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THE ESTABLISHMENT OF CHRISTIANITY AND THE PROSCRIPTION OF PAGANISM

BY

MAUDE ALINE HUTTMANN, Ph.D.

Instructor in History in Barnard College
Columbia University

New York
COLUMBIA UNIVERSITY
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PREFACE

The original purpose of this dissertation was to describe the measures taken by Constantine and his successors in the fourth century to limit or destroy the pagan cults. On examining Constantine's relation to paganism, however, it became evident that it was not enough to accept him simply as the first Christian emperor; it was imperative to understand something of his personal religious belief, and his work for the Christian Church, since both, it has been claimed, contributed to the general injury from which paganism suffered during his reign. The stories of Constantine's conversion and of his edicts of toleration led the author into a tangle of disputed questions through which she has sought to make a way that may easily be traversed by anyone who cares to go over the ground again.

Since the object in dealing with these particular problems and Constantine's legislation for the Christian Church was merely to aid in the comprehension of his general policy, it has seemed advisable to omit discussion of the Emperor's laws against heterodox Christianity. The question of heresy under the Christian emperors is so intricate as to demand separate treatment.

The limitations of time, and the space required for the discussion of Constantine's policy of toleration, have, unfortunately, made it impossible to complete the original scheme of incorporating in this thesis all the results of the author's researches into the legal position of paganism throughout the fourth century. Since she could not here treat the subsequent period so fully as she had the reign of

Constantine, she was inclined to publish as a separate work all her post-Constantine material. Nevertheless, Constantine's legislation stands in sharper outline when compared with that of his successors. Furthermore, to exclude the later laws seemed to make the whole book more useful by assembling together the entire mass of scattered anti-pagan legislation. The author therefore decided to append to her account of *Toleration under Constantine* the laws passed by his successors as preserved in the Codes of Theodosius and Justinian and to preface each group of laws with an outline of the main political events of each reign. The loss of unity entailed by the scheme, will, it is hoped, be offset by a greater usefulness to the student of the subject.

The author is happy to have this opportunity to express her lasting obligation to Professor James Harvey Robinson, under whom a large part of her graduate work was done. She is grateful to Professor Munroe Smith for his kindness in reading her manuscript and offering valuable criticisms. She also owes much to Doctor Louise Ropes Loomis for translation of Greek texts and advice in rendering the laws. Most deeply is she indebted to Professor James Thompson Shotwell, at whose suggestion this enterprise was begun and upon whom has fallen the burden of supervising its completion.

M. A. H.

Barnard College, May 1, 1914.

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PART I
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CHAPTER I

Constantine's Personal Religion

The historian is confronted with a difficult problem when he attempts to pass judgment on any man's religion. Even to weigh the significance of outward religious observance is no easy matter. Temperament, training, and worldly position all play important parts in determining, not only what shall be an individual's faith, but also, what shall be his expression of it before the world. If it is hard to put an estimate on public behavior, it is a doubly serious business to determine what feelings lie back of the acts. When the man whose religious conduct and feelings we are examining is a statesman, it seems well nigh impossible to be confident of finding the springs of his actions. Astute rulers of great empires have found the support of religion an invaluable assistance in strengthening their hold on their subpects. Some monarchs, while they gave outward adherence to a cult, have been secretly indifferent to it; others, while assuming an attitude of indifference, have derived personal saitsfaction from faith in its tenets, and observance of its rites. It is consequently, a difficult problem for the historian to determine whether a great statesman's religion is his own personal belief, or whether it is but part of his statecraft. Particularly is this the case where a monarch rules over peoples of different religions. He has then the arduous task of adjusting their various claims and of securing the support of the cults which have the most numerous, or the most fanatical adherents. In such a case

even the fullest and best of sources may still leave a doubt in the historian's mind. For who can tell whether the ruler is practising dissimulation or not? The more astute and successful he is, the more uncertain we become in our confidence in the sources we have. It is even possible that the monarch himself may be practising self-deception.

Such is the nature of the problem of Constantine's own religious belief. It is claimed by some historians that he was distinctly unreligious, while others find equal warrant in the sources for depicting him as the most devout of men whose religion was a matter of both faith and practice. Burckhardt, for example, whose biography written in the middle of the nineteenth century, still remains one of the important contributions toward the study of Constantine's character, viewed him as essentially unreligious. The opinion of recent scholarship, however, seems to take the opposite view. Whether Constantine were sincerely religious or not, the fact remains that he passed for such to many persons in his time. Before he was claimed by the Christians as a follower of the Cross, his piety and lively interest in religion excited the approval of pagans.[1] Eumenius, writing in 310, states that when he entered a village, statues of the gods were borne before him in order to please him, and that he was noted for his conspicuous devotion to Apollo,[2] and in 308, after wars in Gaul, he visited the temple

[1] *Eumenii Panegyricus Constantino Augusto*, chs. xxi and xxii, paragraphs 1 and 2.

[2] *Eumenii Gratiarum Actio, Const. Aug.*, ch. viii, par. 4. "Sed omnium Deorum nostrorum simulacra protulimus."

Eum. Panegyr. Const. Aug., ch. xxi, p. 1372, par. 3, "Ipsa hoc sic ordinante fortuna, ut te ibi rerum tuarum felicitas admoneret, Diis immortalibus ferre, quae voveras, ubi deflixisses, ad templum toto orbe pulcherrimum (*i. d.* of Apollo) immo ad praesentem, ut vidisti Deum." Also par. 4, "Vidisti enim, credo, Constantine, Apollinem tuum, comitante Victoria, coronas tibi laureas offerentem, quae tricenum singulae ferunt omen annorum." Likewise ch. xxi, p. 1373, par. 7, "Jam omnia

of that divinity in Autun and made it a rich gift.[1] At the same time the figure of the Sun-god appeared on his coins.[2] Eusebius calls Constantine "the pious son of a most pious and prudent father."[3]

One must not put too much faith in the enduring effect of family training—witness Julian; but the remark of Eusebius gains credibility from Constantine's actions as soon as he became Caesar, which apparently followed the line of toleration which had been set by his father. Just what deity Constantius Chlorus worshiped, history does not definitely settle. Eusebius would have us believe that the father of Constantine was at heart a Christian.[4] It has been pointed out that one of Constantine's sisters received the Christian name of Anastasia,[5] and it is known that although the name of Constantius Chlorus appears on edicts of persecution against the Christians, alongside those of his colleagues, the decrees were not enforced in his territory.[6] Such tolerant attitude, however, might come from a syncretism in religion, as well as from a firm and settled faith in Christianity.[7] The only thing we can say is, that ap-

te vocare ad se templa videantur praecipueque Apollo noster." *Cf.* ch. xxii, par. 2.

[1] *Ibid.*, ch. xxi, par. 7, "Merito igitur augustissima illa delubra tantis doneriis honestasti, et jam vetera non quaerant."

[2] Schiller, *Geschichte der römischen Kaiserzeit*, vol. ii, p. 204; *cf.* Gibbon, *The History of the Decline and Fall of the Roman Empire*, vol. ii, p. 291. Maurice, *Numismatique Constantinienne*, vol. ii, introduction, p. xxiii, thinks that Julian's accusation (*Oratio*, vii) that Constantine abandoned the Cult of the Sun, is proof that he had practised it before his conversion.

[3] *Historia Ecclesiastica*, bk. ix, ch. ix.

[4] *Vita Constantini*, bk. i, chs. xiii-xviii.

[5] *Cf.* Duchesne, *Histoire ancienne de l'Eglise*, vol. ii, p. 57.

[6] *Cf. infra*, ch. ii., p. 32.

[7] *Cf.* Beugnot, *La Destruction du Paganisme*, vol. i, p. 55; Schiller, *op. cit.*, vol. ii, p. 204; Boissier, *La Fin du Paganisme*, vol. i, pp. 18 *et seq.*

parently Constantine was reared in an atmosphere as hospitable to the persecuted religion as to the cults the empire tolerated.

The syncretistic movements of Constantine's day brought old and new religions into closer relationship and laid emphasis upon those cults which evoked personal devotion to a single deity. To all appearances, at least, Constantine's religion was affected by this movement. The worship of Apollo, the divine physician,[1] was part of the old state religion which had had a specially magnificent setting since Augustus's religious revival. The cult of Mithras offered a personal deity whose work for man's spiritual regeneration made him a rival to the Saviour of the Christians. It is evident that the substitution of Christianity for the religion of Apollo and Mithras was not so great a step as it might appear to later theologians, for the convert might closely approximate his ideas of the Christ to those of the victorious Sun-god, whose worship was so widely spread among the legions, or to Apollo, the light-bearer. However this may be, the Church historians, and Constantine himself—at least in later life—held to a more definite conversion and since the attention of subsequent writers, both pagan and Christian, fastened upon this incident as an epoch in the life of the emperor, we shall gain our best glimpse of the problem of his character and true attitude, by examining the various accounts in detail.

In 312, Constantine, whether from religious or from political motives, could realize the value of a propitious and powerful deity to prosper an undertaking. Diocletian's

[1] *Iatromantis* (physician and seer), *Oulios* (health-giving, able to purify the guilty and cleanse from sin). He was consulted, along with Esculapius, for remedies at the time of Galerius' last illness. Lactantius, *De Mortibus Persecutorum*, ch. xxxiii. He was supposed to be the father of Esculapius.

carefully wrought scheme for the imperial succession did not last out even his own lifetime.[1] Shortly after his abdication in 305, so many ambitious men snatched at the imperial purple that the Roman government became as hydra-headed a state as the world has ever seen. Towards the end of 312, the number of the emperors had so far been reduced, that only four remained: Maximin and Licinius in the East, and Constantine and Maxentius in the West. Personal ambition and the complexity of events made it impossible that the two rulers of the West should remain colleagues;[2] one or the other must yield his rule. Maxentius held Italy and was established in Rome where, according to the Christian historians, his oppressive measures and moral turpitude made him heartily detested.[3] Into Italy from Gaul Constantine hastened the latter part of 312, hoping to crush his rival. His victories in Italy culminated in the battle of the Milvian Bridge, October 28, 312, the battle with which is connected the story of Constantine's alleged adoption of Christianity.

Among the sources which deal with Constantine's conversion the two accounts of Eusebius meet us first. The "Church History" has only a slight and most unsatisfactory reference. After describing the preparation for the

[1] Eusebius, *H. E.*, bk. viii, ch. xiii. Schiller, *op. cit.*, vol. ii, p. 164, has an excellent account of the break-up of Diocletian's plan for the imperial succession.

[2] After the death of Galerius, Constantine and Licinius evidently made a compact agreeing to dispose first of Maxentius and then of Maximin. *Cf.* Zosimus' *History of the Roman Empire*, bk. ii, pp. 42 *et seq.*; also *Anonymus Valesii, Origo Constantini imperatoris*, bk. v, ch. xiii. The formal reasons given for the struggle between Constantine and Maxentius were: on Constantine's part, the misrule of Maxentius in Rome and Italy; on Maxentius' part, the intention to avenge his father's death, which he laid to Constantine's door. Eus., *V. C.*, bk. i, ch. xxvi.

[3] Eus., *H. E.*, bk. viii, ch. xiv; *V. C.*, bk. i, chs. xxxii-xxxv; Sozomen, *Historia Ecclesiastica*, bk. i, ch. ii.

impending battle with Maxentius, Eusebius says, "Constantine, who was the head of the empire in dignity and rank, having compassion upon those who were oppressed at Rome, invoking in prayer the God of Heaven, and his Word, Jesus Christ himself, the Saviour of all, as his aid, advanced with his whole army, proposing to restore to the Romans the benefits of that liberty which they had from their ancestors." [1] "Maxentius, putting confidence rather in the acts of sorcery than in the devotion of his subjects did not dare to go forth beyond the gates of the city. . . . But the emperor relying upon the asistance of God,[2] attacked the first, second, and third army of the tyrant and conquered them all." "Then, acknowledging that his aid was from God, he had his statue, cross in hand, set up in Rome as a memorial of his victory at the Milvian Bridge: and had inscribed upon it 'By this salutary sign, the true proof of bravery, I have saved and freed your city from the yoke of the tyrant'." [3]

[1] Eus., *H. E.*, Teubner Text, bk. ix, ch. ix.

[2] Constantine's enterprise was a perilous one. It was a hardy undertaking to attack Rome when one remembered that during the preceding decade two armies had recoiled from attacking the immortal city. Up to this time Constantine had fought only barbarians. The army of Maxentius was made up of the pretorian guard, picked soldiers who constituted Rome's garrison, and splendid, tried African troops. This army had vanquished Severus and Galerius and had checked all attempts to invade Italy. In numbers Constantine seems to have had about half as many men as Maxentius. Zos., bk. ii, p. 43; *Incerti Panegy. Constant.*, chs. iii and v. *Cf.* Lact., *De Mort. Persecut.*, ch. xliv. *Incerti Panegy.*, ch. iii, speaks of the superior forces of Constantine's opponent. This panegyric, written in 313, is sometimes attributed to Nazarius. Officers of Constantine did not hesitate to give utterance to their fears that the expedition would end in disastrous defeat. *Ibid.*, ch. ii, par. 4, "Quisnam te Deus, quae tam praesens hortata est majestas, ut, omnibus fere tuis comitibus et ducibus, non solum tacite mussantibus, sed etiam aperte timentibus. . . ."

[3] Eus., *H. E.*, bk. ix, ch. ix. *Cf.* Schultze, Die römische Bildsäule mit dem Kreuze in *Z. F. K. G.*, 1885, vol. vii.

The value of this account as a source is obviously open to criticism. In making Constantine invoke Jesus as the Word as well as the Saviour, we detect the theologian under the cloak of the historian. Eusebius implies in this story that when Constantine came into Italy, he was already a convinced Christian, and is followed in this by Sozomen, who distinctly states that Constantine was a Christian before he returned to Rome from the West.[1] Yet in a later report Eusebius connects the conversion more closely with the battle of the Milvian Bridge. In the account given in the "Life of Constantine", written some years later than the "Church History,"[2] we have less of Eusebius and more of Constantine since the account was as Eusebius says, taken directly from the emperor's lips. Constantine was gathering strength for the contest with Maxentius that was to decide who was to be master of the city of Rome, when he learned the extreme efforts his rival was putting forth to monopolize divine protection.

Being convinced, however, that he needed some more powerful aid than his military forces could afford him on account of the wicked and magical enchantments which were so diligently practised by the tyrant, he sought Divine assistance, deeming the possession of arms and a numerous soldiery of secondary importance but believing the co-operating power of Deity invincible and not to be shaken. He considered therefore on what god he might rely for protection and assistance; while engaged in this inquiry, the thought occurred to him that of the many emperors who had preceded him those who had rested their hopes in a multitude of gods and served them with sacrifices and offerings had in the first place been de-

[1] *Cf. infra*, p. 26.

[2] The *H. E.*, according to McGiffert, was undoubtedly completed between the latter part of 323 and the early part of 324. *Vide*, McGiffert, p. 45. The *V. C.* appeared between 337-340.

ceived by flattering predictions and oracles which promised them all prosperity and at last had met with an unhappy end while not one alone of their gods had stood by to warn them of the impending wrath of heaven. While one alone who had pursued an entirely opposite course, who had condemned their error and honored the one supreme God during his whole life, had found him to be the Saviour and Protector of his empire and the giver of every good thing. Reflecting on this and well weighing the fact that they who had trusted in many gods had also fallen by manifold forms of death without leaving behind them either family or offspring, stock, name, or memorial among men, while the God of his father had given to him on the other hand manifestations of his power and very many tokens; and considering further that those who had already taken arms against the tyrant and had marched to the battlefield under the protection of a multitude of gods had met with a dishonorable end . . . reviewing, I say, all these considerations he judged it to be folly indeed to join in the idle worship of those who were no gods and after such convincing evidence to err from the truth, and therefore felt it incumbent on him to honor his father's God alone.[1]

Accordingly, he called on him with earnest prayer and supplication that he would reveal to him who he was and stretch forth his right hand to help him in his present difficulties; and while he was thus praying with fervent entreaty a most marvellous sign appeared to him from heaven, the account of which might have been hard to believe had it been related by any other person. But since the victorious emperor himself long afterwards declared it to the writer of this history when he was honored with his acquaintance and society and confirmed his statements by an oath, who could hesitate to accredit the relation, especially since the testimony of after-time has established the truth? He said that at about noon, when the day was already beginning to decline, he saw with his own

[1] *V. C.*, bk. i, chs. xxvii, xxviii. *Cf.* Socrates, *Historia Ecclesiastica*, bk. i, ch. ii; also Philostorgius, *Historia Ecclesiastica*, bk. i, ch. vi.

eyes the trophy of a cross of light[1] in the heavens above the sun and bearing the inscription "Conquer by this". At this sight he himself was struck with amazement and his whole army which followed him on this expedition and witnessed the miracle. He said moreover that he doubted within himself what the import of this apparition could be and while he continued to ponder and reason on its meaning night suddenly came on; then in his sleep the Christ of God appeared to him with the same sign which he had seen in the heavens and commanded him to make a likeness of the sign which he had seen in the heavens and to use it as a safeguard in all engagements with his enemies.[2] The emperor constantly made

[1] It has been attempted from time to time to find a natural explanation for Constantine's vision. It has been suggested that Constantine saw the phenomenon of the mock suns—the real sun with three mock ones might have appeared like a cross. This phenomenon of the parhelion is not uncommon in northern, but rare in southern latitudes. Or if one insists on a materialistic interpretation, the cross may have been a halo such as Whymper saw after an accident on the Matterhorn, 1865, when he thought he saw three crosses for his three lost companions. *Cf. Cambridge Mediæval History,* vol. i, p. 4. Richardson, *Life of Constantine,* p. 490, note 2. Firth, in his *Constantine the Great,* p. 104, calls attention to the interpretation put on the aurora borealis in 1848. In France people saw in it the letters "L. N.." and regarded them as heaven's direction to vote for Louis Napoleon at the coming election. In Italy the phenomenon was taken to be the blood of the murdered Rossi calling for vengeance.

