropos heresy which should necessitate legislation and that in itself is a measure of intolerance. Moreover, such a dichotomy in the volumes of material cannot be wholly and reasonably attributed to a

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248 As suggested by Williams and Friell (1994) 56
natural loss of the texts (which doubtless occurred) in the 120 years prior to the compilation of the code under Theodosius' II commissioners.

Also notable, is the greater physical length of Theodosius' heretical legislation; some of this enhanced length is due to an increase in rhetorical invective directed against the heretics: “madness of their excessively obstinate minds,” the “contamination” of various heresies who were variously described as a “pestilence” a “poison” a “sacrilege,” a “crime,” a “perfidy” and a “sectarian monstrosity, abominable.” These are from just the first two paragraphs of Theodosius' first law, CTh. 16.5.6 which is the richest in terms of derogatory rhetoric, although by no means unique. The laws also tend to excel in what might be termed ‘excess verbiage.’ That is, they are often characterised by a tendency to use more words, and in a more grandiloquent manner, than was probably strictly necessary. CTh. 16.5.14 preferred to say of the Apollinarians, for example, that they should be “prohibited from all places, from the walls of the cities, from the congregation of honourable men, from the communion of the saints” rather than the simpler “exiled.” In the case of this law, that order was repeated at the end: “They shall go to places which will seclude them most effectively, as though by a wall, from human association.”

The greater length of the laws is also explicable by an increased thoroughness in the range and depth of their application. Heresies of various types, from the greatest to the apparently smallest, were dealt with under many of the names that they might have used. That in itself shows a degree of intolerance in that fewer groups would be able to slip through Theodosius' ‘anti-heretical net’ by the use of differing semantics. Moreover, as the legislation continued throughout Theodosius' reign, it tends to place increasing pressure on the heretics. First, heresies were condemned and their churches confiscated (CTh. 16.5.5 and 8), then they were forbidden to assemble in newly acquired or built churches (CTh. 16.5.11) and then were forbidden to create their own clerics (also CTh. 16.5.11) and then for teaching and creating bishops (CTh. 16.5.13
and 14 respectively). A similar campaign of attrition was launched on the Manicheans; but that was personal and appears to have been directed towards the elimination of their wealth. A tactic which appears not to have been applied to the more obviously Christian heresies, although CTh. 16.5.21 may be an exception to that reconstruction.

Nevertheless and one of the most striking features of the legislation, and in contrast to the high degree of rhetoric and invective employed, is the lack of punishments found in most of the laws. Beyond the actual provisions contained in the laws such as confiscation of property and ineligibility to inherit or bequeath wealth through wills or exile, (all of which may be regarded as instrumental to the laws themselves rather than as punishments) there are only four laws which give punishments: CTh. 15.5.6 appears to order branding, CTh. 16.5.9 which seems to order torture and the death penalty, CTh. 16.5.15 also appears to order the death penalty and finally CTh. 16.5.21 which ordered large fines.

Unlike under previous emperors, no official emerges who appears to have had a particular desire to target a specific religious group. Although Postumianus, a Christian, was the addressee and therefore possibly the proposer of the comprehensive laws CTh. 16.5.11 and 12, and Eutropius, a pagan, was also the addressee of the comprehensive CTh. 16.5.6 and the retrospective CTh. 16.5.7. Eutropius was probably also responsible for CTh. 16.5.8 which prohibited the building of churches by heretics and the confiscation of the property on which they were sited so possibly he was also instrumental in the apparent building of pressure on heretics through successive laws which impeded their freedom of assembly, construction of churches and transmission of their beliefs through the prohibition of ordinations and teachings.
Theodosius only issued six laws affecting the Jews and two of them were concerned with regulating Jewish-Christian relations. Theodosius’ first law was one of these. CTh. 3.1.5 of 22 September 384 to Cynegius, Praetorian Prefect of the East. It prohibited Jews from buying, converting or owning a Christian slave. It began: “No Jew whatever shall purchase a Christian slave or contaminate an ex-Christian with Jewish religious rites.” If this did happen then “a punishment suitable and appropriate for the crime” was to be imposed upon the owner and the slave would be “forcibly taken away,” which probably means without compensation. The law also ordered that slaves who were “either still Christians or ex-Christian Jews” then they would be “redeemed from this unworthy servitude by the Christians upon payment of a suitable price.”

Linder, following others, believes that this single law is actually two laws, separately issued, and made into one by the Visigothic interpreters of the Theodosian Code. However, the law is concerned with two different means by which Jewish owners might have acquired Christian slaves: by purchase (in the first part) and by any other means (in the second part) such as inheritance. Thus there is probably no “contradiction” in this law, as claimed by Linder.

Evidently the law was concerned with ensuring that Christian slaves could not be owned by Jews, nor converted to Judaism by their masters. That first section of the law is curious as it referred to “ex-Christians” being subject to Jewish rites; this might be a euphemism for forced or coerced conversion, or perhaps, it is a reference to the

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249 Maternus Cynegius 3 PLRE 1.235-236; Honoré’s (1998) E5 52-53, who Honoré suggests may have been a Christian.
251 Maternus Cynegius 3 PLRE 1.235-236; Honoré’s (1998) E5 52-53, who Honoré suggests may have been a Christian.
conversion ceremony itself, and performed when a Christian slave had renounced his Christianity prior to becoming a Jew. Such an interpretation would fit well in this law; as Jews were forbidden from purchasing Christian slaves in the first part of this law and could not continue to possess Christian slaves that they may have obtained in another way in the second part of this law, so too they were prevented from converting Christian slaves to Judaism in that first part (even if such slaves had renounced their Christianity and were therefore, perhaps, not technically Christians). Hence, in the second part, the law made provision for such converts from the date of this law to be removed from Jewish ownership; the law was not, therefore, strictly speaking retrospective, although it arguably was so in practice. Essentially, the law provided a ‘solution’ for every circumstance in which a Jew might have found himself in possession of a Christian as a slave.

In terms of intolerance the law is fairly balanced. Of course, Cynegius would not tolerate Jews owning any Christian slaves, but is noticeably silent on whether Jews could own pagan slaves. Therefore, this law may be more indicative of an enhanced status for Christians, as opposed to a reduced status for Jews, that is, of reducing their status by removing their right to own certain categories of slaves. Although purchase of a Christian slave was described as a “crime,” it was only to be punished suitably. The final clause ordering an appropriate financial recompense for the Jewish owner would correspond to the sense that this law raises Christians without necessarily implying a reduced status for Jews. Although, it does show, that the authorities were keen to maintain strict boundaries between religious groups and that the natural power balance in a slave-master relationship should not be allowed to affect, nor even be in a position to affect, an individual’s religion.
CTh. 3.7.2 of 14 March 388 was also issued to Cynegius and it is the second of Theodosius' laws which affected Jewish-Christian relations. This law was less subtle and prohibited marriage between Jews and Christians. Anyone who “should commit an act of this kind, the crime of this misdeed shall be considered as the equivalent of adultery.” Moreover, it was open to anyone to bring, and not just immediate relatives as had been the case previously.

In practice, as such marriages were regarded as adultery under this law, then they could be punished in the severest manner. The penalty for adultery was death; initially under Augustus by the sword, but since Constantius’ CTh. 11.36.4 of 29 August 339 the punishment had been death by fire. Linder points out that Canon law had forbidden marriage and sexual relationships between Christians and Jews since the beginning of the fourth century and that this unhappy extension of Church law into State law and policy, with all the power that could thereby be brought to enforce it, was probably due to Ambrose’s “personal influence.” Linder cites Ambrose’s letter to Vigilius of 385 in which the Bishop of Milan recommended certain courses of action to Vigilius now that Vigilius had been ordained a bishop. However, in that letter Ambrose counselled against all mixed marriages between Christians and non-Christians and not just between Christians and Jews; he, in his defence, does not appear to have been sensitive to any possibilities of a loss of Christian self identity or being fearful of any sense of contamination, that Jews in particular may have been thought to pose. Moreover, the canons of the Council of Elvira which Linder cites,

252 Attributed by Honoré (1998) 56-57 to his E8. This law is word for word identical with CTh. 9.7.5; Honoré (1998) 152 points out that such repetition occurred in 1 per cent of cases and was deliberate since the individual law covered more than one category laid down by Theodosius II’s commissioners.

253 ne quis christianam mulierem in matrimonium iudaem accipiat, neque iudaee christianum coniugium sortiatur, nam si quis aliud huissumodi admiserit adulterii vicem huius crimini obtinebit libertate in accusandum publicum non vocibus relata.

254 Constantine’s CTh. 9.7.2 of 25 April 326 had ordered that only fathers, brothers and cousins should have the right to bring charges of adultery.

255 Augustus’ e Julia de adulteriis of 18 C

256 Linder (1987) 178-182, quote at 178; he cites the decrees (16 and 78) of the 306 Council of Elvira forbidding mixed marriages. The texts of the Canons, with an English translation and discussion are given by Laeuchli (1972); Sivan (2001) 208-219 also discusses this law.
although they do forbid mixed marriages, appear to be more concerned with marriage between Christian girls and pagan priests. As such, this letter does not support Linder’s claim that Ambrose had influence in the specific case of this law; if Ambrose had been instrumental, we would at least have expected the law to prohibit marriage between Christians and all non-Christians, and not just Jews. Ambrose was a correspondent of Cynegius, but there is no evidence that Ambrose was able to exert any influence over Cynegius and indeed there is only one letter from the bishop to the Prefect and that concerns Cynegius’ niece.

A more likely explanation for this law however is suggested by the relationship between Christians and Jews in Antioch. Wilken has suggested that the Jews had considerable advantages over the Christians (at least in Antioch) during the latter part of the fourth century, due especially to the popular cult of the (Jewish) Maccabean martyrs whose relics were appropriated by the Christians. This sense of unease is reflected by the strong language used by John Chrysostom in the eight homilies he delivered against Judaizers in 387. Cynegius was touring the east for a second time in the year up to his death in March 388 and therefore even if he did not hear Chrysostom, it seems certain that he would have been aware of the contemporary concern that Judaism was simply too close to Christianity for comfort.

However, despite the harshness and therefore the great disapproval with which mixed marriages were viewed by Church and state, the law does not indicate whether the punishment should be restricted to only one religious group and therefore it should be presumed that when it came to paying for the crime, Jews and Christians were to be treated equally. Moreover, a prohibition on mixed marriage may well have

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257 Canons 15-17
258 Ambr. Ep. 19 (eyenka Ep. 35) PL 16.982-994; Ambrose certainly appears to have had no time for the Jews or Judaism, but his influence over Theodosius and his court has recently been shown to be desperately lacking, if not virtually non-existent, by McLynn (1994) 298-309
260 Joh. Chrys. *homiliae adversus Iudaos* 1-8 48; Harkins (1979); see also Parkes (1934) 163-166
been welcomed by both communities, even if the punishment was severe; Ambrose used injunctions from the Old Testament to justify his opposition to mixed marriages and it seems perfectly possible, if not likely, that his colleagues in the Jewish priesthood would have shared that desire to keep marriages within the community, based, as it was, on the same scriptures.\textsuperscript{261}

CTh. 13.5.18 of 18 February 390 was addressed to Alexander, Augustal Prefect of Egypt and was considerably milder than the previous.\textsuperscript{262} It exempted the Jews and Samaritans, as a “group” from the performance of liturgies relating to sea transport because, it reasoned, if liturgies were imposed on groups, no specific person would be responsible for their execution. Instead, the law ordered that those individuals from the Jewish and Samaritan group who were wealthy enough to bear liturgies should do so individually.\textsuperscript{263}

Essentially therefore, this law treated Jews and Samaritans as the same as other groups and indeed may be evidence of positive tolerance from Theodosius' government if, as seems reasonable to assume, Jews and Samaritans had been collectively obliged by the authorities to perform such liturgies.

CTh. 16.8.8 of 17 April 392 was addressed to Tatianus, Praetorian Prefect of the East and was considerably advantageous to the Jewish establishment and leadership.\textsuperscript{264} It is fortunate that, although this law is fairly short, it gives the reasons for its issuance. It refers to “complaints of the Jews” which indicate that persons who had been “cast out” by the Jewish authorities were being “restored to their sect by the

\textsuperscript{261} See King (1961) 117 and Coleman Norton (1966) 416-417 gives the references from the Old Testament which prohibit cross community marriages.

\textsuperscript{262} Alexander 12 PLRE 1.42; Honoré’s (1998) 59-70 E9, Virius Nicomachus Flavianus

\textsuperscript{263} indatorum corpus ac samaritanum ad naviculariam uctionem non inre vocari cognoscitur uid uid enim universo corpori videtur indici nullam specialiter potest obligare personam. unde sicut inopes vilibus ne commercis occupati naviculariae translationis munus obire non debent ita idoneos acultatibus uid his corporibus deligi poterunt ad praedictam uctionem haber non oportet inmunes

\textsuperscript{264} Flavius Eutolmius Tatianus 5 PLRE 1.876-878; Honoré’s (1998) 73-76 E11
authority of the judges [provincial governors]” despite protests from the “primates of their law.” Theodosius ordered this “aforesaid outrage to be abolished altogether.” The law warned that this state of affairs should not be returned to: “nor shall a zealous group of persons in the aforesaid superstition obtain the power of undeserved reconciliation” neither through the judges, nor through obtaining a rescript which would go against the “wishes of their primates who, by the decision of their Most Noble and Illustrious patriarchs, manifestly have the right to pronounce sentence concerning their own religion.”\footnote{265}

This law therefore is advantageous to the Jewish community to the detriment of the Roman authorities who had apparently assumed at least a right of veto, if not complete jurisdiction, over internal and religious Jewish affairs. This law therefore permitted the Jews autonomy in such areas and in a sense put them outside the jurisdiction of the state.\footnote{266}

The synagogue at Callinicum was destroyed by a mob led by the local bishop in 388. An initial order by Theodosius for that bishop to make good the damage was subsequently reversed.\footnote{267} Five years later on 29 September 393 Theodosius sent CTh. 16.8.9 to Addeus, Count and Master of both branches of the Military Service in the Orient, as he is titled in the law.\footnote{268} Like the previous law, it gives some indication of the circumstances that caused it to be issued. It noted that “the sect of the Jews is

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\footnotetext[265]{indavornm nereae nosdam auctoritate indicum recipi in sectam suam reclamantibus legis suae primatibus adseverant nos ipsi indicio suo ac voluntate proiciunt. nam omnino submoveri inebemus iniuriam nec eorum in ea superstitione sedulus coetus aut per vim indicum aut rescripti subreptione invitis primatibus suis nos vivorum clarissimorum et illustrium patriarcharum arbitrio mani estum est habere sua de religione sententiam opem reconciliationis mereatur indebitae}
\footnotetext[266]{Linder (1987) 186-189 gives examples of Jewish law indicating which Jewish authorities had powers of excommunication.}
\footnotetext[267]{See McLynn’s (1994) convincing reappraisal of the famous encounter between Ambrose and Theodosius. For a more traditional interpretation of the encounter which displays Ambrose as the victor over Theodosius, see Williams and Friell (1994) 64-65 and Holmes-Dudden (1935) 371-379; Ambr. Ep. Ex. Coll. 1a; Ep. 74, Ep. Ex. Coll 1}
\footnotetext[268]{Addeus PLRE 1.13; Honoré’s (1998) 73-76 E11; this law may possibly have been addressed or influenced by the contemporary Praetorian Prefect of the east, Rufinus.}
\end{footnotes}
forbidden by no law.” As such, Theodosius was “gravely disturbed that their assemblies have been forbidden in certain places.” Addeus was therefore ordered to “restrain with proper severity the excesses of those persons who, in the name of the Christian religion, presume to commit certain unlawful acts and attempt to destroy and to despoil the synagogues.”

On religious violence in Theodosius’ reign Brown has written that events such as those at Callinicum are noticeable precisely because they ‘stand out’ as unusual, and he cautions against being “misled by the dramatic nature of our sources,” during this high-tide of Christian violence in the eastern empire which he estimates began in 386 with the destruction of temples in Syria and ended in 392 with the destruction of the Serapeum in Alexandria. However, this law indicates that the incident at Callinicum, five years previously, was not an isolated example of Christian militancy against synagogues; indeed in its brevity and in its apparently routine style, it gives the impression of being quite the opposite of a source with a “dramatic nature.” It strongly suggests that such violence was neither uncommon nor isolated; an impression that is reinforced by the use of the plural in this law. Theodosius’ law shows that no allowance will now be made for such violence. It was issued three months after Addeus is known to have assumed his command, so this decided action by Theodosius’ government to deal with such violence may be attributable to a personal desire by Addeus to curb such Christian militancy.

CJ 1.9.7 of 30 December 393 was issued to Infantius, Count of the East; it is Theodosius’ last law on the Jews. It ordered that “none of the Jews” shall keep their “custom in marriage unions” nor should they “contract nuptials according to their law,

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269 [Footnote text]
270 Brown (1998) 646-647 quote at 647
271 Addeus’ first known law is CTh. 1.5.10 of 12 June 393
272 Honoré’s (1998) E11; Infantius PLRE 1.456
or enter into several matrimonies at the same time.”

Unfortunately it is not known why this law was issued, but some hint of the background is provided by Theodoret in his commentary on St. Paul’s First Epistle to Timothy. Theodoret comments that pagans and Jews would take more than one wife simultaneously and that this practice continued into his own day. The reasons for this Jewish practice in Theodoret’s day may have been rooted in Deuteronomy 25.5-6 in which whenever a man died childless, his brother was to take his widow in order that “his name will not be obliterated from Israel.” On marriage, the Jewish Encyclopaedia notes that polygamy was practised, especially by the Kings and that, although it was discouraged by the time of the Prophets and that monogamy became the norm by the Roman period, there remained some “notable exceptions.” Therefore this law may have been designed to prevent any practices of polygamy amongst the Jews based on Deuteronomy that could have been continuing at this time, but if so, the law appears to be heavy-handed in apparently banning all Jewish marriage customs and on this basis may be judged to be intolerant. Although against that should be noted the lack of any punishments.