[2] *The British Museum Guide to the Early Christian and Byzantine Antiquities* has the picture of a medallion of Valens showing the labarum. Evidently the monogram ☧ had various forms at different periods, "some of which are identical with monograms found on the coinage of western Asia long before the foundation of Constantinople. One of them, ⌘, is used as an abbreviation for the word τρεχαλκον upon the coins of Herod I (B. C. 37—B. C. 41); another ☧, which most nearly corresponds to the description given by Lactantius of the sign seen by Constantine, stands for the word ἀρχοντος on Phrygian and Lydian coins of the time of the early Roman emperors. The use of such monograms as abridgments of words upon coins was commonest about the period of Septimius Severus (A. D. 193-211), and was thus long anterior to Constantine. The Chi-Rho, in the so-called Constantinian form, was used by Christians merely as an abbreviation of the

use of this sign of salvation as a safeguard against every adverse and hostile power and commanded that others similar to it should be carried at the head of all his armies.[1]

The second account of Eusebius became the popularly accepted one among Christians and both Socrates and Sozomen about a century later repeat it.[2] Socrates makes the point that Constantine realized that the Diocletian party had not profited at all from their worship of the pagan

name of Christ in inscriptions before A. D. 312, in ☧, for example, standing for "in Christ." Its independent use as an actual symbol of Our Lord is not proved before the time of Constantine, but it becomes common in the second quarter of the fourth century, at the close of which it is often flanked by α and ω." *V. op. cit.*, pp. 19-20. It is worth remembering that while the cross was used as a symbol in prehistoric times and by at least one pagan cult of the fourth century, it was not commonly employed openly as an independent symbol by Christians until the fifth century. As for its pre-Christian use, Soc., bk. v, ch. xvii, and Soz., bk. vii, ch. xv, relate that symbols of the cross were found in the temple of Serapis when destroyed by Theodosius.

Bury, in his appendix to Gibbon, *op. cit.*, vol. ii, p. 567, has some interesting evidence in regard to the monogram. He says that Rapp, in his paper, *Das Labarum oder Sonnenkultus* (*Jahrb. des Vereins von Altertumsfreunden in Rheinlände*, 1866, pp. 66 *et seq.*) showed that the monogram appears on Greco-Bactrian coins of the second and first centuries B. C. Bury says: "It appears still earlier on Tarentine coins of the first half of the third century. It is not clear that Constantine used it as an ambiguous symbol; nor yet is there a well-attested instance of its use as a Christian symbol before A. D. 323. *Cf.* Brieger, in his *Zeitschrift für Kirchen Geschichte*, 1881, vol. iv, p. 201. Several examples of the Labarum as described by Eusebius are preserved; I may refer especially to one on a Roman sarcophagus in the Lateran Museum." *Cf.* Burckhardt, *Die Zeit Constantins des Grossen*, pp. 349-350.

An excellent illustrated article on the Christian and pre-Christian use of the cross in various forms is that on Cross, in the *Encyclopedia of Religion and Ethics,* by D'Alviella, vol. iv, pp. 324 *et seq.*

[1] *V. C.*, bk. i, ch. xxxi.

[2] Socrates' birth is placed at 379, and the last year definitely mentioned in his history is 439. Sozomen's history was begun about the year 443. Soc., bk. i, ch. ii; Soz., bk. i, chs. iii-iv.

deities whom they sought to propitiate; but that his own father, who had renounced the various religions of the Greeks, had passed through life far more prosperously. Revolving these facts in his mind, and in a state of uncertainty as Constantine was marching at the head of his troops, he saw the vision. Socrates added that the standard in the form of a cross which Constantine prepared in accordance with the divine oracle, was preserved in the palace " even to the present time ".

Sozomen adds to his recital of the emperor's conversion his own idea why Constantine used the labarum in the army:

I think that Constantine changed the most honorable symbol of Roman power into the sign of Christ, chiefly that by the habit of having it always in view and of worshiping it, the soldiers might be induced to abandon their ancient form of superstition and to recognize the true God whom the emperor worshiped as their leader and their help in battle; for this symbol was always borne in front of his own troops and was at the command of the emperor, carried among the phalanxes in the thickest of the fight by an illustrious band of spearmen of whom each in turn took the standard upon his shoulders and paraded it through the ranks.[1]

Lactantius, the contemporary[2] of Constantine, has a laconic statement about the appearance of the Christian monogram in the army, but no word about any conversion. He declares that just before the battle of the Milvian Bridge " Constantine was directed in a dream to cause the heavenly sign to be delineated on the shields of his soldiers, and so to proceed to battle. He did as he had been commanded, and he marked on their shields the letter X with

[1] Soz., bk. i, ch. iv.

[2] Lactantius, the tutor of Crispus, wrote his "*De Mortibus Persecutorum*" shortly after the battle of the Milvian Bridge.

a perpendicular line drawn through it, and turned round thus at the top, being the cipher of Christ ☧.[1]

In the second story that Eusebius has given us of Constantine's conversion, the miraculous plays a large part in winning the emperor to faith in Christianity on the eve of his battle with Maxentius.[2] We are beyond our historical depth when we try to evaluate the story of a vision. We, therefore, turn eagerly to the historian from whom we hope to receive a report unbefogged by the mists of Christian prejudice. Alas! although there is no shimmer of the supernatural in the account of Zosimus the pagan, yet here too, the reasons given for Constantine's change of religion must be discounted. His story differs absolutely both as to the time and the occasion for the event, from the tale common to the ecclesiastical historians. Let us hear his account of the change of religion and the events which led up to it.

Now that the whole empire had fallen into the hands of Constantine, he no longer concealed his evil disposition and vicious inclinations, but acted as he pleased, without control. He indeed used the ancient worship of his country; though not so much out of honour or veneration as of necessity. Therefore he believed the soothsayers, who were expert in their art, as men who predicted the truth concerning all the great actions which he ever performed. But when he came to Rome, he was filled with pride and arrogance. He resolved to begin his impious actions at home. For he put to death his son Crispus, styled (as I mentioned) Cæsar, on suspicion of debauching

[1] Lact., *op. cit.*, ch. xliv.

[2] Pagans as well as Christians believed that miraculous assistance had been given to Constantine in his combat with Maxentius. *Cf. Incerti Panegyr.*, ch. ii, p. 1406, par. 5; and again ch. ix, par. 1, "Haec omnia Imperator cum cogitares, scires, videres, nec te paterna gravitas nec tua natura temerarium esse pateretur, dic, quaeso, quid in consilium, nisi divinum numen, habuisti?" *Cf. Nazarii Panegyricus*, ch. xiv for an account of heavenly legions at the battle.

his mother-in-law Fausta, without any regard to the ties of nature. And when his own mother Helena expressed much sorrow for this atrocity, lamenting the young man's death with great bitterness, Constantine, under pretence of comforting her, applied a remedy worse than the disease. For causing a bath to be heated to an extraordinary degree, he shut up Fausta in it, and a short time after took her out dead. Of which his conscience accusing him, as also of violating his oath, he went to the priests [1] to be purified from his crime. But they told him there was no kind of lustration that was sufficient to clear him of such enormity. A Spaniard named Ægyptius, very familiar with the court ladies, being at Rome happened to fall into converse with Constantine, and assured him that Christian doctrine would teach him how to cleanse himself from all his offenses; and that they who received it were immediately absolved from all their sins. Constantine had no sooner heard this than he easily believed what was told him, and forsaking the rites of his country, received those which Ægyptius offered him; and for the first instance of his impiety, suspected the truth of divination . . . and applied himself to the abolishing of the practice.[2]

Sozomen [3] has a noteworthy critique of the Zosimus story.

It appears to me that this story was the invention of persons who desired to vilify the Christian religion. Crispus, on whose account it is said that Constantine required purification, did not die till the twentieth year of his father's reign;

[1] Soz., bk. i, ch. v, says he is reported to have inquired of the philosopher Sopater.

[2] Zosimus, *History of the Roman Empire*, bk. ii, pp. 51 *et seq.* For a critique of the legend of Constantine's baptism by Silvester, *v.* Duchesne, *Liber Pontificalis*, bk. i, Introduction, p. cvii. *Cf.* Malalas, *Chronographia*, in *Corpus Byzantinae Historiae*, vol. iv, bk. xiii, for the story of Constantine's baptism by Silvester without any mention of a plague.

[3] Soz., bk. i, ch. v.

he had the second place in the empire and bore the name of Caesar and many laws framed with his sanction in favor of Christianity are still extant. That this was the case can be proved by referring to the dates affixed to these laws, and to the lists of the legislators. It does not appear likely that Sopater had any intercourse with Constantine whose government was then centered in the regions near the ocean and the Rhine; for his dispute with Maxentius, the governor of Italy, had created so much dissention in the Roman dominions, that it was then no easy matter to dwell in Gaul, in Britain, or in the neighboring countries in which it is universally admitted Constantine embraced the religion of the Christians previous to his war with Maxentius and prior to his return to Rome and Italy; and this is evidence by the dates of the laws which he enacted in favor of religion. But even granting that Sopater chanced to meet the emperor or that he had epistolary correspondence with him, it cannot be imagined the philosopher was ignorant that Hercules, the son of Alcmena, obtained purification at Athens by the celebration of the mysteries of Ceres after the murder of his children, and by Sphitus, his guest and friend. That the Greeks held that purification from guilt of this nature could be obtained is obvious from the instance I have just alleged, and he is a false calumniator who represents that Sopater taught the contrary. I cannot admit the possibility of the philosopher's having been ignorant of these facts; for he was at that period esteemed the most learned man in Greece.

Sozomen here has called attention to several of the objections that prevent our accepting Zosimus' tale. On the face of it. Zosimus' reasoning is specious. At bottom, however, there may be some truth in the supposition that Constantine found in the Christian doctrine of the forgiveness of sin, ease of conscience he could not obtain from the pagan cults with which he was acquainted. Historians [1]

[1] Victor Schultze in article Constantine in *New Schaff-Herzog*

who hold that Constantine had become a Christian by 312, whether before or after he left Gaul for his campaign against Maxentius, find a fundamental difficulty in accepting Zosimus' story, since he places the date of Constantine's conversion as late as 326, the time of the deaths of Crispus and Fausta. This difficulty, however, should not be so serious for the historians who hold that Constantine was not a convert to Christianity before his conquest of Licinius in 324.[1]

Encyclopedia of Religious Knowledge, vol. iii, p. 250; also in his *Geschichte des Untergangs des Griechisch-römischen Heidentums*. pp. 33-34; Boissier, *La Fin du Paganisme*, vol. i, pp. 23 *et seq.*; Allard, *Le Christianisme et L'Empire Roman de Néron à Theodose*, p. 147; Duchesne, *L'Histoire ancienne de l'Eglise*, vol. ii, p. 57; Firth, *op. cit.*, p. 104; *v.* Julian's *Caesars*, p. 290. "Constantine found his son installed there (near Wantoness), and crying to all-comers, 'Approach boldly, corrupters, sacrilegious murderers and infamous men; I will instantly make you pure again by bathing you in this water; and whoever again falls back into the same crime, I will make pure again, as before, if he strikes his breast and beats his head.'" Also Seeck, *Die Geschichte des Untergangs der Antiken Welt*, vol. i, p. 62.

[1] There is a difference of opinion as to whether the defeat of Licinius occurred 323 or 324. H. D. Jones, in the *Encyclopedia Britannica*, vol. vi, pp. 988 *et seq.*, believes that formulae employed in dating Egyptian papyri seem to point to 324 as the date of the defeat rather than 323. Seeck, too, accepts 324.

Brieger, *op. cit.*, pp. 165 *et seq.*, believes that Constantine did not become a Christian suddenly. He thinks that Constantine, even after the battle of the Milvian Bridge, worshiped a powerful deity which sometimes was identical with the Christian God, sometimes with the Sun-god; and that he went through various phases of religious change which culminated in his baptism just before his death. He declares that only after the conquest of Licinius did Constantine confess his determination to be the servant of the God who had led him to victory. Beugnot, too, *op. cit.*, vol. i, pp. 59 *et seq.*, does not believe that Constantine was a Christian in 312. He insists that only after his defeat of Licinius did Constantine definitely join the Christian Church. *Cf.* Marquardt, *Le Culte chez les Romains*, vol. i, p. 139: "324 Constantine pronounced for Christianity. Moreover, the emperor did not become a Christian himself and did not decree the

However students may differ as to the date of Constantine's conversion, they must agree in rejecting the statement of Zosimus that it was after the deaths of Constantine's wife and son that he first impiously "suspected the truth of divination". As a matter of fact as early as 319,[1] Constantine had forbidden private divination; and in 321 or 324,[2] when Constantine and Crispus were both consuls, they had passed a decree against harmful magic. Furthermore, we know that Constantine must long have felt sceptical regarding the value of some divinations, for he had disregarded the omens taken before his battle with Maxentius, and had proceeded on his way, in spite of the warnings.[3] Constantine's relation to the whole question of divination will be treated later.

These are the earliest accounts of Constantine's change of religious attitude. We have seen that there is diversity of opinion among historians as to when this change occurred. There is equal discord of views in regard to the identity of the deity upon whom Constantine called before his battle with Maxentius. Some scholars contend that the god whose protection Constantine sought in his campaign

abolition of paganism. Constantine never broke entirely with the traditions of the Roman religion. Pauly-Wissowa, *Real-Encyclopaedie des classichen Altertums Wissenschaft,* vol. iv, pp. 1021 *et seq.,* contends that between the conquest of Maxentius and Licinius, Constantine was content with assuring a legal position and certain privileges to Christianity; but that from 324 he departed from paganism. In proof of this view he refers to the emperor's part in the Council of Nicaea, the Christian character of the inscriptions on the later coins, and Constantine's baptism just before his death.

[1] *Codex Theodosianus*, edition Mommsen, ix—16—1, see *infra*, p. 162 for text. *Cf. C. Th.*, xvi—10—1.

[2] *C. Th.*, ix—16—3 v., *infra*, p. 163 for text.

[3] *Incerti Panegyricus Constantine Augusto Dictus*, ch. 2, p. 1406, par. 4. "Contra consilia hominum, contra aruspicum monita ipse per temet liberandae urbis tempus venisse sentires?"

against Maxentius was not the god of the Christians but the all-ruling spirit of the deists.[1]

We cannot go further into this complicated problem.[2]

[1] H. Gwatkin, in the *Cambridge Mediæval History*, vol. i, p. 4, declares that Constantine, although clear about monotheism, was not so clear about the difference between Christ and the unconquered Sun. Richter (*Das Weströmische Reich*, pp. 84 *et seq.*) holds him a monotheist to the time of his death. Burckhardt, *op. cit.*, thinks it possible that the emperor may have confused Christ with the Sun-god and thought he was one of many gods. Burckhardt says a monogram like ☧ was in use on Oriental standards in pre-Christian times as an abbreviation for the Sun; and that "soli invicto comiti" was used on the coins until Constantine's death.

[2] Schiller, *op. cit.*, vol. ii, pp. 206 *et seq.*, has carefully examined the coinage of Constantine's reign in hopes of discovering something to aid in judging the emperor's religious policy. He found from the Western mints coins bearing the figures of (a) Mars, (b) the Genius of the Roman People, and (c) the Sun-god. The coins with the figure of Jupiter were not struck in the West, but in the mints of Licinius. Schiller asserts that the figures of Mars and the Genius of the Roman people were not stamped on the coins of Constantine after the war with Maxentius, and that by 317 coins with those figures had disappeared. The image of the Sun-god was used a little later, but by 323 it, too, had ceased to be employed on the coins. We may therefore say, declares Schiller, that from 315 to 323 the pagan figures were disappearing from Constantine's coinage and their place was being taken by such neutral inscriptions as *beata tranquilitas, gloria exercitus.* Towards the close of the reign, copper coins were issued on whose reverse were shown two soldiers with the monogram ☧. Among the references in the sources that depict Constantine as a Christian, *vide* Soz., bk. i, ch. viii; Eus., *V. C.*, bk. iii, ch. ii. "For truly he maintained a continual testimony to the Christ of God with all boldness and before all men, and so far was he from shrinking from an open profession of the Christian name that he rather regarded this as his highest honor, now impressing on his face the salutary sign and now glorying in it as the trophy which had led him on to victory." Also Eus., *V. C.*, bk. i, ch. xxxii, and bk. iv, ch. xiii, giving the letter to the king of the Persians in which Constantine avows his faith in Christianity; ch. xxix, in which the emperor indulges in harsh language against paganism. According to Eus., *V. C.*, bk. iv. ch. lvi, when on his expedition to Persia he carried in his train a church-like tent in which he might offer prayers with the bishops who accompanied him.