Conclusion  Theodosius Judaism

One of the most striking features of Theodosius’ legislation on the Jews is a consistent desire to draw lines of demarcation between the Jewish community and the rest of Roman society. This is most notable in the two laws that dealt with Jewish-Christian relations (CTh. 3.1.5 and CTh. 3.7.2), but it is also apparent in legislation that ostensibly concerns wholly the Jewish community. Indeed the evidence of CTh. 16.8.8 suggests that this desire to demarcate lines of responsibility was so strong as to actually be an impediment to the supreme authority of the state in all matters. This ceding of responsibility, although ostensibly tolerant and fair-minded, in fact would have reinforced the sense that the Jewish community was not quite part of Roman

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273 Nemo Iudaeorum morem suum in conjunctionibus retinebit nec in suam nuptias sortiatur nec in diversa sub uno tempore coniugia conveniat.
275 Adler and Singer (eds) 1901-1906
society, they were, in some sense, and by this law made more obviously and legislatively, ‘the other.’ Essentially, it was an exclusivist, rather than an inclusive measure. If so, this perception could arguably have contributed to future violence against this ‘other’ group being as it was legally established, not quite Roman. No such considerations extended to the area of finance however (CTh. 13.5.18) in which Jews were to be treated as individuals and as fairly (or unfairly) as everyone else. CTh. 16.8.9 ordering an end to violence directed against the Jews and protection for them is notable both for the official tolerance that it extends to Jewish activities and also for the fact that such violence appears to have been continuing since the famous destruction at Callinicum five years previously; the government appears to have been tolerant of intolerance until this law was issued.
Theodosius and Apostates

Theodosius’ first law on Apostates was the first such to be issued. CTh. 16.7.1 of 2 May 381 was addressed to Eutropius, Praetorian Prefect of the East who was also responsible for the first two of Theodosius’ heresy laws. That first law was a short, simple sentence against Christians who had “become pagan.” These were “deprived of the power and right to make testaments” and the will of any such deceased apostate “shall be rescinded by the annulment of its foundation.”

Therefore, this law bears striking similarities with Eutropius’ CTh. 16.5.7 of six days later. Both were retrospective and both levelled the same injunctions against the respective targets of the legislation. However, this first law, CTh. 16.7.1 against Christian apostates becoming pagans, did not seek to justify its retrospectivity unlike CTh. 16.5.7 and, unlike that later law, it made no allowances for the children of such apostates who may have continued in the Christian faith. Of course, the two laws are dealing with separate subjects, but nevertheless, it does appear that this sort category of apostates were to be treated more intolerantly than Manicheans. Interestingly, the law makes no mention of Christians converting to Judaism or any other religion. The nature of this law further undermines, if not negates, the opinion of the editors of the PLRE that Eutropius was “apparently a pagan;” it would surely have been inconceivable for Eutropius either to have proposed or to have been willing to accept or execute such a blatantly anti-pagan law. It would also have been equally inconceivable to for Theodosius to have unilaterally issued such a law, and especially during this, the early years of his reign to an eastern official.

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276 Honoré’s (1998) E2 45-47; Honoré believes him to have been possibly a lawyer and probably a Christian.  
277 his qui ex christianis pagani acti sunt eripiatur acultus ins ne testandi et omne de uncti si nod est testamentum submota conditione rescindatur.  
278 Eutropius’ religion (or lack of it) has been discussed above in connection with Sirm. Const. 7 of Easter 381
CTh. 16.7.2 of 20 May 383 was addressed to Postumianus, a Christian.²⁷⁹ This law is longer and more complicated than the previous, but essentially repeated the provisions of that previous, with some concessions. It stated that “Christians and those confirmed in the faith who have turned to pagan rites and cults” were to be denied “all power to make a testament in favour of any person whatsoever, so that they shall be outside the Roman law.”²⁸⁰ If, however “Christians and catechumens” who were “neglecting the venerable religion and going over to altars and temples” then they were forbidden to bequeath property to anyone except their statuary heirs, i.e. their children and brothers.²⁸¹

The law went on to deal with inheritances, and this section is less clear. It ordered that “the same general rule shall be observed with respect to their persons in taking property under a will” so that they may not inherit “except for their own successions and statutory ones.” Finally the law ended with a clause that such people “must unquestionably be excluded from all power not only to make testaments but also to enjoy them under any right of acquiring an inheritance.”²⁸²

In its first section, this law prevented apostatised baptised Christians from making a will at all and then went on to restrict the bequeathing rights of Christians who were catechumens, but unbaptised, from bequeathing to anyone except members of their immediate family. The second section may have been intended to apply these same rules to such apostates apropos inheriting, but that is not altogether clear in this

²⁷⁹ Honoré’s (1998) E4 whom he believes was Maternus Cyngiæus.
²⁸⁰ christianis ac idelibus ui ad paganos ruitus cultus ne migrarunt omem in numcum ne personam testamenti condendi interdictus potestatem ut sint abs ne iure romano
²⁸¹ is vero ui christiani et catechumeni tantum venerabili religione neglecta ad aras et templum transierint si ilios vel fratres germanos habebunt hoc est si suam aut legitimam successionem testandi arbitratu proprio in nasibet alias personas ins adimatur
²⁸² ari et circa eorum personas in capiendo custodienda orma ut praeter suas et legitimas suae idem et parentem vel germanorum ratrum bonis pervenire potuerint successiones indicio etiam si ita res erent condita voluntatia nulla omnia in capiendis hereditatibus testamenti iura sibi vindicent et indubitabat ab omni testamentorum debeat non solum condendorum sed etiam sub adipiscendae ponti icio hereditatis usurpandum potestate e claudi
law. Evidently, the law is more tolerant than Eutropius’ CTh. 16.7.1 of two years earlier in terms of bequeathing, but less so in terms of inheriting.

CTh. 16.7.4 of 11 May 391 was issued to Flavianus, Praetorian Prefect of Italy, during his first tenure as Praetorian Prefect, the second being under the usurper Eugenius.283 This law was severer than the previous two and appears to correspond quite closely to canon law. It ordered that persons who “should betray the holy faith and should profane holy baptism shall be segregated from the community of all men.” They were also disqualified from giving testimony and their inability to bequeath was also restated.284 The law also stated that apostates were not allowed to inherit and, within the context of this law, it appears that that was also, probably, the sense of the previous law, CTh. 16.7.2. Theodosius stated that he would previously have ordered their expulsion “if it had not appeared to be a greater punishment to dwell among men and to lack the approval of men.”

Theodosius went on to state that apostates shall never “return to their former status; the disgracefulness of their conduct shall not be expiated by penitence” nor would any defence of their position be admissible since “fiction and fabrication cannot protect those persons who have polluted the faith they had vowed to God, who have betrayed the divine mysteries.” Whilst the law said that “help is extended to those persons who have slipped and to whose who go astray” in the case of those who

283 Virius Nicomachus Flavianus 15 PLRE 1.347-349. Curiously, during his Prefecture he received only six laws, considerably fewer than normal. See O’Donnell (1978) for Flavianus’ career. Honoré’s (1998) 70-73 E10; Honoré suggests he may have been the Christian Aurelianus 3 PLRE 1.128-129

284 The prohibition on giving testimony was repeated by the commissioners as CTh. 11.39.11 of the same date.

285 ii *ui sanctam idem prodiderint et sanctum baptisma pro anaverint a consortio omnium segregati sint a testimoniis alieni testamento ut ante iam san imus non habeant actionem nulli in hereditate succedant a neminne scribantur heredes. un us etiam praceipissem us procul abici ac longius amandari nisi poenae visum nisset esse maioris versari inter homines et hominum carere su raqisi.
“profane holy baptism” they were not to be given any aid “through penitence, which customarily avails in other crimes.”  

The canons of the c306 Council of Elvira do not mention apostasy as such, but they do include various offences that amounted to apostasy. The first canon ruled that a baptized Christian who sacrificed to idols was never again allowed to receive communion, even at the moment of death. The sense appears to be that such a Christian had thrown himself out of the church and hence was apostate. However, somewhat contradictorily, canon 59 stated that a Christian who went to observe pagan sacrifices was guilty of the same sin and was not to commune until he had completed ten years of penance. To explain this apparent contradiction, it may have been the case that perhaps there was a tacit understanding that observing such spectacles was not quite as sinful as actively supporting them.

If so, then this law corresponds quite well with the attitude towards apostates as shown in the Elvira canons. The harshness of the first part of the law applied to those who had “polluted the faith” which is almost certainly a reference to sacrifice, and who could “never return to their former status.” On heretics, the Elvira canons (22) ruled that they could receive communion after ten years of penance and this is possibly paralleled in the law’s statement that “help is extended to those persons who have gone astray.” Or equally it could be a reference to those who had deliberately witnessed pagan sacrifices, but not actively participated in them.

The addressee of the law, Flavianus, was, of course the famous pagan, and therefore it is highly unlikely that he proposed this law which appears to be directed against those who had deserted Christianity altogether, that is, become pagans. In the

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286 Sed nec um nam in statum pristinum revertentur non lagitium morum oblitterabitur paenitentia ne ne umbra ali neae 
visitiae de ensionis ant muniminis obducetur noniam uidem eos ui idem nam deo 
dicaverant polluerunt et proventes divinum misterium in pro ana 
migrarunt tueri ea nae sunt commenticia 
et concinnata non posunt. lapsis etenim et errantibus subvenititur perditis vero 
boc est sanctum baptismum pro anetibus nullo remedio paenitentiae nae solet aliis 
crinibus prodesse succurratur.
anonymous *Carmen adversus Flavianum*, Flavianus is accused of bribing people to apostatise from Christianity.\(^{287}\) If that was based on any fact, this law may well have been a warning to Flavianus to desist from such activities, but without actually ordering him to do so; that reason may also explain why the law does not make any reference to Christians apostatising to paganism or indeed to any other faith. To have done so, may have made the orders in the law too personal and would have been too direct an attack on Flavianus.\(^{288}\)

CTh.16.7.5, Theodosius' last law on apostasy was also issued to Falvianus and on the same day as the previous, as such the two may have been one single law and were only divided later.\(^{289}\) It was directed against elite apostates and ordered that those with “splendor of rank” which had either been awarded or had been acquired by birth, who had “departed from the faith and are blinded in mind, who have deserted the cult and worship of the sacrosanct religion and have given themselves over to sacrifices” were to be stripped of their rank and as such would be “branded with perpetual infamy and shall not be numbered even among the lowest dregs of the ignoble crowd.” They could have “nothing in common with men if with nefarious and feral minds they scorn the grace of communion and withdraw from mankind.”\(^{290}\)

This law is evidently less detailed than the previous and that counts against the suggestion that they were once a single law. However, if Flavianus was indeed persuading Christian Romans to come over to pagan cults, as the *Carmen* alleges, then this law would again appear to be very personal to him. Elite members, the targets of

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\(^{287}\) *Carm. adv. Flav.* 79 text in Mommsen (1870) 350-364

\(^{288}\) cf O’Donnell (1978) 140-143 who highlights the difficulties in identifying the unnamed subject of the *Carmen* with Flavianus. O’Donnell does not come to any conclusion as to who the subject might have been, but does conclude that there is very little evidence for the conviction of Flavianus’ paganism. Against which see Matthews (1998) 240-247

\(^{289}\) Also Honoré’s E10

\(^{290}\) *si nis splendor collatus est in eos vel ingenitus dignitatis uid devi et mente caecati sacrosanctae religionis cultu et reverentia descivissent ac se sacri iciis mancipasent pereat ut de loco suo statu ue deiecti perpetna urantur in amia ac ne in e trem a uidem vulgi ignobilis parte numerentur. uid enim his cum hominibus potest esse commune ni in andis et eralibus mentibus gratiam communionis e osi ab hominibus recesserunt*
this law, were members of Flavianus’ own class and were those with whom Flavianus
would have been most in contact and hence the most likely recipients of his
proselytizing efforts. There may even have been an element of insult in this law; for
an apostate elite, (someone in Flavianus’ circle of contact) to have been numbered
below “the lowest dregs of the ignoble crowd” must have been particularly galling.
There are similarities between this law and Flavianus’ previous law, CTh. 16.7.4. The
crime for both was deserting the Christian religion for another, which does not seem
to have been important and as such neither makes explicit reference to any particular
religion, although CTh. 16.7.5 does make strong references to paganism. Other laid
down similar penalties; in the first apostates were to “lack the approval of men” which
rather suggests that they were to be ostracised from their social group, which would be
similar to the removal of titles and honours from elite apostates. Although the second
does not repeat the prohibitions on inheriting and bequeathing,
Theodosius and Paganism.

In clear contrast to his legislation on heretics, Theodosius issued just nine laws on paganism, moreover his first, indeed his first law on religion, which he issued six months after becoming emperor, was a benign order to Pancratius, *Comes et rivatae*, CTh. 10.1.12 of 17 June 379 in which the emperor stated that “we have acceded both to ancient custom and to the constitutions of our forefathers.” Theodosius also “commanded that the right shall be granted to the supervisor of the games of the city of Antioch both to plant more cypress trees and to cut out one tree.”

This is a highly tolerant law from Theodosius respecting pagan customs. Liebeschuetz has noted the reception that Julian received in Antioch, and has estimated that by the middle of the fourth century “the city Antioch was effectively Christian.” He has also noted that by the end of the century, the council of Antioch appears to regard itself as “solidly Christian.” At the same time, there is no evidence of any strife or even of self-imposed segregation between the religious communities in Antioch and therefore this law is consistent with such an atmosphere in Antioch; an approach which was sensible for Theodosius to adopt. Nevertheless, in an “effectively Christian” city, Theodosius, if he was indeed a convinced Catholic, may have been willing to ignore or refuse such a request that related to only one city (albeit an important one) and indeed appears not to have been connected to the patron deity of the city Calliope; that he chose not to do so is testimony to a desire, at this stage of his

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291 Pancratius 4 PLRE 1.664. Honoré (1998) 40-41 does not assign this law, nor three others between the period 17 June – 10 August 379 to any of his numbered quaestors.

292 *et mori veteri et constitutis nos maiorum accessisse cognoscas. et alytarchae urbis antiochenae plantandi phures e cidendae annius cupressi inbemus tribni acultatem.*

293 Liebeschuetz (1972) 224-229, quotes at 224 and 226 respectively.
reign, to genuinely attempt to maintain some sense of harmony.\textsuperscript{294} It should be noted that this is Theodosius' first law on religion.

CTh. 16.10.7 of 21 December 381 was issued to Florus, Praetorian Prefect of the East.\textsuperscript{295} It ordered that any “madman or sacrilegious person” who would “immerse himself in forbidden sacrifices by day or by night, as a consulter of uncertain events” and if such “should employ, or think that he should approach, a shrine or a temple for the commission of such a crime” then he would be “subject to proscription, since we give warning by our just provision that God must be worshipped by chaste prayers and not be profaned by dire incantations.”

This law was evidently directed against private divinations and in particular, nocturnal ones, and was not a general prohibition on pagan cult. Nocturnal activities involving sacrifice, especially those associated with divination, had always generated suspicion (see Valens’ CTh 9.16.7 of 9 September 364 and, to a lesser extent, Valentinian’s CTh 9.16.9 of 29 May 371 on the magic trials). Valens’ previous law may have demanded the death penalty for such offences, as had been consistent with earlier legislation and practice on the subject, whereas this law orders that the accused would be “subject to proscription” which suggests that the penalty for these offences under Theodosius was worse. Proscription implies not only the death penalty and confiscation of wealth and property, but also that the offender had been condemned, or marked out for punishment, before (or instead of) a trial. That should be understood to relate to ‘fringe’ and potentially subversive religious activities, rather than to ‘mainstream’ paganism.

CTh. 16.10.8 of 30 November 382 to Palladius, dux \textit{Osroenae}, the frontier region to the east of the Euphrates. The law may originally have been addressed to

\textsuperscript{294} Lib. \textit{r} 1.109, however cf his \textit{r}. 30.51 stating that there were only four temples still intact at the time of writing: Fortune, \textit{e}us, Athena and Dionysus.

\textsuperscript{295} Florus 1 PLRE 1.367-368; Honoré's (1998) E2 45-47
Florus, the Praetorian Prefect of the East. Unusually, this law came from, and was issued by the authority, of the Imperial consistory, referred to in the law as the “public council,” although, as normal, Theodosius appears to be speaking in the second person plural throughout. The law ordered that “the temple shall continually be open that was formerly dedicated to the assemblage of throngs of people and now also is for the common use of the people.” The law went on to state that in the temple “images are reported to have been placed which must be measured by the value of their art rather than by their divinity.” Theodosius would not permit any “Imperial response that was surreptitiously obtained to prejudice this situation.” Moreover, in order that the temple should be seen by “assemblages of the city and by frequent crowds” Palladius was ordered to “preserve all celebrations of festivities, and by the authority of our divine Imperial response, you shall permit the temple to be open.” But this was to happen is such a way “that the performance of sacrifices forbidden therein may not suppose to be permitted under the pretext of such access to the temple.”

The law therefore was only applicable to one temple, possibly in Edessa, but there are two distinct clauses to it. The first appears to order the conversion of the temple from a strictly religious building into something approaching a ‘community centre’ for “the common use of the people” which presumably referred to all people of whatever religion and in contrast, presumably, to the previous “assemblage of throngs of people,” which must refer to previous pagan ceremonies. The purposes of this seem to have been to convert the temple, and the images, into some sort of art museum, for the general benefit of all. However, the second clause of the law preserves something of the temple’s original, civic and religious purpose, and ordered Palladius to actively

\[296\] Palladius 11 PLRE 1.660 of whom nothing more is known.

\[297\] edem olim re nentiae dedicatum coeunti et iam populo no ne communem in us simulacra eruntur posita artis pretio usum divinitate metienda ingiter patere publici consilii auctoritate decernimus ne ne haic rei obretium o icere simimus oraculum. ut conventu urbis et re nentia coeunti videatur e perentia tua omni vitorum celebritate servata auctoritate nostir ista patere templum permittat oraculi ne illic prohibitorum usus sacri iciorum haec occasione aditus permittus esse credatur.

\[298\] Pharr (1952) 473 n17
protect all festivities that were traditionally celebrated in relation to the temple, so long as sacrifice did not take place.