It would seem from the evidence of our sources that Constantine did experience some change of religious attitude in the year 312, but just what that change was, it is impossible to say. If he became the sincere Christian that Eusebius makes him out, there are certainly some difficult problems to solve in connection with his private life later in his reign. Yet, as we said at the start, we cannot judge the religion of an emperor as we can that of a private individual. Constantine may have believed himself a Christian from the Milvian Bridge, although he had still to acquire the true and wiser meaning of the religion. The fact that he was baptized only shortly before he died does not make for or against our point of view. It was, we must however recollect, no unusual practice in that age for devout Christians thriftily to postpone enjoying the sacrament of baptism until death's approach in order to profit by its undiscounted value.[1]

This study, however, is concerned only incidentally with the problem of Constantine's private character. The problem before us is rather to determine his attitude towards the religions of the empire, as displayed in his public policy. Even here, however, we shall find the sources not at one, and often, almost as insufficient as those which bear upon his private life.

Cf. Eus., *H. E.,* bk. ix, ch. xi; *Eusebii Oratio,* ch. ii; Soc., bk. i, ch. iii; Eunapius, *Vitae Sophistarum,* ch. lvi. We must remember that Constantine educated his children as Christians and that the pagan Julian execrated his memory. A whole series of Constantine's acts might be cited to prove that faith in Christianity animated them. After 324, Eus., *Orat.,* ch. x, par. 5, writes: "No more, as in former times, is the babbling of impious men heard in the imperial palace; but priests and pious worshipers of God together celebrate his majesty with royal hymns of praise."

[1] Such baptisms were called "clinic baptisms." The Catholic Church which accepts 312 as the date of Constantine's conversion, is erecting a church on the site of the battle of the Milvian Bridge to commemorate the 1600th anniversary of that event.

CHAPTER II

Edicts of Toleration

With the battle of the Milvian Bridge are connected not only the puzzling speculations regarding Constantine's religion but also the beginnings of his legislation for the Christians.

Before considering this legislation, however, it is evident that we must determine, as far as possible, the position of the Christian Church throughout the Roman Empire in the year 312, when Constantine overthrew the rule of Maxentius in Italy. We need to know the legal position of Christianity; what relation it bore to the other cults of the state; what corporate rights and privileges it possessed, and how far its clergy and laity were free to fulfill their religious obligations. To understand all this, we must glance at the history of the Church during the preceding decade.

Two years before the close of Diocletian's reign the Roman government began its most thorough-going attempt to exterminate Christianity.[1] It decreed, that churches were everywhere to be destroyed and the scriptures burned, while Christians holding positions of honor should suffer degradation.[2] Then, shortly after, another edict[3] ordered

[1] The series of four Edicts published by Diocletian against the Christians has not been handed down to us in legal form. The provisions, however, have been preserved in the writings of Eusebius and Lactantius. Eus., *H. E.*, bk. viii, ch. ii, and *Martyrs of Palestine*, ch. iii; Lact., *op. cit.*, chs. xii and xiii.

[2] First Edict of Diocletian Eus., *H. E.*, bk. viii, ch. i. Lact. *op cit.*, ch. xiii.

[3] Second Edict of Diocletian Eus., *H. E.*, bk. viii, ch. i. Lact. *op. cit.*, ch. xiii.

the imprisonment of all Church officials, who were later [1] allowed to purchase their release by sacrificing. Finally, a general decree was published, requiring "that all people should sacrifice at once in the different cities, and offer libations to the idols".[2]

These edicts were proclaimed throughout the length and breadth of the land. In Gaul and Britain, however, the mild disposition or the religious proclivities of Constantius Chlorus seem to have tempered their severity. There is a question as to whether Constantius forbade Christian assemblies or destroyed churches.[3] Certainly he did not persecute the Christians for their failure to conform to paganism, and he allowed them to remain in the army and about the court. In Italy, Africa, and Spain, which were under Maximian's rule, the number of martyrs was not small. It was, however, in the East, that the provisions of the edicts were most strictly enforced; partly because of the greater fanaticism and numbers of the Christians there, and partly because of the immediate presence of Galerius. This Caesar of Diocletian, some contemporaries [4] believed, prompted the issuing of the whole series of edicts against the Christians; and when he became Augustus, after Dio-

[1] Third Edict of Diocletian, *ibid.*

[2] Fourth Edict of Diocletian *Mart. Pal.*, Lact. *op. cit.*, chs.xvi and xvii, which made of Christianity a *religio illicita* for the first time since the toleration edict of Gallienus.

[3] "He took not the smallest part in the war against us, but preserved the pious that were under him unharmed and unabused. He neither threw down the church buildings, nor did he devise anything else against us." Eus., *H. E.*, bk. viii, ch. xiii. *Cf. V. C.*, bk. i, chs. xiii-xvi, and Lact., *op. cit.*, ch. xv.

[4] *Cf.* Lact. *op. cit.*, ch. xi. Eus., *H. E.*, bk. viii, ch. xxii. "He is reported to have been the original author of the misery of the persecution, having endeavored long before the movement of the other emperors to turn from the faith the Christians in the army, . . . and finally inciting his partners in the empire to the general persecution."

cletian's abdication in 305, he persevered in the policy of persecution, until the course of events made it seem advisable to substitute a policy of toleration towards this troublesome sect. In 311, the pagan gods, whom he had supplicated, had failed to give him relief from the agony of the malady from which he was suffering.[1] He concluded, therefore, to bargain for the prayers of Christians, who might obtain from their God the bodily healing he sought. Accordingly, Galerius proceeded to publish an edict, granting toleration to the Christians.[2] The document was published in the name of Galerius and of his colleagues, Constantine and Licinius. Maximian's name does not appear upon the copies of the edict which have come down to us.[3] This law is of more than incidental interest. From it, rather than from the later legislation of Constantine, we must date the line of tolerant edicts which ultimately resulted in establishing Christianity as the state religion. It runs as follows:

Amongst our other measures for the advantage of the Empire, we have hitherto endeavored to bring all things into conformity with the ancient laws and public order of the Romans. We have been especially anxious that even the Christians, who have abandoned the religion of their ancestors, should return to reason. For they have fallen, we know not how, into such perversity and folly that, instead of adhering to those ancient institutions,[4] which possibly their own forefathers established,

[1] Lact., *op. cit.*, ch. xxxiii; *cf.* Eus., *H. E.*, bk. viii, ch. xvii.

[2] For text *vide Lact.*, ch. xxxiv and Eus., *H. E.*, bk. viii, ch. xvii.

[3] Hülle, *Die Toleranzerlasse römischer Kaiser für das Christentum bis zum Jahre 313*, p. 48, believes that his name stood originally in the edict. Maxentius was never recognized as emperor by any but his father Maximian.

[4] *v.* McGiffert's note 3, page 339 for the interpretation of this phrase. He believes it refers, not to Christianity, but to paganism.

they have arbitrarily made laws of their own and collected together various peoples from various quarters.

After the publication, on our part, of an order commanding the Christians to return to the observance of the ancient customs, many of them, it is true, submitted in view of the danger, while many others suffered death. Nevertheless, since many of them have continued to persist in their opinions and we see that in the present situation they neither duly adore and venerate the gods nor yet worship the God of the Christians, we, with our wonted clemency, have judged it wise to extend a pardon even to those men and permit them once more to become Christians and re-establish their places of meeting; in such manner, however, that they shall in no way offend against good order.[1] We propose to notify the magistrates in another mandate in regard to the course that they should pursue.

Wherefore it should be the duty of the Christians, in view of our clemency, to pray to their God for our welfare, for that of the Empire and for their own, so that the Empire may remain intact in all its parts, and that they themselves may live safely in their habitations.[2]

This document gave freedom of worship to men who were already Christians. It failed to state, specifically, that all men were free to adopt the religion of Jesus, although this permission may by implication have been intended. Christians were allowed to hold assemblies, but there was no provision for restoring property that had been seized from Christian individuals or corporations, during the eight preceding years, nor was there any mention of recompense for suffering or losses incurred through the persecution for religion's sake. The employment of the specified toleration

[1] McGiffert, note 9 to Eus., *H. E.*, bk. viii, ch. xvii.

[2] Translation from Robinson's *Readings in European History*, vol. i, p. 22.

appeared precarious, for it would seem that an unfriendly magistrate in a hostile community might forbid Christians from holding assemblies, on the pretext that such gatherings led to popular disturbances, which created offenses against good order. The historian must ever regret that Galerius' instructions to his magistrates have not been preserved; from them we might have been able to understand exactly how far the freedom of the Christians was limited.

To judge from the accounts of Eusebius and Lactantius, Constantine and Licinius seem to have lived up to the letter and the spirit of this law.[1] Maxentius, also, although failing to publish the decree in due order, permitted freedom of worship to the Christians in the territories of Italy and Africa.

Maximin Daja,[2] who ruled the East,[3] pursued a peculiar course toward the Christians.[4] Instead of promulgating Galerius' edict, as custom demanded, he verbally ordered his pretorian prefect to cease persecuting the Christians, and to advise magistrates of cities to do the same. The circular [5] sent out by the prefect contains nothing resembling the provisions of Galerius' edict which gave to Christians individual toleration and recognized their religion as *religio licita*. It states simply that persecutions are to stop. The difference between the spirit of this rescript and that of the edict of Galerius was not, indeed, at first perceived by the Christians of the Orient, who rejoiced in the belief that full

[1] Lact., ch. xxiv declares that Constantine protected the Christians directly after his father's death, when he assumed the government in the West.

[2] Maximin Daja was appointed Caesar by Diocletian at the time of his abdication, May, 305, at the same time that he created Galerius emperor. Maximin's name as that of emperor appears on coins at the same time that those of Licinius and Constantine do. *Vide* Schiller, *op. cit.*, vol. ii, p. 178. *Cf.* McGiffert, p. 358, note 1.

[3] Eus., *H. E.*, bk. ix, ch. i. [4] *Ibid.* [5] *Ibid.*

toleration was accorded them. But this happiness lasted not quite six months. Galerius' death followed shortly after the publication of his edict of toleration, greatly increasing Maximin's territory and power.[1] The Augustus of the Orient again began to show his animosity towards the Christians by denying them certain privileges of assembly.[2] He seems also to have incited, artfully, his pagan subjects to petition that the Christians be exiled. Finally a bloody persecution set in.[3] It was while engaged in thus actively persecuting the Christians that this emperor attempted to regalvanize paganism.

He introduced a new mode of government in things respecting religion and for each city he created a high priest, chosen from among the persons of most distinction. The office of these men was to make daily sacrifice to all their gods and with the aid of former priests to prevent the Christians from erecting churches or from worshiping God either publicly or in private; and he authorized them to compel the Christians to sacrifice to idols, and on their refusal, to bring them before the civil magistrate; and as if this had not been enough, in every province he established a superintendent priest, one of chief eminence in the state, and commanded that all those priests newly instituted should appear in white habits, that being the most honorable distinction of dress.[4]

[1] Galerius' edict was drawn up after March 1, 311 and published in Nicomedia, April 30; therefore this change of policy must have begun in October or thereabouts.

[2] Meetings in cemeteries—*v. Lact.*, ch. xxxvi.

[3] Eus., *H. E.*, bk. ix, ch. i. The rescript of Maximin in answer to the petitions of the inhabitants of Tyre against the Christians is given in Eus., *H. E.*, bk. ix, ch. xvii. *Cf.* Lact., ch. xxxvii.

[4] Lact., ch. xxxvi. cf. Eus., *H. E.*, bk. ix, ch. iv. This attempt of Maximin to organize paganism on the lines of the Christian Church and to endow paganism and its priests with more positive duties proves him the forerunner of Julian in his religious administration. Like Julian's later scheme the attempt was futile, but was in itself a confession of the power of Christian ecclesiastical organization.

It is evident, in view of this rehearsal of facts, that in 312, Christianity was treated as *religio licita* save in the lands under Maximin's dominion. There had however been no enactment granting corporate rights to the Church such as those enjoyed in other cults. No definite statement had been made by the government providing for reinstating the degraded Christian officials; nor was any system of recompense instituted for pecuniary losses or other sufferings. Galerius merely allowed Christians to follow their religion, provided they did nothing contrary to the law. Such, in brief, was the situation of Christianity. when Constantine defeated Maxentius at the Milvian Bridge, October, 312.

Maxentius perished in the battle of the Milvian Bridge, and following that victory, Constantine was welcomed as a saviour and benefactor by the Senate and the people of Rome, who dedicated to his honor the arch that bears his name.[1] We saw above [2] how he caused his statue with the cross to be set up in Rome.[3] According to Eusebius, he then proceeded to draw up a decree, providing complete toleration for Christians.[4] The statement runs as follows:

[1] For an interesting archeological discussion of the origin of the Arch of Constantine, see Frothingham's articles in the *Century* for January, 1913, "*The Mystery of the Arch of Constantine Unveiled.*" For a discussion of the arch and its inscription, see Lanciani, *Pagan and Christian Rome,* pp. 20 *et seq.*

[2] *Cf. supra*, p. 18.

[3] Brieger in *Z. F. K. G.*, 1880, p. 45 thought that in this case the passage in *H. E.* had been copied from *V. C.* Schultze, however, (*ibid.*, 1885, vol. vii, p. 343) has shown that Eusebius mentioned the statue in question in his speech at Tyre in 314, (*H. E.*, bk. x, ch. iv, par. xvi) and this adds considerable weight to the evidence. For full treatment of the story of the statue with the cross, see Schultze, "*Die römische Bildsäule mit dem Kreuze,*" *Z. F. K. G.*, 1885.

[4] An inscription shows that Constantine was in Rome on the day after the battle. *Vide Corpus Inscriptionum Latinarum*, ed. Mommsen, vol. i, p. 352. He remained there about three or four months. *Cf.* Zosimus, bk. ii, p. 44; Eus., *H. E.*, bk. ix, ch. ix, and *V. C.*, bk. i, ch. xli.

And after this both Constantine himself and with him Licinius, who had not yet been seized by the madness into which he later fell, praising God as the author of all their blessings, with one will and mind, drew up a full and most complete decree in behalf of the Christians, and sent an account of the wonderful things done for them by God and of the victory over the tyrant, together with a copy of the decree itself, to Maximinus, who still ruled over the nations of the East, and pretended friendship toward them.

This text, along with a later statement [1] of Eusebius in the same chapter, following the citation of the letter of toleration written by Maximin to his prefect Sabinus, has been regarded as establishing the fact that Constantine and Licinius issued an edict at Rome on behalf of the Christians.

Its existence is accepted by Tillemont, Beugnot, Chastel, De Broglie, Boissier, Richter, Burckhardt, Lasaulx and Sesan.[2] Richter argues that probably the reason why the text of the Edict has not been preserved by Christian transmitters of Constantine's history is, that it was a bare state-

[1] "None of our people, therefore, ventured to hold meetings or even to appear in public, because his (Maximin's) communication did not cover this, but only commanded to guard against doing us any injury, and did not give orders that we should hold meetings or build churches or perform any of our customary acts. *And yet Constantine and Licinius, the advocates of peace and piety, had written him to permit this, and had granted it to all their subjects by edicts and ordinances.*"

[2] Tillemont, *Histoire des Empereurs*, vol. iv, p. 146, Beugnot, *His. de la destruct. du paganisme*, vol. i, p. 57. "Peu après son entrée dans Rome, Constantine publia conjointement avec Licinius un édit favorable aux Chrètiens; il paraît que cet edit ne leur accordait pas la liberté entière de leur culte; il ne nous est point parvenu." Chastel, *His. de la destruct. du paganisme*, p. 52. De Broglie, *L'Église et l'Empire Romaine*, vol. i, p. 239. Boissier, *op. cit.*, vol. i, p. 49. Richter, *Das weström. Reich*, p. 62. Burckhardt, *op. cit.*, pp. 322 *et seq.* Lasaulx, *Der Untergang des Hellenismus*, p. 22. Sesan, *Kirche und Staat in römisch-byzantimischen Reiche seit Konstantin d. Grossen bis zum Fall Konstantinopel*, 1911.

ment of toleration and did not manifest Constantine as an ardent champion of the Cross. They wished to have him appear full of enthusiasm for Christianity from the day of his victory over Maxentius.[1]

To-day other historians, such as McGiffert and Hülle and Wittig deny the existence of an Edict of Rome granting toleration to the Christians.[2] They believe that the beginning of the first of the above quoted pasages from Eusebius refers to an edict published after a conference of Constantine and Licinius a few months later—the Edict of Milan. The latter part of the passage undoubtedly refers to a letter sent by Constantine to Maximin, to acquaint him with the victory over Maxentius, and in this letter there may have been a command to cease persecuting the Christians.[3] Hülle insists that the second passage as well refers to the Edict of Milan.[4]

In view of the intensive work of Hülle on the subject of the Edict of Rome and our disagreement with his point of view, we give his argument at length. He points out that[5] the Senate had given the first position in the state to Constantine, who could therefore exercise dominion over the whole empire and prohibit maltreatment of Christians, even in Maximin's territory. He believes Eusebius wrong

[1] p. 62.