This law may have been a highly innovative compromise between militant Christians who were threatening the structures of temples and images of gods and those on the other side who sought their preservation on religious or civic grounds. As such, it appears to be fortuitous that the version of the law that has survived, was destined for the duumvir who would have been responsible for law and order in the region.

CTh. 16.10.9 of 25 May 385 was addressed to Cynegius, Praetorian Prefect of the East and, like CTh. 16.10.7, dealt essentially with divination. The law ordered that no one “shall assume the audacity of performing sacrifices, so that by the inspection of the liver and the presage of the entrails he may obtain the hope of a vain promise, or worse, he may learn the future by an accursed consultation.” A “very bitter punishment” was to be applied to such people in the expectation that they would not perform such rites. The law finished with a summary of prohibitions, i.e. attempts to “explore the truth of present or future events.” This law is more specific in terms of the prohibition of divination, but arguably less so in terms of its punishments. With regards to the punishment, it should be noticed that in this later law the sentiment expressed by Theodosius was that the punishment should be viewed as preventative, rather than a punishment delivered simply because the law had been broken. Such a difference would have had no effect in practice on anyone actually breaking the law, but the sentiment behind it does appear to be important.

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299 Honoré’s (1998) 52-53 E5
300 ne quis mortalium ita aciendi sacrificii audaciam ut inspectione iecoris et presagio vanae spem promiscionis accipiat vel quod est deterius uturam sub e cruciis consultatione cognoscat, acerbioris etenim inimicem suppliantibus cruciatus eis ut contra vetitum praesentium vel uturarum rerum e plorare temptaverint veritatem.
CTh. 12.1.112 of 16 June 386 was issued to Florentius, Praefectus Augustalis, and regulated the appointments of “chief civic priests.”

It may have originally passed through the office of the Praetorian Prefect Cynegius. It ordered that such should be those who had “performed the most services for his municipality” and who had not “withdrawn from the cult of the temples by his observance of Christianity.” The law stated that it would be “unseemly and illicit for the temples and the customary rites of the temples to belong to the care of those persons whose conscience is imbued with the true doctrine of divine religion.” At the end, the law indicates that such priesthoods were a “compulsory public service.”

Evidently this law was to the benefit of Christian decurions, not least because it removed one municipal liturgy from their shoulders. It may even have been welcomed by pagans, from a religious perspective, though perhaps less so than it would have been welcomed by Christians. It does not give any evidence of intolerance, but it is evidence of a polarisation between the pagan and Christian communities.

CJ 7.38.2 of 3 July 387 to Dexter, Comes ei rivatae appears to enhance the position of paganism. It ordered that lands held by “tenants or under emphyteusis a long lease and which are the property of the state or the emperor or belong to the sacred temples shall be restored.” There were to be no exceptions to this “restoration” of lands and also, the law stated that there was to be no compensation payable to anyone who may have purchased such property. The most interesting

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301 Honoré’s (1998) 54-55 E6; Florentius 7 PLRE 1.364
302 in conse vendra archieros ne ille sit potior ui patriae plura praestiterit nec tamen a templorum cultu observatione christianitatis abcesserit. utpe indecorum est immo ut verius dicamus illicitum ad eorum curam templum et templorum sollemnia pertinere norum conscientiam vera ratio divinæ religionis imbuerit et nos ipous decebat tale munus etiam si non prohiberentur e ngere.
303 Honoré’s (1998) E7 55-56; Nummius Aemilianus Dexter 3 PLRE 1.251
304 universas terras uae a colonis dominicis iuris rei publicae vel iuris templorum in quovis in alibi provinicia venditae vel allo alicui pacto alienatae sunt ab bis ui perperam at ne contra leges eas detinet nulla longi temporis præscriptione o ficiente innumeris restitui ita ut nec pretium uidem ini nis comparaturibus reposcere liceat.
aspect of this law is that Dexter is known to have been a Christian and indeed a serious
Christian, the son of Bishop Pacianus of Aracelona, of whom Jerome said was
“dedicated to the faith of Christ forever.” Jerome also dedicated his work *de viris
illustribus* to Dexter who in turn had inspired Jerome to write it. It appears that
Dexter was a fair-minded individual who believed that pagan temples should not be
deprived of their property any more than should the state or the emperor; evidently,
even at this late stage in the fourth century, a Christian with strong connections to the
establishment of the Church was by no means, thereby, anti-pagan. If Dexter had
been even slightly so, he could simply have omitted “sacred temples” from the law.

Theodosius’ generally favourable legislation on paganism appears to take an
abrupt about-turn at the beginning of 391, after he had wintered in Milan and was
returning eastward after the defeat of Maximus, and over twelve years since ascending
to the throne. On the laws that followed Williams and Friell have remarked: “It is
possible, but difficult, to find greater examples of intolerance and fanaticism than in
the spirit that animates these new laws.” They believe that the apparent change of
policy on paganism was due possibly to the appointment of the *agister ieiuniorum*
and Catholic Flavius Rufinus or that the massacre in Salonica in Thessalonica,
followed by Ambrose’s intervention impelled Theodosius’ Catholic conscience to
make amends by suppressing paganism. In a similar vein, King takes the view that it
was “ultimately incompatible” for a Catholic emperor to have a policy of toleration
towards pagans and especially when his brother Christians were “actively fighting
paganism and destroying temples.” Against the influence of Rufinus might be said
that he became *agister ieiuniorum* three years before the beginning of the change in
policy in 388 and ceased to be so in 392; if he was a pivotal figure in the issuing of the
new legislation, he was, at least, not a primary or immediate influence. Against King’s

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305 Jer. *de vir. ill.* 132: *clarus ad saeculum et Christi deditus* See Matthews (1998) 133-134 for Dexter and
his father; also Matthews (1967) 440
306 King (1961) 72 refers to Theodosius’ “mild attitude towards paganism in the years up to 391
307 Williams and Friell (1994) 119-120, quote at 120; cf Syme’s (1984) 904 comment to Theodosius’ “total
surrender to the bigots.”
308 King (1961) 77
view that the emperor was ‘catching up’ with his militant subjects with the latest legislation may be advanced the facts that the most notorious of them, Maternus Cynegius, had died three years before the change in policy and maybe up to five years after his anti pagan campaign. Moreover, as will be seen, the forthcoming legislation was to target practices, rather than physical structures.\textsuperscript{309} The view that Theodosius was overcome by a genuine sense of remorse after the massacre in Salonica is weak and based on no contemporary evidence; Roman emperors were not known for soft-hearted sentiments. Moreover, the penance that Theodosius performed in front of Ambrose and his congregation in Milan has been reassessed by McLynn who interprets it as, with Ambrose’s help, a “public relations triumph for the emperor.”\textsuperscript{310} McLynn’s interpretation is convincing, but unfortunately it does not provide an answer to the apparent change of policy with regards to paganism after the massacre and penance.

CTh. 16.10.10 of 24 February 391 was the first such law, issued from Milan and addressed to Albinus, Praetorian Prefect of Rome; it has been referred to as the \textit{em o se hostiis polluat}, from the opening words.\textsuperscript{311} It is worth quoting the text of the law in full:

“No person shall pollute himself with sacrificial animals; no person shall slaughter an innocent victim; no person shall approach the shrines, shall wander through the temples, or revere the images formed by mortal labour, lest he become guilty by divine and human laws. Judges also shall be bound by the general rule that if any of them should be devoted to profane rites and should enter a temple for the purpose of worship anywhere, either on a journey or in the city, he shall

\textsuperscript{309} For Maternus’ notorious rampage see Matthews (1998) 140-141; see also Hunt (1993) on this sort of ‘bottom up’ legislation; Fowden (1978)

\textsuperscript{310} McLynn (1994) 315-330, quote at 323; see especially 323-330 for Theodosius’ public penance and its likely reception by Christians in Milan.

\textsuperscript{311} y Williams and Friell (1994) 120 and King (1971) 78; Honoré’s (1998) E10 70-73, whom he believes was the Christian Aurelianus (Aurelianus 3 PLRE 1.128-129).
immediately be compelled to pay fifteen pounds of gold, and his office staff shall pay a like sum with similar haste, unless they resist the judge and immediately report him by a public attestation. Governors with the rank of consular shall pay six pounds of gold each, their office staffs alike amount; those with the rank of corrector or of praeses shall pay four pounds each, and their apparitors, by equal lot, a like amount.”

nemo se hostiis polluat nemo insontem victimam caedat nemo delubra adeat templum perlustret et mortali opere ormate simulacra suspiciat ne divinis ad ne humanis sanctionibus reus iat. indices uo ne haec orma contineat ut si nisi pro ano ritui deditus templum uspiam vel in itinere vel in urbe adoraturus intraverit uindecim pondo auri ipse protinus in erro cogatur nec non officium eius parem summam similis maturitate dissolvat si non et obstiterit indici et con estim publicaテストーション rettlutorit. consulares senas officia eorum similis modo correctores et praesides uaternas apparitiones illorum similis normam ae uali sorte dissolvant.

The first comment that should be made on this law is that it was directed towards Rome and was clearly only intended to apply to Rome and the 100 miles around the city that fell under the jurisdiction of Rome’s Prefect, hence the clause against “the judges” being “devoted to profane rites on a journey or in the city.” The journey probably refers to the necessary movements that judges would have to make around the city, and within the its territory in fulfilment of their duties.

Secondly, the law begins with prohibitions against animal sacrifice. Such sacrifices were probably declining at this period; Libanius informs us that blood sacrifices on altars were not conducted in his region. However, he does inform us

\[312\] Lib. r. 30.17
that blood sacrifices continued at Rome. As such, this law may have been intended to bring pagan religious practice at Rome into line with that practised in the rest of the empire. Nevertheless, that would doubtless have upset and angered the traditional pagan elite of Rome who were continuing a thousand years of tradition.

The rest of the prohibitions, on approaching shrines, wandering through temples and revering images of the gods should perhaps be understood in this context of prohibiting sacrifice; that is to say, these three actions were only prohibited when they accompanied, and were part of the ritual of, a blood sacrifice, and were not therefore, necessarily prohibited in themselves. In that context the punishments make more sense; if these three actions were prohibited for all people, then, logically, all people should have been detailed in the punishments. ut only judges, governors, correctores and praeses were mentioned and this was because only such magistrates would have officiated at the public sacrifices, exercising their official roles. The fines were not excessively large; Symmachus is reckoned to have had an annual income from his estates of 1,500 lbs of gold. Admittedly, he was among the wealthier of his class, but there is evidence which suggests that even provincial governors had an annual income of between 10-20 pounds of gold a year and that excludes any fees.

Theodosius had been in Italy for over two and a half years, since at least September 388 and had spent at least three months (from June to the end of August 390) in Rome, and during which time the massacre at Salonica took place. As such, it seems unlikely that he was genuinely offended by the display of public cult that must have continued during his visit, otherwise he would surely have legislated against it sooner, and not just two months before he left Italy. Williams and Friell note the

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313 Lib. 30.33
314 For Symmachus see Matthews (1998) 18 n2; for the provincial governors (admittedly figures from the sixth century) see Kelly (2004) 65
“political clumsiness in the timing and occasion of these laws” by which they mean that the law would have been debated in the Consistory in which Flavianus would have been present. Ut in fact, the timing may have been precisely perfect and may have suited both Theodosius and the pagan establishment of Rome. Enforcement of this law would have been easier with the direct presence of the emperor, but issuing it from Milan, and when the Imperial court would have been about to depart over the summer for the east arguably reduced the immediacy of the law’s enforcement. That is not to say that the new prohibitions could have been blatantly disregarded in their totality, but without the near physical presence of the fount of the prohibitions, their strength may well have been undermined. 316 This may have been understood by both Theodosius, and, more importantly, by the pagan establishment who were the targets of the law.

Nevertheless, the prohibition of state blood sacrifices in the ancient capital was a significant event; having discounted the reasons provided by King and Williams and Friell, only two other possibilities present themselves: the first is that it was a much delayed rebuke to the Roman establishment for its support of the usurper Maximus; a delayed response to an arguably understandable ‘mistake.’ 317 Equally, it could have been designed as a forceful reminder of who was in charge of this part of the empire, which had only recently come into Theodosius de facto, but not, it should be emphasised, de iure, control; the lawful ruler remained Valentinian II. 318

CTh. 16.10.11 of 16 June 391 extended similar prohibitions to Egypt. Unusually, it was jointly addressed to two officials, Evagrius, Augustal Prefect and

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316 See Harries (1999) 66 for the importance of the Imperial presence (albeit virtual in this instance).
317 Symmachus had represented the Senate for the celebrations surrounding Maximus’ consulship in 388 where he delivered a panegyric to the usurper Soc. 5.14.6, Matthews (1998) 223, see 229-232 for his and Flavianus’ rehabilitation under Theodosius.
318 Cf Constantius’ CTh 16.10.4 of 1 December 354 ordering the closure of temples; pagan practices had apparently been allowed during the usurpation of Magnentius in Rome.
Romanus, the Count of Egypt.\textsuperscript{319} It ordered that no one had the “right to perform sacrifices; no person shall go around the temples; no person shall revere the shrines. All persons are excluded from profane entrance into temples by the opposition of our law.” If anyone “should attempt to do anything with reference to the gods or the sacred rites, contrary to our prohibition” then he would not be exempted from punishment by any “special grants of Imperial favour.” If any judge “should rely on the privilege of his power, and as a sacrilegious violator of law, should enter polluted places” then he would be fined 15 lbs of gold and his staff the same amount unless they had opposed him “with their combined strength.”\textsuperscript{320}

Again, like the previous law, this one was concerned with blood sacrifice, which is curious; not only do we have Libanius assertions that blood sacrifice was no longer practised, but also blood sacrifice does not appear to have played an important role in traditional Egyptian religion at any period and as such, its impact may have been very limited.\textsuperscript{321} Like the previous law, it may be appropriate to read the prohibitions as applicable to government officials, since only they (and their staff) were mentioned in the schedule of punishments, and as such it should perhaps be understood to be targeting them in their official capacities and any sacrifices they may have continued to carry out. As such, it could be tentatively suggested that sacrifice performed by them in their private capacity, or indeed by any private person, was not prohibited under this law.\textsuperscript{322}

\textsuperscript{319} Evagrius 7 PLRE 1.286 and Romanus 5 PLRE 1.391; Also Honoré’s (1998) E10 70-73
\textsuperscript{320} nulli sacrificandi tribuatur potestas, nemo templa circumueat, nemo delubra suspiciat. interclusos sibi nostrae legis obstaculo pro anum aditus recognoscant adeo ut si iu vel de diis ali uid contra vetitum sacris ne molietur nullis eundem se indulgentiis recognoscat. inde no ne si nis tempore administrationis suae retus privilegio potestatis pollutis locis sacrilegus temerator intraverit uindecim anri pondo eiis vero eius nisi collatis viribus obviarit parem summam aerario nostro in erro cogatur.
\textsuperscript{321} See Frankfurter (2000) 24-25
\textsuperscript{322} However, against that reading should be noticed the apparently pivotal role that Eunapius gives to Evagrius and Romanus in the destruction of the Serapeon (the same year as this law) Eun. V. Soph. 6.2.2, but against that see more restrained accounts by Socrates 5.16.10 and especially Sozomen 7.15.5
Such a manner of reading this law may be evidenced in the next law of Theodosius on paganism (and his last) which went further in its prohibition of pagan practices. CTh. 16.10.12 of 8 November 392 was issued to Rufinus, Praetorian Prefect of the East.³²³ It was long, comparable in length to some of Theodosius' laws on heresy, running to four sections plus an introductory paragraph. Unlike the two previous laws against pagan practices, this one was directed against people of all classes and began, like them with a prohibition on blood sacrifice. “No person at all, of any class or order whatsoever of men or of dignities, whether he occupies a position of power or has completed such honours, whether he is powerful by the lot of birth or is humble in lineage, legal status and fortune, shall sacrifice an innocent victim to senseless images in any place at all or in the city.”³²⁴ Seemingly innocuous and very longstanding aspects of private, domestic cult were prohibited, no one was to “by more secret wickedness, venerate his lar with fire, his genius with wine, his penates with fragrant odours; he shall not burn lights to them, place incense before them, or suspend wreaths from them.”³²⁵

In the second paragraph the law dealt with punishments for anyone who “dared to immolate a victim for the purpose of sacrifice, or to consult the quivering entrails.” He would be “guilty of high treason” of which anyone might accuse him and would receive the “appropriate sentence;” which presumably means death. Even if his enquiries were for the purpose of divination and had “inquired nothing contrary to, or with reference to the welfare of the emperors.” Such activity was still considered an “enormous crime” which broke down “the very laws of nature” in order to “investigate forbidden matters, to disclose hidden secrets, to attempt interdicted

³²³ Honoré’s (1998) E11 73-76; Flavius Rufinus 18 PLRE1.778-781
³²⁴ nullus omnino ex quolibet genere ordine hominum dignitatum vel in potestate positus vel honore
per unctus sive potens sorte nascondi suum humilis genere condicione ortuna in nullo penitus loco in nulla urbe
sensa carentibus simulacris vel in sontoem victimam caedat
³²⁵ secretiore piaculo larem igne mero genium penates odore veneratus accendat lumina imponat tura serta suspendat
practices, to seek to know the end of another’s life, to promise the hope of another person’s death.”

The third paragraph concerned veneration of idols, but in a manner which suggests that it was directed against more superstitious forms of veneration. If anyone sought to venerate images “by placing incense before them” or “in a ridiculous manner, should suddenly fear the effigies which he himself has formed, or should bind a tree with fillets or should erect an altar of turf... or should attempt to honour vain images with the offering of a gift... is a complete outrage against religion.” Such violators of religion would have their “house or landholding in which it is proved that he served a pagan superstition” confiscated to the treasury, if it was proved that they also owned the property.