[2] McGiffert, Eus., *H. E.*, note 7 to page 364. Hülle, *Die Toleranzerlasse der römischen Kaiser f. das Christentum*, pp. 64 *et seq.* *J. Wittig Das Toleranzrescript v. Mailand*, p. 64 in *Konstantin der Grosse u. seine Zeit*, ed. Dölger, 1913. Other historians, while not explicitly denying the existence of this edict, ignore it in their narration of events, *c. g.* Pauly-Wissowa, *Real-Encycl. des class. Altertum-Wiss*, and Duchesne, *Hist. anc. de l'Eglise.*

[3] *Cf.* Hülle, p. 65; also Allard, *Le Christianisme et l'Emp. romaine*, p. 148 and Seeck's *Geschichte d. Untergang d. Ant. Welt*, vol. i, p. 146.

[4] *Cf. op. cit.*, pp. 64 *et seq.* Hülle cites Lact., ch. xxxvii to support his opinion.

[5] *V.* pp. 64 *et seq.*, for continuance of discussion.

in giving Licinius any share in this communication, for Licinius had not taken part in the battle against Maxentius, and had not, at this time, experienced the wonders of the Christian God. He watched the conflict from his residence and only met Constantine at Milan in the opening of the year 313.[1] Hülle agrees with Keim in believing that Eusebius does not distinguish between the letter of instruction from one emperor to another and the imperial law or Edict of Milan issued early in the year 313. The account of a victory won three months before would scarcely be sent to Maximin along with this imperial law. Neither could Maximin have received this law before his last campaign against Licinius, which began the middle of the winter 313, and which abruptly broke up the conference at Milan. Eusebius, in the last words of the quoted selection, states positively that when the account of the victory at the Milvian Bridge was sent to Maximin, he "still pretended friendship toward them." Furthermore, Hülle cannot believe Constantine alone at Rome drew up such an edict of toleration for the Christians. (a) Such an edict has not come down to us. (b) If such an edict had been issued, it would be strange to find scarcely three months later a second one similar in character drawn up at Milan. (c) Finally, there was no need for an edict of toleration in Rome. Maxentius did not persecute the Christians for their faith, and had given back property that had been earlier seized from the churches,[2] even if he had not expressly recog-

[1] Hülle, p. 96, says they were together in Milan from the middle of January to the beginning of April.

[2] Allard *op. cit.* pp. 146-7 points out that when war was declared, Maxentius had already authorized Pope Miltiades to reclaim from the urban prefect the ecclesiastical properties confiscated since 304; and permitted him to translate from Sicily the remains of his predecessor in order to inter them in the Cemetery of Callistus. *Cf.* De Rossi, *Roma sotterranea*, vol. ii, p. 259.

nized Christianity as a *religio licita.* Moreover, with the fall of Maxentius, Christians could expect their religion to be recognized as one of the *religiones licitae,* for the universal law of Galerius,[1] published in Constantine's name also, would become operative, and in consequence, there was no need for a new edict for the Christians of Italy and Africa. Hülle declares then that this passage must be taken to refer to the legislation at Milan.[3] He remarks that it is not strange that Eusebius, who knew little about the affairs in the West, made a mistake. Hülle believes that it was Constantine's letter to Maximin, announcing the overthrow of Maxentius, that led Maximin to publish his rescripts to Sabinus, granting restricted toleration to Christians.[2]

Maximin and Maxentius had been secret allies,[3] and

[1] *v. supra,* pp. 33-34.

[2] McGiffert, p. 364, note 18 adopts the view that it was not the fear of Constantine and Licinius which led to this rescript; for he was bent upon war against them and attacked Licinius at the earliest possible moment. He cannot have cared, therefore, to take any especial pains to conciliate them. He was probably moved by a desire just at this crisis to conciliate the most numerous and influential body of his subjects whom he had persecuted, in order that he might not have to contend with disaffection and disloyalty within his own dominions during the impending conflict with Licinius.

[3] Lact., *op. cit.,* ch. xxxvii. "While occupied in this plan he received letters from Constantine which deterred him from proceeding in its execution, so for a time he dissembled his purpose. Nevertheless any Christian that fell into his power was privily thrown into the sea." Lact., ch. xliv: "This destructive war being ended, Constantine was acclaimed as emperor, with great rejoicings by the senate and people of Rome. And now he came to know the perfidy of Daja; for he found the letters written to Maxentius and saw the statues and portraits of the two associates which had been set up together. The senate, in reward of the valour of Constantine, decreed to him the title of Maximus (the Greatest) a title which Daja had always arrogated to himself. Daja, when he heard that Constantine was victorious and Rome freed, expressed as much sorrow as if he himself

Maximin felt it profitable after his confederate's death to strengthen his position against Constantine and Licinius, by winning the support of his Christian subjects. As we saw above, Constantine sent word of the defeat of Maxentius to Maximin, who then published a decree giving half-hearted toleration again to the Christians.[1]

The Christians, however, had grown wise under Maximin's double dealing, and recognized that this latest edict of pretended toleration carried no more real liberty than the earlier rescripts had done. They, therefore, "did not venture to hold meetings or even to appear in public, because his communication did not cover this, but only commanded to guard against doing us any injury, and did not give orders that we should hold meetings or build churches or perform any of our customary acts."[2] Only after Maximin's defeat by Licinius at Adrianople, April 30, 313, did he publish a complete and unequivocal edict of toleration for the Christian community.

To return to the question of the existence of an Edict of Rome. It is a fact, to be sure, that no text of a Roman edict has come down to us; but, for that matter, neither do we possess texts of the persecution edicts of Diocletian. Notwithstanding Hülle's contention, there would seem to have been reason for Constantine, upon his entry into Rome, to make some formal statement in regard to his policy towards the Christians. His new subjects, both pagan and Christian, would expect it. That an emperor

had been vanquished, but afterwards, when he heard of the decree of the senate he grew outrageous, avowed enmity towards Constantine, and made his title of the Greatest a theme of abuse and raillery."

[1] This decree in form of a letter to the prefect Sabinus is found in *H. E.*, bk. ix, ch. ix.

[2] Eus., *H. E.*, bk. ix, ch. ix.

[3] Eus., *H. E.*, bk. ix, ch. x.

had pursued a *laissez-faire* policy for a time towards Christianity, carried no assurance of continued toleration of the religion. A definite statement of toleration by the emperor, having the weight of a legislative act, would alone convince Christians that they might be sure of protection from the government for their religion. Although both Constantine's and Licinius' names appeared on the edict of Galerius, everyone knew that Galerius was the real author of the document, and that the other two imperial names were inscribed on it only as a matter of form. Further, Maxentius had not published that edict; and, although he had tardily ordered Christian property to be restored, he had not recognized Christianity as a *religio licita*. When Constantine made his triumphal entry into Rome, instead of republishing the edict of an emperor who had been dead quite a year, it would have been more likely for him to issue some personal promise of future protection to the Christians. He did, at this time, publish an edict [1] restoring confiscated property, recalling exiles and releasing men from prison and other penalties unjustly inflicted by Maxentius. Constantine might naturally have given a word of assurance to Christians in the same document.

If Maximin was to realize the need of attaching his Christian subjects to himself, preparatory to his future conflict with Constantine and Licinius, would not Constantine be equally far-sighted and see the value of winning loyalty from all his subjects? If the Christians were expressly protected by Constantine, Maximin would feel doubly the desirability of propitiating those in his own territories. It is self-evident that only Constantine could have been the author of an Edict of Rome; but if Constantine and Licinius were in sympathy at this time, it would have been

[1] *V. C.*, bk. i, ch. xli.

natural for Constantine to add as a formal courtesy Licinius' name to his own [1] on the document.

As some of the older historians [2] have held, perhaps this assurance of toleration did seem too bare in its form, and Constantine may have felt it worth while to publish a fuller one when Licinius too would be actively legislating. On the other hand, it is conceivable that he made only an informal statement to reassure the Christians of Rome and Italy, and that Eusebius had in mind the letter to Maximin, when he referred to an edict of toleration. Our conclusion then is from the evidence interpreted in the light of the situation, that Constantine at Rome, after defeating Maxentius, did make some pronouncement of policy towards Christianity; but that he deemed it wise to reiterate or widen his statement, later, at Milan.

Some months after the battle on the Tiber, Constantine and Licinius had their noteworthy meeting at Milan, and there discussed affairs of State and outlined their policies. It has been believed that then and there they drew up, among other things, a full edict of complete toleration for the Christians.[3] The texts of this edict have been supposed

[1] *Vide* Seeck, *Das Sogenannte Edikt von Mailand*, p. 384 for the custom regarding imperial superscriptions of decrees.

[2] *V. supra*, pp. 38-39 also Chastel, *op. cit.*, p. 52, note. We cannot agree with Boissier, *op. cit.*, vol. i, p. 49 and others that the document of Rome contained certain restrictions which soon seemed even to Constantine unjust and unworthy. This view is based on the statement in Eus., *H. E.*, bk. x, ch. v. "But since to that rescript in which such liberty was granted them, many and various conditions were evidently attached, some Christians, it may be, later ceased to observe their religion." We follow McGiffert, p. 379, note 3, in considering this sentence to refer to the edict of Galerius.

[3] Tillemont, Allard, Chastel, Brieger, Beugnot, Boissier, de Broglie, Lasaulx, Burckhardt, Schultze, Schiller, Firth, Cam. Med. His., Ranke (*Weltgeschichte*), all call the document in the texts cited below the Edict of Milan. Ed. Schwartz in his *Kaiser Constantin und die Christliche Kirche*, p. 72, believes an edict of toleration was drawn up at Milan.

to be preserved in Eusebius' *Historia Ecclesiastica,* bk. 10, ch. v,[1] and in Lactantius' *De mortibus persecutorum,* ch. xlviii.[2] There are slight variations in the readings, and the common opinion has been that the purer text was that of Lactantius. Seeck, in 1891,[3] startled scholars by declaring that we have no warrant for calling these documents the Edict of Milan; that, in fact, there never was an Edict of Milan.[4]

Using the text of Lactantius, Seeck made, in his article, a critical analysis of it and stated his reasons for refusing to accept it as a formal edict of toleration for the Christians of the whole Empire, granted by Constantine and Licinius at Milan. His four main objections to the universally accepted view of the document were: (a) It was not an edict; (b) it was not issued by Constantine; (c) it was not given at Milan; (d) it did not grant legal toleration to the Christians of the whole empire, for the greater part already possessed it. The form, he declared, was not that of an edict; and Lactantius himself refers to the document as a letter to the governor of Bithynia. However, Seeck conceded that a letter could carry as direct and complete authority as an edict. When Constantine and Licinius met at Milan, he argued, they could not have sent an order to the governor of Bithynia, because that province was still under the rule of Maximin. He admits that the two emperors may from Milan have sent a document, similar to this letter, to the governors in their own territories, and then after the conquest of Maximin, may have sent correspond-

[1] *V. infra,* pp. 139 *et seq.* for text.

[2] *V. infra,* pp. 134 *et seq.* for text.

[3] *Das Sogenannte Edikt von Mailand. Z. F. K. G.,* vol. xii, pp. 381 *et seq.*

[4] "Ein Edikt von Mailand, das sich mit der Christenfrage beschäftigt, hat es nie gegeben."

ing letters to the chief officers of the newly-conquered territory.[1] The differences that exist between the texts of Lactantius and Eusebius, he goes on to say, can scarcely be explained as errors or omissions. We appear to have two different redactions of a letter, one copy sent to the governor of Bithynia and the other evidently to the governor of Eusebius' home province. Seeck believes that the superscription of the document, unfortunately lost, bore the names of the three emperors, Constantine, Licinius and Maximin.[2]

The text itself refers to former orders concerning Christians which are to be disregarded now that Christians are to be given complete toleration.[3] Seeck cannot believe that Constantine and Licinius were here retracting decrees of their own.[4] The context of the source shows that orders were sent to the governor of Bithynia, and with this district Licinius and Constantine had nothing to do before Licinius had conquered Maximin. These former orders, Seeck believes, were the commands of Maximin; and for this theory finds confirmation in the text of Eusebius. Here the emperors state that they have long given their subjects freedom to become Christians at will. "But since to that

[1] "Die Kaiser könnten also von Mailand aus Schreiben gleichen Inhalts zunächst an die Statthalter ihrer Reichsteile versandt und dann nach der Besiegung des Maximinus in jeder seiner Provinzen, welche in die Hände des Licinius fiel, den Oberbeamten entsprechende Briefe zugestellt haben," p. 382. This seems to imply the possibility of an edict or decree of toleration at Milan!

[2] p. 383 also p. 384 "Wenn folglich in dem Toleranzgesetz *tam ego Constantinus Augustus quam etiam ego Licinius Augustus* statt des schlichten *nos* steht, so folgt daraus, dass die Ueberschrift mehr Namen als diese beiden enthielt."

[3] "and, accordingly, we give you to know that without regard to any provision in our former orders to you concerning the Christians, etc." Also Introduction to Eusebius' text. *V. infra*, p. 165.

[4] *V. infra*, p. 139.

rescript in which such liberty was granted them many and various conditions [1] were evidently added, some Christians, it may be, later ceased to observe their religion." [2] Maximin, as we have seen,[3] failed to publish Galerius' edict. The Christians had been so deceived as to the real import of the rescript that he had promulgated in lieu of this edict, that later they regarded with suspicion the grudging promise of religious toleration which he extended to them in 312 after receiving the news of Maxentius' destruction.[4] Not until after his defeat by Licinius did Maximin give an unequivocal order for complete toleration of Christianity.[5] Therefore, Seeck contends, it was to set aside these tricky mandates of Maximin that the document we have under consideration was drawn up.

Since in all but the eastern part of the Empire, Seeck believes, the last orders of the dying Galerius were carried out at this time, a further assurance was quite unnecessary. In the Orient, on the other hand, persecution of the Christians had continued. Consequently Seeck declares that this law affected not the whole empire, but only the Orient. The political conditions and the context of the source, Seeck asseverates, both prove that Licinius, not Constan-

[1] For discussion on the translation of *αἱρέσεις* as "conditions" instead of "sects" *v.* McGiffert, p. 379, note 4; and Hülle, p. 80, note 2 and pp. 95, 96.

[2] For full text *v. infra*, pp. 139 *et seq.*

[3] *V. supra*, p. 35.

[4] "Since he was forced to do this by necessity and did not give the command by his own will, he was not regarded by any one as sincere or trustworthy, because he had already shown his unstable and deceitful disposition after his former similar concession. None of our people, therefore, ventured to hold meetings or even to appear in public, because his communication did not cover this, but only commanded to guard against doing us any injury." *H. E.*, bk. ix, ch. ix, par. 23.

[5] *H. E.*, bk. x, ch. x for text.

tine, was the real author of the decree and that it was published at Nicomedia, not Milan. According to Seeck, we ought, therefore, to call this law, not "The Edict of Milan," but " The Decree of Nicomedia."

Such was the substance of this remarkable article. Seeck did not retreat from its conclusions in the face of the inevitable attacks which followed its publication. Subsequently, in replying to the criticisms of Crivellucci,[1] he denied again that such an edict ever existed.[2]

All scholars now seem willing to agree with Seeck, that the source under discussion should more exactly be called a decree of Licinius, given at Nicomedia.[3] Some further believe that no toleration document of any kind was drawn up at Milan.[4] Others, however, while acknowledging that Seeck is correct in claiming that what we had been carelessly calling the Edict of Milan, is really a Decree of Nicomedia, insist that there was somewhat earlier an edict of toleration, given at Milan by Licinius and Constantine.[5]

[1] *L'editto di Milano, Studi storichi*, vol. i, p. 239.

[2] "Ueber das Edikt von Mailand habe ich nicht geredet, da ein solches meiner Ueberzeugung nach ueberhaupt nicht existiert hat." *Gesch. des Untergangs der ant. Welt. Anhang zum ersten Band,* p. 499. *Cf. Z. F. K. G.*, vol. xii, p. 381.

[3] *Cf.* Duchesne, *His. Anc. de l'Eglise*, vol. ii, p. 38, Hülle, *op. cit.*, pp. 80 and 97. Schultze, *New Schaff-Herzog-Ency. of Relig. Kno., loc. cit.*

[4] Pauly-Wissowa, *op. cit.*, vol. iv, p. 1081. *Cf.* Botsford, *A History of the Ancient World*, p. 515 note. Robinson, *Readings in European History*, vol. ii, p. 22, note.

[5] Duchesne, *His. Anc. de l'Eglise*, vol. ii, p. 38, Hülle, *op. cit.*, pp. 80 and 97, Crivellucci, *op. cit.*, also Görres, *op. cit., infra*, Crivellucci cites Eus., *H. E.*, bk. ix, ch. ix, par. 25, as proof of his conviction that an Edict of Milan was drawn up by Constantine and Licinius. Seeck insists that Eusebius in this passage is incorrect in his chronology. Constantine, he points out, was still in Rome the middle of January 313, and the battle between Licinius and Maximin on the Campus Serenus took place April 30 of the same year. Remembering the

To the latter group belongs Görres. A few years after Seeck's article *Das Sogenannte Edikt von Mailand* appeared Görres published a scornful attack upon it.[1] While agreeing with Seeck's chief contention, that the document we had been calling the Edict of Milan is really a Decree of Nicomedia given by Licinius, he takes issue with Seeck on many points, and does battle royally for his faith in the existence of an Edict of Milan.