The fourth paragraph dealt with attempts to “perform any such kind of sacrifice in public temples or shrines” or on property which was not their own. If it “was proved” that the property was so used without the knowledge of the owner then the offender would have to pay 25lbs of gold as a fine and the same amount would be levied against anyone who had “connive d at such a crime.”

In the fifth and final paragraph Theodosius emphasised that “this regulation shall be so enforced by the judges, as well as by the defenders and decurions” of the

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326 uod si nispiam immolare hostiam sacri icaturus audebit aut spirantia e ta consulere ad e emplum maestatis rens llicita cunctis accusatione delatus e cipiat sententiam competentem etiam si nihil contra saltem principum aut de salute nasefert, su icit enim ad criminis molem naturae ipsius leges velle recindere illicita percurtari occulta recludere interdicta temptare inem naere salutis alienae spem alieni interitus polliceri.

327 Si nis vero mortali opere acta et aenum passura simulacra imposito ture venerabitur ac ridiculo e emplo metnens subito nae ipsa simulaverit vel redimita vittis arbore vel erecta e osis ara cespitibus vanas imagines humiliore licet muneris praemio tamen plena religionis injuria honorare temptaverit is utpote violatae religiosis rens ea domo seu possessione multabitur in naeenum gentilicia consisterit superstitione amulatum. nam ne omnia loca nae turis constiterit sapore umasse si tamen ea in iure nisse turi iacantium probabuntur ico nostro adoscianda censemus.

328 Sin vero in templis animae publicis aut in aedibus agris et alius simulacrae simulacrae sacri incendi genus et erec temperatur si ignorante domino unuratata consisterit viginti nis ne libras aurii mulla nomine cogetur in erro convien tem vero huic sceleri par ac sacri icantem poena retinebit.
cities. Decurions and defenders were to report to the courts any information that they received concerning infringement of the law and if any suggestion that decurions and defenders had “concealed such a crime through favouritism or overlooked through carelessness, they shall be subjected to judicial indignation.” If judges knew of such crimes, but deferred punishment, then they would be fined 30lbs of gold and their staffs collectively the same amount.329

Unlike the previous laws, it cannot really be suggested that the injunctions against the lares and penates should be read in conjunction with the prohibition on blood sacrifice. No justification for the prohibition of these ancient customs can be advanced and as such, and in that respect, this law appears highly intolerant. Similarly, the prohibition on venerating images, although veneration of the actual image itself may reasonably be said to be a superstitious practice and not the sort of injunction against which more sophisticated and educated pagans, such as decurions and governors, may have had strong feelings. However, paragraphs one and four seem to refer back to the prohibition on sacrifice given at the beginning of the first paragraph, but with the additional reference which suggests that such sacrifices were to be used for divinatory purposes, which, of course, had long been prohibited and as such this law marks no new departures in that respect. A more innovative departure appears to be contained in the first paragraph which formally prohibits what appears to be other forms of blood sacrifice, i.e. non-divinatory forms. ut again, as stated, such occurrences in Egypt may well have been remarkably few, due to local and long established custom. The law is thorough through both its detail of persons affected by its provisions, as well as through its demands of enforcement though local officials and courts; this indicates a serious desire by the authorities to eliminate the practices of

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329 quod quidem ita per iudices ac de ensores et curiales singulorum urbiunm volumus custodiri ut ilico per hos comporta in indicium de erantur per illos delata plectantur. si aud autem ii tegendum gratia aut incuria praetermittendum esse crediderint com motioni indiciariae subiacebunt illi vero moniti si vindictam dissimulatione distulerint triginta librarum auri dispensio multabuntur o iciis no ne eorum damno parili subingandis.
sacrifice as well as of more innocuous practices, and as such, may be considered intolerant.
Conclusion  Theodosius

As has been noted, Theodosius' legislation concerning paganism appears to have two separate phases. On the first phase, which extended from CTh. 10.1.12 of 17 June 379 to CJ 7.38.9 of 3 July 387 and in which Theodosius appears to have been accommodating towards paganism, two of the laws were issued to Christians (CTh. 16.10.9 to Cynegius and CJ 7.38.2 to Dexter); none of the other four laws is known to have been issued to a pagan. The law to Cynegius was probably uncontroversial as it was concerned with divination, whereas that issued to Dexter was thoroughly accommodating and fair to paganism. The second phase however, during which Theodosius is supposed to have become more intolerant of paganism, begins with CTh. 16.10.10, addressed to a pagan, Albinus. That law appears to have been specific not only to Rome, but also to the officials administering Rome, rather than to the population as a whole. Moreover, it was probably only designed to apply to Rome practices that had already, without legislation, become common in the rest of the empire. This interpretation reinforces the hypothesis that Theodosius issued it at the end of his time in the west in order to reinforce his authority, that is, to make Rome (in Valentinian’s half of the empire) do the same as was also done in Theodosius’ half of the empire.

However, if the law was indeed passed for essentially non-religious purposes, it still indicates a degree of intolerance on Theodosius' part in that he wanted the whole empire to conform to certain practices. But it should be emphasised that that would not primarily indicate religious intolerance since the underlying motive would have been essentially political.

CTh. 16.10.11 extended such provisions to Egypt, but it probably dealt with only very occasional and unusual instances of sacrifice which may have been controversial in any circumstance. The same cannot be said for CTh. 16.10.12 which
does appear to be particularly intolerant. Although it should be noted that the worst penalties in that law, i.e. death, was reserved, as normal, for divination; it dealt with other offences less severely.

Overall, Theodosius' pagan legislation is more tolerant than his legislation on heresy. Two heresy laws ordered the death penalty (CTh. 16.5.9 of 31 March 382 and CTh. 16.5.15 of 14 June 388) as did two laws on paganism mentioned immediately above, but Theodosius' legislation went to greater lengths to prohibit heresy. Not only did it include a wide range of heretical groups, but in the latter years of Theodosius' reign the legislation proscribed ceremonies performed by heretics. This is not paralleled in Theodosius' legislation on paganism. The punishments for heretics were also worse than for pagans; consistently the legislation sought to place heretics beyond the bounds of society, either physically through expulsion or exile or more symbolically (though no less practically) through depriving them of testamentary power. Again, no such punishments were levelled against pagans. As such, it should be concluded that heretics were considered to be worse than pagans.

The religions of addressees who may well have proposed the laws, does not always appear to have been a significant factor as regards the nature of the law and its degree of intolerance. That the addressee had some role in proposing the laws seems certain at least in the case of Tatianus. Four of his fifteen laws (CTh. 16.2.27, 11.16.18, 16.3.1 and especially 9.40.15) are to a degree prejudicial to the interests of the Church, or at least seek to portray it in a negative light. That they were prejudicial is borne out by the repeal of two of them (CTh. 16.2.27 and 16.3.1); repeal is relatively unusual in the Theodosian code. His law against Eunomian eunuchs (CTh. 16.5.17) was also repealed (by CTh. 16.5.23), although it took five years for that to occur.

That repeal was addressed to the Christian Rufinus who also the recipient of a further four (possibly five) laws. If, like Tatianus, he too was influential in the subject
matter and nature of the law, then it would appear that he was a more tolerant individual than Tatianus. Rufinus did receive Theodosius' intolerant final law on paganism (CTh. 16.10.12), but he also received two minor regulatory laws (CTh. 15.5.2 prohibiting Sunday games and CTh. 16.7.12 on virgins’ clothing and Imperial portraits), as well as Theodosius' last law, CTh. 16.5.24 forbidding heretic teachers from teaching their faith. If he had been involved in CTh. 16.8.9 to Addeus, the count of the East, which gave protection to synagogues, then Rufinus’ record as a fundamentally tolerant man would be enhanced.

The Christian Postumianus received only four laws but two of them (CTh. 16.5.11 and 12) were particularly comprehensive and therefore intolerant. Postumianus had been asked by Gregory Nazianzus to try and secure some unity amongst the Christian factions in the 383 Council of Constantinople; unsurprisingly, he was not successful and as such these two comprehensive laws may have been issued in response to his lack of success.³³⁰

These three individuals were the most prolific addressees of Theodosius' legislation; 24 other addressees received only one law, three received two laws and only the western pagan Albinus received three. As such, no single figure dominates the legislation, although Tatianus came close with his four year tenureship of the eastern Prefecture. Of the religions of the addressees, four were pagan (five if Tatianus’ son Proculus was also a pagan), six were Christians (seven if Infantius 1 followed the slippery nature of his father, Domitius Modestus, in religion) and the remaining 20 are unknown. That last group is obviously an important factor, but on the available evidence it can be tentatively concluded that, when choosing his officials, their religious affiliation was not an overriding factor for Theodosius. Conceivably, there could have been advantages for Theodosius in selecting pagans to be his officials, or those whose religion was not such a strong component of their character that it has

³³⁰ Greg. Naz. p. 173
shone through in the surviving evidence; a Catholic may have been loyal to things other than the business of ruling an empire, with all that that entailed, whereas a pagan, or religiously neutral individual, would have had little on which to focus his loyalty than the emperor.