Görres claims four chief errors in Seeck's position: (a) Seeck underestimates the intellectual inferiority to Constantion of Licinius and even Galerius. (b) He seems to have no notion that the Decree of Nicomedia widened the existing privileges of Christians. The Edict of Galerius had made Christianity a *religio licita,* but the law of 313 gave complete religious freedom to Christians. (c) He fails to recognize the grandeur of the policy of Constantine for the Christians. (d) He disregards entirely the historical setting in discussing the question of an Edict of Milan. In the opinion of Görres one of Seeck's serious faults is his disregard of modern literature on Constantine, especially Görres' own illuminating articles!

The constructive argument of Görres runs as follows. In 313, at Milan, Constantine and Licinius drew up an edict (unfortunately lost), granting fullest toleration to Christians, and then sent it to the pretorian prefects. This

distance between the two localities, Seeck contends that a law which could not have been drawn up before January could not have been received by Maximin before he had clearly shown his enmity to Licinius; and still Eusebius declares that Maximin was pretending friendship for his colleagues, when fear of them led him to publish his law of toleration. Wittig, *op. cit.*, p. 62, thinks we may still speak of a toleration *rescript* of Milan of 313. He says that Sesan, *op. cit.,* agrees with him in this view although he calls the document an edict.

[1] Eine Bestreitung des Edikts von Mailand durch O. Seeck kritisch beleuchtet in *Zeitschrift für Wissenschaftliche Theologie,* vol. xxxv, pp. 28 *et. seq.*

edict affected all the Empire, except those territories under Maximin's dominion. After the conquest of Bithynia, both Emperors were concerned that its inhabitants should be assured of the benefits of the Edict of Milan. In consequence a decree was addressed to the governor of Bithynia; and an arrangement was made for publishing the decree in the other eastern provinces, as soon as they should fall into the hands of Licinius. Quite naturally, neither Lactantius nor Eusebius had any interest in the original copy of the Edict of Milan. Therefore Lactantius gave the form as he knew it, published at Nicomedia, while Eusebius used the form sent to the governor of Palestine.

Görres declares there is no proof that Maximin's name appeared on the Edict of Nicomedia; it was against him that the decree was directed, his name did not appear even on the edict of Galerius. Görres pronounces it sheer nonsense to think that the nephew of Galerius, the most brutal of all the emperors who persecuted Christians, had signed the edict of toleration in 313.

Görres further contends that when Seeck claims that Maximin signed the decree of 313, he fails to distinguish between the character of the provisions of that document and those of the edict of 311. Görres does not acknowledge that the purpose of the decree of 313 is primarily to set aside the ambiguous and evil mandates of Maximin, but rather to abolish restrictions in the edict of 311.[1] He holds that Seeck does not seem to have any conception of Constantine's noble religious policy. If we follow Seeck, says Görres, Constantine's great and glorious victory over Maxentius gave the Christians only the modest right of having a *religio licita,* such as the Jews possessed. He cannot agree

[1] Wittig, *op. cit.*, p. 56 believes with Görres that the conditions referred to were those of the edict of Galerius. Sesan, *op. cit.*, however, takes them as those of an edict of Constantine of 312.

with Seeck that the edict of Galerius had made full provision for Christianity, and that Constantine had nothing to do for the Church. He argues that the Edict of Milan widened the recognition given to Christianity in 311 and placed the religion of Jesus on the same footing as paganism, and also provided for the restitution of property to Christians.

Görres points out that the spirit of the Decree of Nicomedia is monotheistic and as such emanated from Constantine, who had inherited monotheistic ideas from his father. This monotheism was accepted by Licinius, the peasant's son, who had been brought up in a camp and was an enemy to cultivation and a friend of Mammon and women, purely as a matter of expediency. He was not at all in sympathy with religious speculation and showed favor to Christianity, at this time, only on account of antagonism to Daja and of alliance with Constantine. Görres concludes his arguments and discussions by declaring that nothing can shake the historical evidence of the existence of an Edict of Milan and he trusts that his article will prevent in the future any attack like Seeck's.

In comparing the arguments of Seeck and Görres in their critiques of the Edict of Milan, we find we cannot subscribe to all the conclusions of either critic. They agree in calling the text of Lactantius that of a decree of Licinius given at Nicomedia and affecting only the Oriental provinces; but this is almost the only proposition in the discussion upon which they exhibit one mind. We agree with Görres in believing that the decree of Nicomedia breathes the spirit of Constantine, rather than that of Licinius. Furthermore, Görres seems justified in charging Seeck with disregarding the actual difference in the toleration accorded by Constantine and Licinius from that allowed by Galerius. As to the matter of the number of imperial names originally inscribed on the text of Lactantius, Seeck seems to

have the better of the argument. He does not, however, claim, as Görres implies that he does, that Maximin actually signed and subscribed to the decree. The formal addition of a colleague's name was a polite usage, and did not, in itself, imply that the colleague was actively legislating. When it comes to the discussion over the references to unfavorable provisions in former decrees, it seems probable that Görres is nearer the truth than Seeck in believing the passage referred not only to the chicanery of Maximin, but also to the possible restrictive clause in the edict of Galerius. Finally, Görres seems justified in maintaining that a toleration decree was actually drawn up at Milan for all parts of the Empire except for those ruled over by Maximin.

Hülle in his valuable monograph on the *Toleration Edicts of the Roman Emperors for the Christians,*[1] devotes close study to the critical examination of the texts of the decree of Nicomedia, preserved by Eusebius as *Imperial Laws* and by Lactantius as *Letters of Licinius.* He believes that the text of Lactantius is the earlier form of the two. The differences in expression, which he analyzes, lead him to conclude that both documents are based on a common Latin text, no longer extant.[2] In view of some variation in context of the two readings, Hülle acknowledges that they may possibly be redactions of two original documents, one used by Eusebius, the other by Lactantius. Even in this case he would give the preference to the text of Lactantius, since we have it in its original language, not a translation. Both texts are defective, and in neither one has

[1] *op. cit.*

[2] The introduction given in Eusebius is wanting in Lactantius. Certain formal differences may be due to the exigencies of the two languages. The chief difference in contents is that "Quo quicquid divinitatis in sede caelesti" of Lactantius compared with the corresponding clause in Eusebius, *q. v.*

been preserved the usual greeting to the governor to whom the law was sent. Eusebius mentions the name of no other emperor than those of Constantine and Licinius. Undoubtedly when this law was published in Palestine, Hülle reminds us, it bore no additional imperial name, for Maximin was then dead and his name execrated. From the context of Lactantius' text, Hülle contends we can determine positively who were the real authors of the law but not whose names made up the original superscriptions. He agrees with Seeck that the decree originally bore more names than those of Constantine and Licinius. He further declares it self-evident that there could not have been more than three names, and that the third name must have been that of Maximin, who even after his battle with Licinius, was recognized by Licinius and Constantine as emperor.[1]

Although Hülle is willing to concede that the text of Lactantius is that of a decree of Licinius affecting only the Orient and given at Nicomedia, he refuses to follow Seeck in denying the existence of an Edict of Milan.[2]

Hülle judges that the edict of Galerius did not give full religious freedom to Christians; hence there was need, in the early days of the reign of Constantine, for some provision for widening the limited toleration allowed by the law of 311. He contends that Constantine and Licinius recognized this need, when discussing imperial affairs at Milan; and in consequence made a statement, probably in the form of an edict, that, in future, all men, Christians and those of all other religions as well, were to enjoy complete

[1] He disposes of the theory of Zahn and Hunziker that the third name was that of Galerius, *v.* p. 94.

[2] "Die Polemik Seecks scheint uns aber zu weit zu gehen, wenn sie auch die Geschichtlichkeit eines Mailänder Religionsedicts ueberhaupt bestreitet und behauptet, "Ein Edikt *v.* Mailand, das sich mit der Christenfrage beschäftigte, hat es nie gegeben."

religious toleration. This law, he believes, was published at Milan; and although we do not possess a copy of it, we can judge of its provisions from the Decree of Nicomedia. He finds evidence for this view, in the references in the Decree of Nicomedia. Even Eusebius' errors elsewhere [1] are, to Hülle's mind, further proof of the existence of an Edict of Milan.[2]

Hülle's great contributions to the attempted solution of the problem are his keen analyses of the texts under discussion. His conclusions are sound and cautious, and we can subscribe to those noted above. We feel less sympathy, however, with his interpretation of the spirit and intent of the legislators of the Edict of Milan.[3]

Let us turn now to consider the content of the Decree of Nicomedia.[4] From it we can estimate the spirit of a probable Edict of Milan, even if we can only conjecture what its actual provisions may have been. The decree really consists of two parts: the first, about a quarter of the whole document, contains a summary of the religious policy agreed upon by Licinius and Constantine, while discussing general affairs of state at Milan; the second [5] consists of

[1] *H. E.*, bk. ix, ch. ix; bk. x, ch. v.

[2] Duchesne takes about the same position in regard to Hülle's conclusions anent the Edict of Milan and the Decree of Nicomedia. *His. anc. de l'Eglise*, vol. ii, p. 38.

[3] *V.* p. 100. Hülle thinks that an Edict of Milan made no provision for the return of property to Christians because that had been provided for in Constantine's letter to Anulinus, the pro-consul of Africa. Wittig, *op. cit.*, pp. 51 *et seq.*, believes it impossible to prove the date of this letter, feels it would have been odd if the emperors at Milan had not concerned themselves with the matter of Christian property. This author believes we can find more of the Edict of Milan in the Decree of Nicomedia, than Hülle is willing to allow.

[4] For text *v. infra*, pp. 136 *et seq.*

[5] Beginning "And accordingly we give you to know."

the provisions for the religious toleration that Licinius was extending to the lately conquered Bithynia. The religious policy outlined at Milan was one of broadest toleration, and carried positive assurance of complete religious freedom to Christians and all other men. Constantine and Licinius had agreed that every man should have liberty, not only to practise his own religion, but also to choose any cult and attach himself to it.

Licinius, in the second part of the document, extended these same privileges to his new subjects, and expressly stated that neither tenor nor provisions of former mandates concerning Christians were to be regarded in future. This indulgence to Christians was unconditional, and they were not to be disturbed nor molested in any way. The emperor arranged that Christians and Christian corporations should receive again, without cost to them, their property which had been confiscated. Provision, however, was made to indemnify the present owners of such property, from the state treasury. As at Milan so at Nicomedia, the government proclaimed religious freedom not only for Christians but for all other men as well.

Quite distinctly the authors of the document under discussion made religious motives its *raison d'être*. Religion, they declare, is the vital question in a state because of its great value for all men. It is in order that all men, from the sovereigns down to the humblest in the land, should enjoy the favor of the divinity in heaven that the emperors propose to grant freedom to all men in matters of religious faith and practice. The whole spirit of the decree is monotheistic, pure and simple; yet there is no statement to warrant one considering the divinity referred to as identical with the Christian God.[1]

[1] It has been suggested that the phraseology of the references to the divinity was intentionally vague. For although Constantine may have

On the contrary, a divinity who was to be propitiated and gratified by the establishment of this universal toleration would seem, in the fourth century, to correspond to the syncretistic ideas of some pagans rather than to those of any Christians. The framers of the religious policy of Milan and Nicomedia carefully safeguarded the dignity of all religions of the Empire, declaring it not their will that any cult or its adherents should suffer loss of any honor.

become converted to Christianity, Licinius was still a pagan at heart and would have been unwilling to sign a decree that proclaimed him a devotee of the Christ. Hence the phrases in the edict were turned in such fashion that they could apply to the personal religion of either emperor. For this view *v.* Firth, *op. cit.*, pp. 110 *et seq.*

Other scholars find in this same use of vague terms in speaking of the omnipotent God, a proof that Constantine was not yet converted to complete faith in the God of the Christians. Boissier, *op. cit.*, vol. i, pp. 59 *et seq.*, disposes of the supposition that Constantine wrote the Edict of Milan under the influence of the Christian bishops. Using the text of Lact., *op. cit.*, ch. xlviii, he contends that a Christian would never have been willing to concede that the pagan gods played any rôle in the government of the world or that it was needful to conciliate them. Only a pagan would feel the necessity of propitiating every man's god. Boissier points out that in the fourth century numbers of thoughtful pagans, conscious of the syncretism of the age, were endeavoring to find a *via media* for pagans and Christians. He sees the spirit of such pagans in these ambiguous references to the divinity, and the confessions of the utility of allowing each man to worship his own god. Was Constantine then a pagan standing in this *via media?* Not at all, says Boissier, he was a Christian since his conflict with Maxentius; he was himself responsible for the provisions of the document, which are deeply Christian, but his pagan chancellery gave the form to the document. This interpretation of Boissier's is interesting and ingenious but hardly satisfactory. It is difficult to believe that an emperor's scribes could cast a document in such form as to convey a spirit different from that which the emperor intended. It is, however, reasonable to suppose that a statesman like Constantine would phrase such a decree as this so as to carry weight with adherents of all religions. This was certainly no opportune occasion for an expression of the emperor's personal religious tenets particularly as his colleague and ally was of a different religious stripe.

It is true that the Christian religion was the only one mentioned by name in the decree. This was quite natural and cannot be taken to imply a surprising degree of interest in Christianity or any lack of consideration of other cults. The Christian Church was the only religious organization which had not possessed a legal position until the preceding year; and even since Galerius' edict, it had suffered persecution in the East. Therefore any proclamation of toleration would naturally have reference more especially to Christianity—the one religion whose position in the law of the empire had been so unsettled, and whose history had been so checkered with neglect, contempt and persecution at the hands of the government.

It is noteworthy, however, that in 313, both at Milan and again at Nicomedia, the government, while granting toleration to Christians, thought it advisable to reassure the adherents of other religions that similar protection would be given to them also. Boissier sees in this protection of the non-Christian cults simply the essentially tolerant spirit of Christianity.[1] For our part other interpretations seem equally reasonable. Might we not gather from these provisions that so many favors had by this time been extended to the Christians, that pagans began to fear that Christianity was to become the religion of the government? Men may have believed, and not unnaturally, that complete toleration toward Christianity would entail the loss of freedom to other religions. If Constantine were a Christian at this time it would be advisable for him to assure his pagan subjects that he did not intend to display a not uncommon spirit of Christian intoleration towards pagan cults. Again, we might read in these passages only proofs of the lively desire of the pagan Licinius to reassure the troubled minds

[1] *Op. cit.*, vol. i, p. 58, where he cites the tolerant expressions of Tertullian and Lactantius.

of his co-religionists that they should be undisturbed in their faith. Or finally, we might conclude that in the assurances of religious liberty to pagans, we should find chiefly evidences of the broad, tolerant spirit of Constantine, who may, or may not, have been a convert to Christianity by 313. These are opinions upon which the historian who is particularly interested in solving the riddle of the exact position of Constantine towards Christianity in 313, and his real desire in regard to the ultimate position of paganism in the state may speculate. Our chief interest, however, in the decrees of Milan and Nicomedia lies in ascertaining their relation to earlier legislation for Christians, and their actual provisions affecting Christians and pagans.

Undoubtedly, in the light of close scrutiny of the texts, this legislation of Constantine and Licinius did amplify the toleration accorded to Christians both by the edict of Galerius and by the statement of toleration probably made by Constantine in Rome. By April, 313, the two rulers of the entire Roman world formally published their policy of complete religious toleration for every variety of cult that might be practiced within their territory. The millennium, in which the lion and the lamb are to lie down together, seemed ushered in.[1] Our task now is to examine the remaining legislation touching Christians, in the period in which Constantine and Licinius were joint rulers of the Empire.

[1] Hülle, p. 100 sees the edict from a different angle.

"Denn dass wir in der That berechtigt sind die Verkündigung allgemeiner Religionsfreiheit in Mailänder Edict nicht als einen Ausdruck heidnisch synkretistischer Stimmung der Machthaber und einen Erweis ihrer ehrlichen Ueberzeugung, dass auf religiösem Gebiet absolut Toleranz herrschen müsse, zu betrachten, sondern als den ersten bewusst unternommenen Versuch den bisher heidnischen Staat zum Christentum hinüber zuführen, dafür liefern uns die religionspolitischen Massnahmen Constantins und des Licinius welche sich unmittelbar an die Mailänder Proclamation anschlossen, den Beweis."

CHAPTER III

Legislation for the Christians

The religious policy, outlined in the decree of Nicomedia, was, upon the whole, sustained by Constantine during his reign. It was a statesmanlike policy of accommodation to the existing religious forces in his empire. Favor was granted to Christianity, as privileges in the past had been extended to the other Oriental cults, which had finally been permitted to enjoy the liberty of the ancient religion of the Romans. Since, however, Christianity was the new religion, it could only achieve a position parallel to that of the pagan cults by a series of special enactments and benefactions which would secure it, not only the legal equality with paganism, but enable it, at the same time, to realize its position as one of the *religiones licitae*. We shall therefore turn first to a survey of the policy of Constantine with reference to the Church.

In 313 Constantine enacted that the orthodox clergy should be freed from all personal obligations.[1] A letter addressed to Anulinus, proconsul of Africa, to whom the edict also was directed, commanded that the clergy be released from all public duties, that they might devote themselves to their vocations; "for it seems that when they show the greatest reverence to the Deity, the greatest benefits accrue to the state."[2]

[1] *C. Th.* xvi-2-1 v. *infra*, p. 152.

[2] Eus., *H. E.*, bk. x, ch. vii. Godefroy holds that the edict and letter refer to the same piece of legislation. For the opposite view see Mommsen *C. Th.* xvi-2-1 note.

Constantine also abrogated the existing laws against celibacy.[1] This step was essential if the Christians were to be free to practise their religion; for asceticism, which had come to be a directing influence in Christian philosophy, was one of the two controlling ideals of monasticism, in which God's athletes took refuge from pagan persecution and the perils of secular life. Now that the persecutions were over, the dangers of the world increased with the temptations of wealth and power, and there was a regular migration into the desert just as the secular clergy was beginning to show, in the splendor of services and fine apparel, the new dignity of a legalized priesthood.

Jews who became converted to Christianity were not to suffer persecution from their former religious brethren. Any attempt to injure a Jewish convert was to be seriously punished.[2]

A few years later, the Corrector of the South Italian districts was advised that the Christian clergy should be relieved of all financial contributions whatsoever.[3] These exemptions did not make the Christian clergy a peculiarly favored group in the state. They simply put that clergy on

[1] *C. Th.* viii-16-1 (Jan. 31, 320) "A. ad populum. Qui jure veteri caelibes habebantur, inminentibus legum terroribus liberentur adque ita vivant, ac si numero maritorum matrimonii foedere fulcirentur, sitque omnibus aequa condicio capessendi quod quisque mereatur. Nec vero quisquam orbus habeatur: proposita huic nomini damna non noceant. Quam rem et circa feminas aestimamus earumque cervicibus inposita juris imperia velut quaedam juga solvimus promiscue omnibus. Verum hujus beneficii maritis et uxoribus inter se usurpatio non patebit, quorum fallaces plerumque blanditiae vix etiam opposito juris rigore cohibentur, sed maneat inter istas personas legum prisca auctorita (s.)". *Cf. Corpus Justiniani*, viii-57-1 also *V. C.*, bk. iv, ch. xxvi and Soz., *op. cit.*, bk. i, ch. ix.

[2] *C. Th.* xvi-8-1; xvi-8-5 also *Constitutiones Sirmondianae*, no. iv. The first of this series of enactments appeared 315, the last, the year before Constantine's death.

[3] *C. Th.* xvi-2-2 v. *infra*, p. 153.

the same footing as the priests of other cults who had long enjoyed similar privileges.[1]

According to the historians of the time, the clergy in Egypt and Africa were subsidized;[2] and Constantine appointed Bishop Hosius[3] to have charge of the church finances[4] and himself directed personal letters with gifts of money to the bishops.[5] The emperor, we are told, gave lavishly from his own private resources for enlarging and beautifying the churches.[6]

The *Liber Pontificalis* has a stupendous list of donations of all kinds of property, both real and personal, with which Constantine was supposed to have endowed the churches during the pontificate of Sylvester. This Mommsen holds to be undoubtedly a true list of imperial gifts, which were, however, contributed not by Constantine alone but many emperors throughout the entire fourth century.[7] The imposing catalogue of churches,[8] formerly believed to have been erected by Constantine, has suffered at the relentless hands of archeologists and historians. Mommsen declares

[1] These exemptions granted to the clergy had long been accorded to doctors, professors, and persons who had held expensive priestly offices. v. Duchesne, *His. anc. de l'Eglise*, vol. ii, p. 63.

[2] Eus., *H. E.*, bk. x, ch. vi also Soz., *op. cit.*, bk. i, ch. viii. "He enacted that part of the funds levied from tributary countries should be forwarded by the various cities to the bishops and clergy wherever they might be domiciled and commanded that the law enjoining this gift should be a statute forever."

[3] Probably the bishop of Cordova.

[4] Soc., bk. i, ch. vii. Tillemont, *op. cit.*, vol. iv, p. 151. Eus., *H. E.*, bk. x, ch. vi.

[5] Eus., H. E., bk. x, ch. ii.

[6] Theodoret, *Historia Ecclesiastica*, bk. i, ch. ii; *Soc.*, bk. i, ch. ii and iii; *V. C.*, bk. i, ch. xlii; bk. iii, chs. xxix-xxxi also lviii. Eunapius, *op. cit.*, p. 43.

[7] *Liber Pont.* ed. Mommsen, pp. 47-72.

[8] *V. C.*, bk. iii, ch. viii; Soz., bk. i, ch. viii.

that there are only two churches in Rome that we can safely call Constantinian, those of St. John Lateran and old St. Peter's.[1] There seems to be little reason to doubt that both the Lateran and Vatican churches were built by Constantine. The bricks used in building the Vatican were stamped with his name and the great triumphal arch within the building bore his dedicatory inscription.[2]

Constantine soon found that he had made the position of the Christian clergy too alluring. Men flocked into the Church in order to escape the onerous curial burdens. In

[1] *Lib. Pont.* ed. Mommsen, vol. i, p. xxvii. "Ecclesias Christianis Constantinum multis locis aedificandas curasse cum Eus. testis sit (*V. C.*, vol. i, ch. xlii; vol. ii, ch. xlv) in urbe Roma ad eum aliquatenus certe redeunt Basilicae duae Laterana et Vaticana." Frothingham in his *Monuments of Christian Rome*, pp. 22 *et seq.*, accepts many more churches as built by Constantine: St. Paul's Via Ostiensis, St. Lawrence's Via Tiburtina, St. Agnes Via Nomentana, St. Costanza, SS. Marcellinus and Peter Via Praenestina. *Cf.* J. Ciampini, *De Sacris Aedificiis*, vol. ii, p. 7. Duchesne in *l'Histoire Ancienne de L'Eglise*, vol. ii, pp. 63-64, says, "A Rome, la vieille demeure des Laterani sur le Coelius, plusieurs fois confisquée se trouvait appartenir alors à Fausta, soeur de Maxence femme de Constantine. On y transporta la résidence episcopale; dês l'automne 313, le pape Militiade y tenait concile. On ne put tarder à commencer la construction de la basilique annexée à cette domus ecclesiae, l'Eglise actuelle du Latran." He then adds a list of churches that owe their foundation to Constantine or members of his family, *cf. Tillemont, op. cit.*, vol. iv, pp. 141-2, ascribing the baptistry to Helena. *Cf.* Lanciani, *Pagan and Christian Rome*, pp. 132 *et seq.*

[2] *Lib. Pont.* Mommsen, vol. i, p. xxvii.

Frothingham, *The Monuments of Christian Rome*, p. 26, "The proof of its Constantinian age was found in its stamped bricks, and the mosaic of Constantine presenting the model of the church to Christ, which, as I was able to prove, existed on the triumphal arch until the end, must have been original" and p. 27, "Constantine's inscription of the arch read, addressing Christ: Because led by Thee, the world triumphant rises to the stars, Constantine, victorious, builds this hall for Thee." For mention of another but corrupt inscription of Constantine and Helena *v.* Mommsen, vol. i, p. xxvii. Also for discussion of the builders of other Churches ascribed to Constantine *v.* Mommsen, *Lib. Pont.*

consequence, in 320 and again in 326, men of curial rank were forbidden to become clergymen.[1] About the time of the first of these prohibitions, an edict addressed to the people of Rome provided that a man might bequeath as much of his property as desired to the Church; and wills containing gifts of this sort were not to be broken.[2] Here again the emperor, by a law, sought to put the Christian Church on a par with paganism, by allowing it the corporate rights of acquiring inheritances, long permitted to pagan cults.

Constantine allotted magisterial duties to priests when he granted them in 316 the right of manumitting slaves.[3] Later he gave important judicial powers to bishops.[4] The day of the Sun was counted among the legal holidays,[5] and leisure was given Christians in the army to attend religious services on that day. Sozomen adds that Friday too was to be honored in remembrance of what Jesus Christ had achieved on that day.[6] Every Sunday non-Christian sol-

[1] *C. Th.* xvi-2-3 also xvi-2-6; *cf.* xvi-2-7; likewise *V. C.*, vol. i, bk. iv. For the date of the law in *C. Th.* xvi-2-3, *v.* Mommsen's note.

[2] *C. Th.*, xvi-2-4. See Godefroy's commentary on this. For text *v. infra*, p. 154.

[3] *C. J.*, i, 13-1 and 2; *Th. C.*, iv, 7, 1; *cf.* Soz., bk. i, ch. ix. For text *v. infra*, p. 154.

[4] *C. S.*, no. 1 permitting men to have cases tried in a bishop's court. For the text and its interpretation, *vide infra*, p. 156; *cf.* Sextus Aurelius Victor, *De Caesaribus*, p. 305. After establishing himself in Licinius' territory in 324, Constantine decreed for the East that the "decisions of Bishops in Synods were not to be annulled by provincial governors; for he judged the priest of God at a higher value than any judge whatever." *V. C.*, bk. iv, ch. xxvii. *Vide infra*, p. 155 for *C. Th.* i-27-1, for the law giving parties in civil controversies the right of electing between ordinary courts and the courts of the bishops.

[5] *C. Th.*, ii-8-1, *v. infra*, p. 158; *V. C.*, bk. iv, ch. xviii; Soz., bk. i, ch. viii; undoubtedly the day of the Sun was selected as the holy day of the followers of both Jesus and Mithras. *Cf. V. C.*, bk. iv, ch. xviii.

[6] Tillemont, *op. cit.*, vol. iv, p. 181, rejects the validity of this state-

diers were to assemble in the open plains near the city and recite a prayer that had been taught them, saying in unison, "We acknowledge thee the only God. We own thee as our King and implore thy succor. By thy favor have we gotten victory; through thee are we mightier than our enemies. We render thanks for thy past benefits and trust thee for future blessings; together we pray thee and beseech thee long to preserve us safe and triumphant, our emperor, Constantine and his pious sons." [1] A better prayer could not well be imagined for the purpose for which this was drawn up. No person could be offended in his conscience in complying with the emperor's command to say it once a week in public. The Divinitas who was invoked was as vague as that referred to in the Decree of Nicomedia and could answer to the Christian God or any other deity popular in Rome at the time. Notice how the prayer closed in patriotic emotion with a swirl of loyalty to the imperial house. We are reminded of the union of religion and patriotism that Augustus found so valuable.

In 323, Constantine decreed that Christians should not be required to make lustral sacrifices and any one attempting to force a Christian to observe the rites of some other religion should be severely punished.[2]

Eusebius [3] informs us that, after his vision, Constantine sent for Christian clergymen to learn the meaning of what he had seen. These teachers instructed the emperor in the principles of Christian doctrine, and from that time forth the clergy were his counsellors. After the battle of the

ment, pointing out that Sozomen alone mentions it. An unsuccessful attempt to observe Friday was made near Constantinople in the fifth century.

[1] *V. C.*, bk. iv, ch. viii, note 2. Appears to have been issued 321 before which time both the old and new Sabbaths were observed by Christians. *Cf. V. C.*, bk. iv, chs. xix-xxi. *Cf. Orat. Eus.*, ch. ix, par. 10.

[2] *C. Th.*, xvi, 2, 5. *V. infra*, p. 159 for text. [3] *V. C.*, bk. i, ch. xxxii.

Milvian Bridge, Eusebius tells us that the victor showed especial honor to the Christian clergy, entertaining them at his table and making them his companions on his travels.[1] Constantine soon found he needed all his information on Christian doctrine. The dogmas of organized Christianity are so subtle and complex that, where any free discussion of them is allowed, diverse interpretations will invariably be advanced. In the fourth century, Africa and Egypt were hot-beds of religious altercation and civil peace was destroyed by religious disagreements of Christians. Early in 313 the Donatists appealed to Constantine through Anulinus, the proconsul of Africa.[2] Constantine's reply [3] was a letter to Miltiades, bishop of Rome, ordering him to hold a synod before which the case of Caecilianus, Bishop of Carthage, could be heard. When the Donatists refused to be content with the decision of this synod, a second assembly of the bishops was held, at the emperor's command, at Arles in the following year.[4] Again the stubborn, puritanical Donatists appealed to the emperor from the judgment of the synod. In 316 the emperor heard their case at Milan, and confirmed the decision of the councils, shortly afterward passing laws condemning their tenets and threatening to banish their bishops and to confiscate their property.

Constantine's actions and attitude in this Donatist controversy are in exact line with his procedure a decade later when he called the Council of Nicaea to settle the dispute between Arius and Athanasius. In either situation we might regard the emperor as the fostering friend of the Church, eager for peace within her walls, practically the temporal head of Christianity as he was the priestly head of paganism. We shall do well, however, to remember that the altercations over Donatism, as over Arianism, led to

[1] *V. C.*, bk. i, ch. xlii. [2] Eus., *H. E.*, bk. x, ch. v. [3] *Ibid.*
[4] Eus., *H. E.*, bk. x, ch. v, Epistle to the Bishop of Syracuse.

serious civil disturbances. Citizens of all classes in Africa and Egypt took sides in these burning religious controversies. Commonly a heated discussion of their views led men to abandon the battle of tongues, to fall upon one another with any weapon at hand. Lives were sacrificed and property destroyed in these riots. To restore order in these districts would be the pressing duty of the Emperor. If only as the source of law and the chief executive in the state, Constantine was bound to take some action in such a condition of affairs. So much for the main legislation of Constantine affecting the Christians during the period when he was joint ruler of the Roman state with Licinius.

The friendship of Constantine and Licinius, that had been cemented by the marriage of Constantine with Licinius' sister, was not established on a sure foundation, and was so shaken by the politics of 314, that the two men went to war. Licinius had to acknowledge his defeat at Constantine's hand and to pay with the cession of Illyria the price of a peace that was to endure only ten years. During this interim of peace, Licinius, the earlier protector of the Christians, became their oppressor.[1] In consequence,

[1] Eusebius would have us believe that this final struggle between Constantine and Licinius was a conflict between Christianity and paganism. He cites the invocation of Licinius to the gods just before the decisive battle as evidence of this view; *V. C.*, bk. ii, ch. v. We feel, however, suspicious of the reporter's touch when we read this alleged invocation. *Zos.*, ch. ii, pp. 44 *et seq.*, says the cause of the break in the friendship of the two emperors was the infidelity and ambition of Constantine and Eutropius agrees. Libanius and Anon. Val. declare that Licinius broke the peace. *Cf.* Soc., bk. i, chs. iii-iv. According to Görres *Die Licinianische Christenverfolgung*, pp. 5 *et seq.* Licinius began to persecute the Christians about 319. He seems, in his growing jealousy and dislike of Constantine, to have suspected the Christians of conspiring against him in favor of Constantine. Although he had not apparently shown them the favors Constantine had in the West, he had not been hostile to them up to this time. Even now the persecution seems to have been mild and limited in character. See note 5, McGiffert, p. 384, *H. E.*

when in 324,[1] Constantine overthrew Licinius' power, and added all his territory to his own, the conqueror entered his rival's territory as the restorer of Christian liberties.

Constantine, now the sole emperor of the Roman world, lost no time in assuring the Christians of the East that they should enjoy the same happy lot as had their co-religionists in the West uninterruptedly since 312. Christians who had suffered in person or property under Licinius were to be released from the penalties they were enduring for their faith. Eusebius[2] informs us that the emperor published edicts to this end; one directed to the Christian Church and one to the heathen population of the newly-conquered provinces.[3] Eusebius has transmitted a copy of that sent to the heathen.[4] The latter opens with a lengthy disquisition on the benefits that fall to Christians, while calamities are the lot of men who show contempt or hostility to the Christian religion. The emperor traces the manifold evils that have afflicted all humanity to the persecutions heaped upon the Christians. He recognizes himself as the instrument chosen by God to banish evil, and recall men to the observance of the holy laws of God. Already, he declares, he has worked God's will in the West, and now he views the pressing need for reform measures

[1] The pretext for the war was a dispute of the two emperors over border territory along the Danube frontier. Constantine began the actual warfare by invading Licinius' territory. Two battles, one at Adrianople, the other at Chrysopolis, gave Constantine two victories which forced Licinius to surrender and to acknowledge Constantine sovereign in both West and East. Seeck, Neue und Alte Daten zur Geschichte Diocletians und Constantine, in *Rheinisches Museum für Philologie* 1907, vol. lxii, p. 493 gives the date 324 although Mommsen holds to 323. *Cf. Mediaeval History*, vol. i, ch. iv for support of Seeck.

[2] *H. E.*, bk. x, ch. ix; *V. C.*, bk. ii, ch. xx.

[3] *V. C.*, bk. ii, ch. xxiii.

[4] *V. C.*, bk. ii, ch. xxiv-xlii. *Cf.* Soz., bk. i, ch. viii also Zos., bk. ii, p. 51.

in the East. Thereupon follows a long list of laws, affecting a great variety of cases of persecution under Licinius' rule. Christians were to be released from exile and from service in the civil courts.[1] Those who had been banished to islands were to be recalled, while men who had been condemned to service in the mines, or in public works, or women's apartments were to be freed. Property that had been confiscated from the Christians was to be restored to them. Provision was made for finding the heirs of martyrs and handing over to them the inheritance they had had to forego. Not only private individuals, but the imperial treasury itself must restore property that had been taken from Christians. The rescript closed with a fervent exhortation that all men should worship God.