There is very little evidence that Theodosius’ legislation was influenced by the Church itself. CTh. 16.5.6 quoted the Nicene creed at length, enacting much of it into law, but it would have been widely known already and whether its inclusion in this law was due to influence from Theodosius, a cleric or a secular official cannot be ascertained. Similarly, the sentiments of CTh. 16.7.7 appear to chime with canon law, but it is uncertain how deliberate that may have been. On the other hand however, there is evidence that Theodosius (in CTh. 16.5.7) positively rejected Ecclesiastical policy, as shown by the admission of heretics to the Church.

Although Theodosian legislation is longer, more thorough and more verbose than that of previous emperors, the amount of derogatory rhetoric does not tend to increase proportionately. Furthermore, such rhetoric is not usually matched by the practical punishments prescribed. For instance, CTh. 16.5.6 spoke of the “madness of their excessively obstinate minds,” but only ordered that they should not assemble in towns or enter churches. Similarly, CTh. 16.5.12 referred to “vicious doctrines hateful to God” and denied them the right to assemble, to ordain priests and ordered that property utilised by them should be confiscated; also CTh. 16.5.19 ordering the expulsion from Rome of the leaders of “perverse dogma.” In contrast, CTh. 16.5.15 apparently prescribes death for members of “perfidious sects” who were “driven by the insanity of a miserable conspiracy against God.” Such rhetoric was not used in Theodosian legislation about the Jews or pagans. As an explanation to this dichotomy, it might be suggested that whenever such rhetoric was used, it was thought at the time to have a self-standing purpose; the rhetoric unambiguously laid down a strong disapprobation of the practice, duly entered into the legislative and official record and
thereby, perhaps, it was thought that the emperor had done his duty to God and to the faith.
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Without doubt there was an element of intolerance in fourth century Christianity, but it has had little impact on the legislative record and Gibbon’s assessment that intolerance was one of five reasons for the success of Christianity cannot substantially rely upon any surviving evidence from the principal sponsors of Christianity in this period, the emperors and their governments. Of course, intolerance was an element in a number of the laws discussed above; but in many instances the strength of the language and rhetoric deployed against religious groups was not matched by the practical punishments, and those are the surest indicators of intolerance in these laws. The highest such indication of intolerance, that of ordering the death penalty for practices or beliefs followed, is given in, at most, only fourteen out of the nearly 200 Imperial statements that have been examined.

Moreover, five of these most intolerant laws (CTh. 9.16.1, 9.16.4, 9.16.8, 16.10.7 and 16.10.12) prescribed the death penalty for the long abhorred practice of divination; one for nocturnal activities (CTh. 9.16.7) which were equally suspect; two were issued at times of particular political instability (CTh. 16.10.4 and 16.1.1) which demanded a strong and unflinching response to threats, and, indeed, the former of these two may well have been primarily designed to deal with political, that is treasonous, activities. A further two almost certainly ordered death for what were probably public order offences (CTh. 16.8.1 and 16.1.4); CTh. 16.8.6 appears to have been essentially concerned with protecting Imperial property (slaves) and the means of production, and CTh. 9.25.2 was concerned with rape. More intolerant are the remaining two capital laws, both of Theodosius: CTh. 16.5.9 against ‘fringe’ Manicheans and CTh. 3.7.2 against mixed marriages between Christians and Jews. There are no known significant factors that might be advanced to mitigate the severity of these two laws and hence they appear to be the most religiously intolerant of the laws under discussion.
emphasised that they amount to less than one percent of all Imperial laws on religion issued during this period.

Detailed and comprehensive efforts to prohibit certain practices and beliefs are again most manifest during Theodosius’ reign; in which there also appears to have been a sustained effort to extinguish a number of heresies through progressively more restrictive legislation on practices. Such a programme is not apparent under earlier emperors and this is to be expected. There is good evidence that the character, religion and temperament of the addressee was influential in the nature and temperament of the law issued. Under Constantine this is most apparent in his letters, preserved by Eusebius, which appear to have been tailored in order to suit the religion of the addressee. Perhaps the clearest example of an individual influencing legislation is that of Evagrius, whose eastern Prefecture covered the end of Constantine’s reign and the beginning of Constantius’. He was responsible for the promulgation of two anti-Jewish laws that appear to have been in contrast with the general tenor of his emperors’ other laws on Jews. In further contrast, these two laws also demanded the death penalty.

By contrast, and under Valens, a more moderate individual emerged who appears to have exercised some influence over the legislation. Modestus, whose own beliefs appear to have shifted with every wind of religious change that swept through his life and through a succession of high positions, displayed a similar non partisan attitude to the legislation which he promulgated. This model, of the influence of an important official shining through the legislative record, is not so apparent under Theodosius, but nevertheless the fundamental concept that individuals influenced legislation remains sound, as can be seen from the legislation issued to Tatianus.

Constantine issued two laws on heresy as well as his letter to heretics preserved by Eusebius. There is no surviving legislation against heretics from the reigns of Constantius, Jovian or Valens. After Constantine, it was to be more than thirty years until another law on heresy was issued, that of Valentinian CTh. 16.5.3
of 2 March 372 against Manicheans. Excluding his letters on the Ursinians, Valentinian issued only one further law, CTh. 16.6.1 on Donatist bishops, who were still technically schismatics, rather than heretics. Gratian only issued two laws on heretics, plus one on the Donatists and he also issued a general criticism and attack on various heresies and schisms in his letter de rebapti atoribus. Valentinian's heresy legislation had been concerned with the leaders of the sects; with teachers and bishops respectively. Gratian’s heresy legislation was wider ranging and its provisions extended to the members of the sects as well as to their properties; as such, it is closer in content and range to Theodosius' later legislation against heretics than to that of his father. Theodosius issued proportionately more legislation against heretics and it became, according to his legislative record, increasingly difficult to maintain doctrines and practices that were divergent from his norm. Essentially therefore it appears unlikely that an emperor or any individual was responsible for the growth in legislation, but rather that such a growth was reflective of wider concerns that occurred in the 370s and onwards. Testament to this is Epiphanius’ anarion, which is coterminous with this period of the fourth century. It is constructive to note that the anarion gave accounts of 68 Christian sects (plus twelve non-Christian religions) whereas the emperors discussed here issued laws and statements on just 22 heretical sects. This simple comparison illustrates that heresy was of greater concern to clerics than to emperors.

However, whatever factors lay behind Theodosius' legislation, there is little evidence that the Church, or a cleric had any decisive, or perhaps even tangential, influence, in other than a few of his laws; and none of the other emperors is shown in his legislation to have been a tool in the hands of the Church. Constantine, who is credited (or cursed) for conceiving the marriage between State and Church emerges as a figure who, especially through the Donatist dispute, stood above the Church in a dominant position. His son, Constantius, appears as a more erratic emperor and without Constantine's ability to perceive and exploit the opportunities offered to him. Valentinian and Valens give the impression of being essentially non-partisan in their religious legislation.
A non-partisan emperor or individual official should not be interpreted as an individual who was blasé, or unconcerned with religious affairs. It is perhaps often assumed that because an individual followed one faith, he had therefore to be automatically and resolutely opposed, in both thought and deed, to any faith that was divergent, contrary or simply different from his own. Moreover, it is also perhaps assumed, as a corollary to that position, that those who have the power to enforce religious compliance will invariably choose to do so with force.

These assumptions are not supported by examination of the detailed evidence. The emperors offered consistent and certain support for Christianity in this period, testament to their belief in its superiority to other faiths. However, a desire to curtail incorrect beliefs and practices did not translate into a desire to demand correct beliefs and practices; and indeed there is no empirical and logical reason why the latter should necessarily follow the former. Theodosius came closest to demanding conformity with his Cunctos populos law, but crucially he appears to have lacked the will to actively ensure compliance and as such the degree to which he demanded and desired conformity to this law may be seriously questioned. To heretics Theodosius repeatedly said ‘thou shalt not,’ but that was not coupled with a serious effort to the effect of ‘thou shalt.’ Moreover, very little of Jewish practice (with the exception of CJ 1.9.7 of 30 December 393) was actually prohibited. Similarly, the same applied to paganism, with the exception of divination. Compelle intrare (Lk. 14.23), a phrase later to be so misunderstood and misused, was not perceived as a binding commandment by any fourth century emperor.

The practicalities of demanding (as well as enforcing) total adherence to the emperor’s faith probably weighed heavily on their decision (including Theodosius’) not to do so. Equally, it has been shown that heretics were the subject of the most hostile attention of the emperors; if emperors had demanded religious conformity from all their subjects, then one should expect to find as much and
similar legislation directed against pagans, Jews and apostates as that which existed against heretics.

It is perhaps unfortunate to have to finish this study with Theodosius, whose fourteen year reign provided more than a quarter of the laws in the 74 years here covered. Ending with him runs the risk of leaving an impression that prolific legislation and increasing intolerance was hereafter inevitable. However, the disinclination to issue legislation against heretics in the years between Constantine’s death in 337 to 372 (near the end of Valentinian’s reign) is evidence that such a state of affairs was not an inevitable consequence of the emperors’ (and empire’s) continuing and deepening embrace of Christianity.