There is no internal evidence that this document was dictated by a Christian. Its author, while stating that Christianity was a religion pleasing to Supreme God and himself acknowledging the power of Almighty God, whose agent on earth he believes himself, nowhere states in the letter that Christianity is the only true religion. Whatever Constantine may have felt in his own heart at this time, he politicly refrained in this mandate to the pagans, from unduly exalting Christianity. The provisions of the rescript merely restored Christians in the East to the rights and privileges they had enjoyed so long as Licinius continued to observe his Decree of Nicomedia.

The commands of the rescript were speedily carried out. In reorganizing his new territories, Constantine drew up laws and dispatched letters on religious matters.[2] Eusebius tells us [3] that a statute was passed and sent to the provincial governors for increasing the height and size of

[1] *V. C.*, bk. ii, ch. xxx. [2] *V. C.*, bk. ii, chs. xliv-xlv.

[3] *V. C.*, bk. ii, ch. xlv; *cf.* Soz., bk. i, ch. viii.

churches, "as though it were expected that, now the madness of polytheism were wholly removed, pretty nearly all mankind would henceforth attach themselves to the service of God." The governors were instructed to spare no expense in making these alterations but were to draw upon the imperial treasury itself. These directions were sent to the bishops as well as to the provincial governors, and Eusebius records that this is the first occasion in which the emperor personally addressed a letter to him.[1]

Another letter of greater importance, in the Emperor's own handwriting, was addressed to the inhabitants of every province in the East.[2] Eusebius says that in it Constantine discussed the error of idolatry and exhorted his subjects to acknowledge the Supreme God and openly to profess their allegiance to his Christ as their Saviour.[3] Examining the letter, it proves to be a curious, rambling document. It opens with a brief explanation of the value of vice as a foil for virtue and then sketches the persecution of the Christians during the emperor's own lifetime. Constantine, in phraseology that reminds us of the language of a Methodist experience meeting, bears witness that the "Lord of All" has been his protector, and that "God's sacred sign" has led him to victories.[4] From time to time the royal author abandons the form of an official document in the letter, and makes direct invocations to God, to whom he ascribes glory and honor for the good gifts he has vouchsafed mankind. In spite of the odd style and the medley of contents, the document contributes noteworthy information to our study of Constantine's religious policy for his Eastern subjects.

[1] *V. C.*, bk. ii, chs. xlv-xlvi; *cf.* Soz., bk. i, ch. viii.

[2] *V. C.*, bk. ii, chs. xlvii-lx.

[3] *Ibid.*, ch. xlvii.

[4] *Ibid.*, ch. lv.

As in the policy of 312 in the West, so now in the East, toleration for all men was granted and insistently demanded. This toleration, the emperor hoped, would lead men to leave paganism for Christianity. Besides, toleration was necessary for the concord that Constantine declared he wished all mankind to enjoy. Therefore, Constantine decreed that every man was to be free, in religious matters, to do as his soul pleased, and no man was to interfere with his neighbor's religious liberty. He declared that Christianity was the only religion whose followers could live lives of holiness and purity, but as for the devotees of other cults "let them have, if they please, their temples of lies; we have the glorious edifice of the truth which thou hast given us as our native home." [1] Even while speaking thus contemptuously of paganism, the legislator was careful to forbid any man coercing his neighbor into becoming a Christian, "For it is one thing voluntarily to undertake the conflict for immortality, another thing to compel others to do so for fear of punishment." Constantine excused himself for going into great detail in the letter, but he said he was most anxious not to deceive nor to be false to the true faith. Furthermore he had learned that some people were declaring that the rites of the heathen temples were abolished; "we should indeed have earnestly recommended such removal to all men, were it not that the rebellious spirit of those wicked errors still continues obstinately fixed in the minds of some so as to discourage the hope of any general restoration of mankind to the ways of truth."

There is no doubt in this document as to the identity of the God the Emperor invoked; but while Constantine ranged himself unmistakeably on the Christian side and referred scornfully to paganism, he provided carefully that

[1] For discussion of the translation of this phrase, see *V. C.*, p. 514, note 2.

pagans should have complete religious independence in faith and in worship. Both the spirit and the letter of this document display a determined policy of religious toleration. Hitherto, in publishing a religious policy, Constantine had been associated with some other emperor; now he was standing alone, at the head of the whole state, declaring what was to be his attitude in religious affairs for the territory lately ruled over by Licinius. Yet the religious platform of 324 is identical with that of 312-3, providing complete religious independence for all his subjects.

Whatever hand drew up this letter, Constantine, by publishing it, subscribed to its contents. His willingness to stand now as a Christian may have been due to one or more of various reasons. There were in the East vastly larger numbers of Christians than were to be found in the West, and during the decade since 312, the world had grown used to Constantine's patronage of Christianity. As has been suggested above,[1] Licinius' paganism may have necessitated ambiguous references to a Deity in the Edict of Milan, while only now Constantine may have felt free to express his personal view in regard to the Divinity. Even if Constantine had been converted to Christianity by 312, he must in the interval have become better acquainted with the nature of the Christian God and the teaching of the Church in regard to Jesus. On the other hand, the possibility ever remains that this edict may mark the real transition of Constantine from paganism to Christianity in the matter of his own personal faith.

While Constantine was directing this series of letters for his Eastern subjects, he was, Eusebius informs us, preferring Christians to pagans when appointing governors in the East;[2] "and if any appeared inclined to adhere to the

[1] *Vide*, p. 57.

[2] *V. C.*, bk. ii, ch. xliii.

Gentile worship, he forbade them to offer sacrifices. This law applied also to those who surpassed the provincial governors in rank and dignity,[1] and even to those who occupied the highest station and held the authority of the Praetorian Praefecture. If they were Christians they were free to act consistently with their profession; if otherwise, the law required them to abstain from idolatrous sacrifices." [2] The wording of the law seems to require the interpretation that, while occupying any one of these special offices, a pagan might not even in a private capacity, assist at a public sacrifice; for it is particularly stated that Christian officials were to be " free to act consistently with their profession," while pagans were required " to abstain from idolatrous sacrifices." It seems unreasonable, in the face of Constantine's promise of toleration, to believe that this enactment was intended to interfere in any way with a pagan official's religious behavior at home. In his own house he must have been free to perform any religious rite he chose; but in public he must keep his hands from sacrificing.

The importance of this law is patent, for, while not interfering with the religious liberty of individuals, it divorced the old religious rites from the public offices in the East. So anxious was the Emperor to make his intention plain, that he forbade an office holder, even unofficially, from assisting at a sacrifice, lest it might seem that the rite, in some way, were connected with the government office he held.

It is true that the ancient religion of Rome made little

[1] Namely proconsuls, vicars or vice-prefects, counts or provincial generals. *Cf. Theod.*, bk. i, ch. ii, "He appointed Christians to be governors of the provinces ordering honor to be shown to priests and threatening with death those who dared to insult them."

[2] *V. C.*, bk. ii, ch. xliv. *Cf.* Soz., bk. i, ch. viii.

personal appeal to men of the fourth century, who were greatly attracted to the various Oriental cults and the Greek philosophies. St. Augustine was pouring his satire and invective upon dead ashes [1] when he inveighed against the worship of the great company of old Roman deities, but Firmicus Maternus [2] and Prudentius [3] knew better where the fires of paganism were blazing, and they directed their efforts to quench the popular Oriental cults which were the serious rivals to Christianity.[4] Nevertheless, it was the old cult of the Republic, re-invigorated and modified, but not materially altered by Augustus, that still continued to be the state religion of the Roman Empire. In the state religion, the Romans had from immemorial times recognized a definite part of the machinery of state, and appointed magistrates or citizens to act as priests to fulfil with legal exactness the *jus divinum* that was allied with the *jus humanum*. The creed of the state religion had become little more than a glorified patriotism,[5] centering in the deified person of the emperor, and was not incompatible with that of any other cult except those of Judaism and Christianity, the two intolerant religions of the time. Looking back upon the impressive development of the Roman Empire, citizens saw the thread of the state religion inter-

[1] *De Civitate Dei, passim.*

[2] *De Errore profanarum religionum.* [3] *Contra Symmachum.*

[4] Cumont, *Les Religions orientales dans le Paganisme Romain*, p. 244 says very justly that St. Augustine made here the common mistake of students who study books instead of facts. While he used Varro, Prudentius and Firmicus Maternus used their eyes and described the paganism that throve about them.

[5] Cumont, *op. cit.*, p. 246, says the national religion of Rome had no real life. Although great personages might still assume the titles of augurs, etc., as they did those of consul or tribune, these religious titles had as little power left them as had the religious. The decline of the state religion dates from the day when Aurelian set above the ancient pontiffs those of the invincible Sun, the protector of his empire.

woven in the fabric of Roman history.[1] Therefore to cut or mar this shining thread would seem, even to the pagan whose intellect scorned the puerilities of the national religion, to spoil and injure irreparably the material itself, and yet it was this very thing that Constantine seemed to be planning in the East.

In the West it would have been exceedingly difficult for Constantine to attempt to discontinue the sacrifice connected with public offices. Even in the East where Christianity had so much larger a following this was a radical step. Yet the act seems a natural one to expect from the ruler who reiterated the toleration policy of 312-3 in 324. While there is no denying that this law in the Orient dissolved one of the important bonds of union between the state and the ancient religion, it is plain that there was no intention to substitute the rites of another cult for those that had been set aside. The offices affected by the enactment were made purely secular, stripped of all religious duties. To pagans of the time this must have seemed small consolation in the face of an act that impiously disregarded fundamental national principles. Many patriotic pagans and ardent Christians must have believed Constantine animated by a spirit hostile to the religion of ancient Rome, when he drew up this decree. To-day, viewing the enactment in the light of the Emperor's declared religious policy, it may have been less an actual attack upon paganism, than a further attempt to maintain absolute parity between Christianity and paganism. As long as pagan rites were required, or permitted to office holders, Christians were at

[1] The idea that the greatness of the Roman empire was the outcome of piety had been advanced by poets and statesmen. Cicero used this idea in a speech and put it into the mouth of the Stoic in *De Natura Deorum*. Christian apologists had to combat this idea which was as old as Rome itself. *Vide*, Glover, *Conflict of Religions in the Early Roman Empire*, p. 7.

some disadvantage. Furthermore, by allowing its servants to perform customary sacrifices, the government would seem to be sanctioning bonds between the state and a religion out of harmony with the personal cult of the sovereign. Finally, in the last analysis, to maintain strict religious neutrality in the state in which various hostile religious groups flourished, a government must free itself from all bonds of union with any cult, and make itself rigorously unreligious. The law of Constantine appears to pursue this line of action and hence seems rather to belong with the pro-Christian than the anti-pagan legislation.

Eusebius informs us that Constantine "also passed a law to the effect that no Christian should remain in servitude to a Jewish master, on the ground that it could not be right that those whom the Saviour had ransomed should be subjected to the yoke of slavery by a people who had slain the prophets and the Lord himself. If any were found hereafter in these circumstances, the slave was to be set at liberty, and the master punished by a fine." [1]

In addition to this direct evidence of Constantine's attitude, there are other facts which have been claimed by his Christian apologists as proof of his Christian spirit and policy. In any case they stand certainly as witnesses to his humane temper. He gave liberally to the Christian poor and especially singled out the virgins to receive richly of his charity.[2] Shortly after taking Rome, he abolished crucifixion. He passed a law commanding that no one in future should be branded in the face.[4] In 320 he com-

[1] *V. C.*, bk. iv, ch. xxvii. *Cf. C. Th.*, xvi, 9, 1, also *C. S.*, no. 4.

[2] *V. C.*, bk. iv, ch. xxviii.

[3] "Vetus veterrimumque supplicium patibulorum et cruribus suffrigendis primus removerit." Sex. Aur. Victor *de Caes.* xli. *Cf.* Soz., bk. i, ch. viii; also Soc., bk. i, ch. xviii.

[4] *C. Th.*, ix, 40, 2. *V. infra*, p. 161 for text.

manded that prisoners awaiting trial, should be allowed light and air, and unless there were grave danger that they might otherwise escape, they should not be chained. Trials should follow arrest as speedily as possible.[1] In 315 Constantine decreed for Italy, and in 322 for Africa, and apparently other provinces as well, that the fiscus and the private purse of the emperor should be liable for the maintenance of all children whose fathers declared themselves too poor to care for them.[2] Although exposure of children was not punishable by law until 374, this provision of Constantine certainly must have lowered the number of infanticides while it secured to many children material care their parents were unable or unwilling to give them. In dividing estates, members of a slave family were not to be separated.[3] There is also a law in his name expressing disapproval of gladiatorial shows and perhaps intending to abolish them.[4] Constantine drew up also many laws to protect widows, orphans and minors.[5]

[1] *C. Th.*, ix-3-1. *Cf. C. Th.* ix-3-2.

[2] *C. Th.* v-9-1. The falling off in population may have made this law a political measure pure and simple. *Cf.* Soz., bk. i, ch. ix.

[3] *C. Th.* ii, 25, 1.

[4] Soz., bk. i, ch. viii. *C. Th.*, xv-12-1. *Cf. C. J.*, xi, 44, 1. For text and discussion of these laws *v. infra*, p. 161.

[5] *C. Th.* i, 22, 2; iii. 30, 1, 2, 3, 4, 5; ix, 21, 4.

CHAPTER IV

Legislation Affecting Paganism

In spite of his concessions to Christianity in the West and the East, and his evident devotion to that religion, Constantine remained the recognized head of paganism, and held the title of Pontifex Maximus to the time of his death.[1] We have already called attention to the assurance of protection to paganism in Constantine's edicts of toleration for Christianity. To weigh Constantine's recorded actions affecting paganism, and to determine from them how far he fulfilled his promises of toleration, constitute now our immediate problems.

In the legal codes there is a comparatively small amount of Constantinian legislation having to do directly with paganism. Much of our evidence for Constantine's attitude towards paganism, as gathered from these sources, is obtained by a process of negative inference. The rich dowering of the Church, and the persistent fostering of its organization, of a truth, mark a decline in the power of paganism. As Christianity waxed, paganism was bound to

[1] An edict of 328 gave him the title of Pontifex Maximus. Tillemont, *op. cit.*, bk. i, p. 139, says there is no proof that Constantine and his successors themselves took this title which was ascribed to them by others. He points out that Sozomen in saying Julian took the title, mentions it, not as a part of his royal dignity, but as a piece of his apostasy, and that Zosimus, living at the end of the fifth century, was not capable of telling us whether Constantine and his successors took the title and robe. The inscriptions prove nothing since Gratian who patently hated the title is given it in an inscription.

wane, even under a policy of avowed toleration for all.[1] That, however, might have been the result of circumstances, and not the conscious wish of the Emperor.

Although little legislation against paganism during this reign is to be found in either the Theodosian or the Justinian Codes, the historians of the fourth and fifth centuries have much to say concerning the measures Constantine took to restrict, if not to crush, paganism. They record that he destroyed or closed the temples,[2] sometimes transferring their income to churches.[3] Eusebius states positively that

[1] Soz., bk. i, ch. vi, "under the government of Constantine the Churches flourished and increased in numbers daily, since they were honored by the good deeds of a benevolent and well-disposed emperor."

[2] *V. C.*, bk. iii, ch. i; Soc., bk. i, ch. iii, declares that Constantine embraced Christianity after his victory over Maxentius and "also either closed or destroyed the temples of the pagans and exposed the images which were in them to popular contempt." Eunap., *Vit. Aed.*, p. 43, "Then Constantine was reigning who overturned the most celebrated temples to raise Churches upon their ruins." Orosius, *Adversum Paganos*, bk. vii, ch. xxvii, "Tum deinde primus Constantino, justo ordine et pio, vicem vertet edicto si quidem statuit citra ullam hominum caedem paganorum templa claudi." *Cf. Anon. Val.* lines 34, 35. Soz., bk. i, ch. viii, declares that after the final defeat of Licinius, Constantine took measures so that: "the worship of false gods was universally prohibited; and the arts of divination, the dedication of statues, and the celebration of pagan festivals were interdicted." *Cf.* Malalas, *Chronographia* in *Corpus Byzantinae Historiae*, bk. xiii, "And therefore without delay he overturned temples and shrines." Theod., bk. i, ch. ii, "the temples of the idols were closed." *Prosperi Teronis Epitoma Chronicon* in *Chronica Minora*, p. 1035. "Edicto Constantini gentilium templa subversa sunt." Soc., bk. i, ch. xviii, "after this the emperor became increasingly attentive to the interests of the Christians and abandoned the heathen superstitions." This chronology is curious; the statement follows the mention of the founding of Constantinople but precedes the account of the destruction of temples in the East. Compare the order in Eusebius.

[3] Eus., *Orat.*, ch. vii, § 13. "Our emperor, as the delegate of the Supreme Sovereign, has followed up the victory, bearing away the

his adored emperor razed to their foundations the temples that had been the chief objects of superstitious reverence;[1] nevertheless, the only accounts that we possess of the destruction of specific temples, are of those with whose services some notorious rites were connected, or whose existence was a distinct outrage to Christian sentiment in the community. Let us examine the stories of the destruction of particular temples.

On the supposed site of the Holy Sepulchre, a temple to Venus had been erected. Eusebius says[2] that before Constantine's rule, no governor or military commander had had the power to abolish the worship at its altars. It must have seemed the height of impiety and indecency to Christians, that a heathen shrine should have stood on the traditional place of the burial and resurrection of their Saviour.[3] There were reasons, however, why this goddess' temple may have been execrated by pagans, as well as Christians.

spoils of those who have long since died and mouldered into dust and distributing the plunder with lavish hand among the soldiers of his victorious Lord." Also *Chronicon Paschale* in *C. B. H.*, vol. iv, p. 282. "Eodem anno, Constantinus, cum solus Romanorum praeesset imperio, omnia ubique idola dejecit, eorumque pecuniis omnibus et possessionibus ablatis universas Christi ecclesias omnesque Christianos ei donavit." This chronicle, closing with the year 627, was probably compiled between 631 and 641. There is a later continuation carrying it into the eleventh century.

[1] *V. C.*, bk. iii, ch. i.

[2] *V. C.*, bk. iii, ch. ii, "They had honored demons with offerings; Constantine exposed their error and continually distributed the now useless materials for sacrifice to those who would apply them to a better use. They had ordered the pagan temples to be sumptuously adorned: he razed to their foundations those of them which had been the chief objects of superstitious reverence." *Cf. V. C.*, bk. iii, chs. xxv *et seq.*

[3] A temple of Venus is believed to have been built by Hadrian on the site of Calvary. The sepulchre of Jesus was held to have been on Calvary.

Immoral practices, severely condemned by devoted pagans, were connected with the worship of Venus throughout the Empire, and it is probable that the rites at this especial temple were not above reproach. So there may have been a double reason for the drastic measures to which Constantine resorted. He ordered, not only that the temple be destroyed, but that the stone and wood of which it had been constructed be removed to a distance. The polluted ground, he commanded dug up to a great depth and carried away. On this purified site the Emperor erected a magnificent church. Eusebius has preserved the minute instructions Constantine gave for the architectural plans and ornamentation of the structure.[1]

The Emperor's mother, Helena, likewise interested herself in building churches in localities associated with the life of Jesus.[2] With her visit to Jerusalem is connected the story of the finding of the cross upon which Jesus was believed to have suffered.[3]

Eutropia, the mother of Fausta, informed her son-in-law that in Palestine the Oak of Mamre, a spot associated with Abraham and Jesus, was polluted with shrines, and an altar on which sacrifices were continually offered.[4] Constantine instructed Count Acacius to tear down, and burn the idols, and overturn the altars. In place of the demolished temple the Emperor ordered a church built; and, in

[1] *V. C.*, bk. iii, chs. xxx-xl.

[2] *V. C.*, bk. iii, chs. xlii-xliii. *Cf.* Theod., bk. i, ch. v and Soc., bk. i, ch. ix, epistle to Macarius also Soz., bk. ii, ch. i.

[3] Soc., bk. i, ch. xvii; also Theod., bk. i, ch. xvii. For critical discussion of the finding of the cross *v.* Duchesne *Lib. Pont.*, vol. i, p. cviii.

[4] *V. C.*, bk. iii, chs. li-liii. *Cf.* Soc., bk. i, ch. xviii. Soz., bk. ii, ch. iv says that Constantine "rebuked the bishops of Palestine in no measured terms because they had neglected their duty and had permitted a holy place to be defiled by impure libation and sacrifices."

future, any one guilty of impiety of any kind in that place was to be visited with condign punishment.[1]

The temples of Venus at Aphaca on Mt. Lebanon, and at Heliopolis in Phoenicia, were plague spots in those communities, and their destruction by Constantine must have been welcomed by all men of character, whether pagan or Christian.[2] At Aegae in Cilicia, stood a temple to Esculapius. Grave charges were made, now and again, against the conduct of suppliants who sought the cure for a malady in visiting, or passing a night, in one of the temples dedicated to this god of healing. Whether the charges were all well-founded or not, they were as fervently believed by some as they were hotly denied by others. We hold that Constantine, in destroying the temple in Cilicia, was acting in what he considered the cause of public morals, rather than religion.[3]

Besides destroying temples whose existence offended moralists by the notorious practices connected with them, and others whose location outraged Christian sensibilities, the historians record that Constantine brought about the delapidation of others in the East, as a means merely of re-

[1] *V. C.*, bk. iii, ch. liii; *cf.* Soz., bk. ii, ch. iv.

[2] *V. C.*, bk. iii, chs. lv and lviii; Soc., bk. i, ch. xviii; Soz., bk. ii, ch. v. For the persistence of the worship of Venus at Heliopolis after Constantine's death, *v.* Tillemont, *op. cit.*, vol. iv, p. 207. It is following the description of the destruction of the temple of Venus on Mt. Lebanon that Eusebius bursts forth into a paean "and henceforward peace, the happy nurse of youth, extended her reign throughout the world. Wars were no more for the gods were not: no more did warfare in country or town, no more did the effusion of human blood, distress mankind, as heretofore when demon-worship and the madness of idolatry prevailed." Eus., *Orat.*, ch. viii, par. 9.

[3] *V. C.*, bk. iii, ch. lvi. Eusebius places these events between the founding of Constantinople and the deposition of S. Eustathius 330-1. St. Jerome sets them in the year 331. The temple of Esculapius was probably afterwards restored *v.* Chastel, *op. cit.*, p. 74.

buking "the superstitious errors of the heathen".[1] In several cities, the emperor ordered the doors and roofs of temples to be removed, thus exposing the buildings to the weather; while statues of brass, silver and gold were removed.[2] This last work was done, not by soldiers, but by a few friends of the Emperor who were empowered to carry out the imperial will in each province. The method these men employed was simple and direct.[3] They ordered priests, "midst general laughter and scorn", to bring out the idols from the temples. "They then stripped them of their ornaments, and exhibited to the gaze of all the unsightly reality which had been hidden beneath a painted exterior. Lastly, whatever part of the material appeared valuable, they scraped off and melted in the fire to prove its worth, after which they secured and set apart whatever they judged needful for their purpose, leaving to the superstitious worshipers that which was altogether useless, as a memorial of their shame."[4] "The bronze images which were skillfully wrought were carried to the city named after the Emperor, and placed there as objects of embellishment."[5] During these proceedings "the people were induced to remain passive from the fear that if they resisted these edicts, they, their children and their wives, would be exposed to evil."[6]

It looks very much as though Eusebius, and other historians of the century, were wrong in ascribing to Constantine

[1] *V. C.*, bk. iii, ch. liv; *cf.* Soz., bk. ii, ch. v.

[2] Eus., *Orat.*, ch. viii, par. 1. "For as soon as he understood that the ignorant multitudes were inspired with a vain and childish dread of these bugbears of error, wrought in gold and silver, he judged it right to remove these also, like stumbling blocks thrown in the path of men walking in the dark and henceforth to open a royal road, plain and unobstructed, to all."

[3] *V. C.*, bk. iii, ch. liv; Eus., *Orat.*, ch. viii; Soz., bk. ii, ch. v.

[4] *V. C.*, bk. iii, ch. liv. [5] Soz., bk. ii, ch. v. [6] Soz., *ibid.*

a purpose to bring ridicule and destruction on paganism by removing doors, and roofs, and valuable statues. There was no destruction of idols as such; simply the removal of valuable metal statues, or the appropriating of costly material. Constantine could thus acquire cheaply a quantity of expensive metals, that would be useful in the improvement and expansion of his new capital. The work of demolition was carried on by small numbers of men without military assistance, so that we are led to believe that, either the communities were not intensely pagan, or no serious injury was felt to have been done the pagan cults themselves. Henry VIII was still a son of Mother Church, contemplating no attack upon the Catholic religion, when, with the assistance of Wolsey, he began to gather into his coffers the wealth of English monasteries.

The fact, however, remained that temples had been robbed of valuable objects by imperial orders, and that this had been accomplished in ruthless, anti-pagan fashion; and indirectly, the cause of paganism suffered. As a result of the discredit cast upon the idols by the commissioners' treatment, there were some conversions to Christianity.[1] Other

[1] Soz., bk. ii, ch. v: "The efforts of the Emperor succeeded to the utmost of his anticipation; for on beholding the objects of their former reverence and fear boldly cast down and stuffed with straw and hay, the people were led to despise what they had previously overrated, and to blame the erroneous opinion of their ancestors. Others, envious at the honor in which the Christians were held by the Emperor, deemed it necessary to imitate the acts of the ruler; others devoted themselves to an examination of Christianity, and by means of signs, of dreams, or of conferences with bishops and monks were convinced that it was better to become Christians." *Cf.* Eus., *Orat.*, ch. x: "Hence the universal change for the better, which leads men to spurn their lifeless idols, to trample under foot the lawless rites of their demon deities, and laugh to scorn the time honored follies of their fathers. Hence, too, the establishment in every place of those schools of sacred learning, wherein men are taught the precepts of saving truth, and dread no more those objects of creation which are seen by the natural eye, nor direct a gaze of wonder at the sun, the moon or stars."

pagans, although led by these events to despise their religion, would not ally themselves with Christianity.[1]

Indirectly, Constantine must have been responsible for the injury to, or destruction of, many other pagan temples. Some localities were not slow to see the advantage of adopting the religion that enjoyed the emperor's peculiar favor; others, undoubtedly, at last felt free to allow the majority of the inhabitants to show their dislike of paganism. Gaza, called Majuma, where "superstition and the ancient ceremonies" had held sway heretofore, turned with all its inhabitants to Christianity, and was raised, in consequence, to the rank of a city, and received the new name of Constantia.[2] "Numbers too in the other provinces, both in the cities and the country, became willing enquirers after the saving knowledge of God, destroyed as worthless things, the images of every kind which they had heretofore held most sacred, voluntarily demolished the lofty temples and shrines which contained them; and renouncing their former sentiments, or rather, errors, commenced and completed entirely new churches."[3]

[1] *V. C.*, bk. iii, ch. lvii: "Hence it was that, of those who had been the slaves of superstition, when they saw with their own eyes the exposure of their delusion, and beheld the actual ruin of the temples and images in every place, some applied themselves to the saving doctrine of Christ; while others, though they declined to take this step, yet reprobated the folly which they had received from their fathers, and laughed to scorn what they had so long been accustomed to regard as gods."

[2] *V. C.*, bk. iv, ch. xxxviii. A similar course of events occurred in other cities, *cf. V. C.*, bk. iv, ch. xxxix; *cf.* Soz., bk. ii, ch. v. Soz., bk. ii, ch. vi says that Christianity gained such numbers of converts in the empire, that the "religion was introduced even among the barbarians themselves. The tribes on both sides of the Rhine were Christianized, as likewise the Celts and the Gauls who dwelt upon the most distant shores of the ocean."

[3] *V. C.*, bk. iv, ch. xxxix; *cf.* Soz., bk. ii, ch. v.

It was only in the East that temples were despoiled and destroyed and Christians preferred to pagans for public offices; in the West, temples seem to have suffered no damage, and paganism was no disqualification for office. Inscriptions show that a number of nobles who served as consuls, prefects, and augurs, were initiated into the religion of Hecate or Mithra.[1] Nevertheless it was in the West, before the overthrow of Licinius, that Constantine drew up all his laws touching divination and magic that have been preserved in the codes. It is fortunate that we possess this series of laws with which to check up the extravagant statements of the chroniclers,[2] who assure us that the emperor forbade divination and magic.

In the old state religion of Rome, a recognized part of the *jus divinum,* whose object was to establish the *pax deorum,* was the *jus augurale,* whose particular province it was to ascertain the mind of divinity, to learn whether or not, the gods were favorable to some human undertaking or desire. There came to be built up a system of divination, authorized by statute, and quite apart from private divination that was strictly forbidden; and the

[1] *C. I. L.*, vol. vi, no. 1675, Alfenio Ceionio Juliano Kamenio V. C. Q. K. praetori tri umf. vii, viro epulonum. mag. p. sc. summi invicti mitrai ierofante aecate arcb de ilib. xv viro. s e tauroboliato. d m pontifici majori consula ri provinciae numidiae justitiae ejus provisionibusq. confotis omnibus dioceseos. Kamenius was prefect of the city in 333. *Cf.* vol. vi, nos. 1690, 1694 and vol. x, no. 5061. *Cf.* Greg. Naz. Orat. ch. vi, p. 98.

[2] *V. C.*, bk. ii, ch. xlv also bk. iv, ch. xxv. "He issued successive laws and ordinances, forbidding any to offer sacrifice to idols, to consult diviners, to erect images." Soz., bk. i, ch. viii, "the arts of divination, the dedication of statues and the celebration of pagan festivals were interdicted." Also Zos., bk. ii, ch. li, Constantine had found diviners' predictions realized and "he was afraid that others might be told something which should fall out to his misfortune, and for that reason applied himself to the abolishing of the practice."

pontifex maximus and the augurs were charged with the observance of this *jus augurale.* It is not difficult to understand why it seemed necessary to the government to prevent private divination, which might bring about great harm to an individual or a whole community. As Fowler well remarks, "as the *jus divinum* tended to exclude magic and the barbarous in ritual, so did the *jus augurale,* which was a part of it, exclude the quack in divination." [1]

The ritual of divination was colored by Etruscan influence and the common word, *haruspex,* is Etruscan in origin, meaning a person trained in the threefold art of divination, interpretation of lightning, and the explanation of the meaning of the entrails of victims and portents and prodigies. From the Orient came flocks of men whose profession it was to read the future. Of these, the soothsayers, the *Chaldaei,* and the *mathematici,* were interested largely in astrology. Associated with them were the *magi,* and *malefici*—the magicians—who were regarded as undesirable persons. In the Theodosian Code, as in recent works on primitive religions, divination and magic are closely associated. In actuality they were quite dissimilar, although they both dealt with man's relation to the future. In divination, man attempted to learn the heavenly attitude; in magic he sought to shape the ends of human destiny to his own liking.

As far back as Cicero's time, educated men did not hesitate to question whether there were such a thing as divination at all, while the mass of men at this very time were relying, more and more, upon irregular, or private, divination. That divination was still considered by some educated men of the fourth century A. D. as a valuable part of religion

[1] *Religious Experience of the Roman People,* p. 296.

is proved by Ammianus Marcellinus' expression of his opinion of the worth of divination:

Auguries and auspices are not collected from the will of birds who are themselves ignorant of the future (for there is no one so silly as to say that they understand it): but God directs the flight of birds, so that the sound of their beaks, or the motion of their feathers, whether quiet or disturbed, indicates the character of the future. For the kindness of the deity, whether it be that men deserve it, or that he is touched by affection for them, likes by these acts to give information of what is impending. Again, those who attend to the prophetic entrails of cattle, which often take all kinds of shapes, learn from them what happens. . . . Men too, when their hearts are at a state of excitement, foretell the future, but these are speaking under divine inspiration.[1]

Let us examine now Constantine's legislation in regard to divination and magic.

The first of these laws was published February, 319. It forbade private soothsaying and threatened with burning any haruspex who went to another man's house. The person who urged the haruspex to come was to be banished and suffer the confiscation of his property. The reporters of the offenses were to be rewarded, and not considered as delators. Nevertheless, men were distinctly assured that they might celebrate these rites publicly, although the observances were scornfully labelled as "superstitions".[2] Did this edict so disturb the populace of Rome, that it was necessary to publish a second, and explanatory edict within a few months?[3] At all events, in May of the same year a

[1] Bk. xxi, ch. i, pars. 9-11.

[2] *C. Th.*, ix-16-1, *v. infra*, p. 162 for text.

[3] *Cf.* Schultze, Konstantin und die Haruspicin in *Z. F. K. G.*, 1886, vol. viii, p. 520.

mandate was addressed directly to the people of the city, assuring them that the emperor was not proposing to abolish all divination. More definitely, than in the earlier decree, the people were reminded that they might go to the public altars and shrines without hindrance, provided they did so by day. At the same time private soothsaying was again forbidden under threat of severe penalty.[1] In this second document not only were soothsayers mentioned, but priests of prophecy, and those who had to do with the administering of the rites of divination, were referred to. In both of these laws only private soothsaying was prohibited. It is evident from the second edict, that nocturnal rites at public shrines were disapproved of, if they had not been actually forbidden.[2]

Two or more years later the emperor carefully distinguished between good and bad magic, and as the chief censor of social behavior, sternly denounced black art.[3] Magicians or men, who, through occult power, brought misfortune upon other men, or worked the moral undoing of their fellows, should be dealt with in severest fashion. But not for a minute can anyone see in this law a wholesale condemnation of all magic; for the lawgiver proceeded to commend the kindly art that was used to bring about cures for the ills of men's bodies, or to preserve the work of their hands. Constantine in this edict judged a magical art, purely and simply, on the score of its results. Did a man

[1] *C. Th.* ix-16-2. *v. infra*, p. 163 for text.

[2] Tillemont believes that in Constantine's laws against divination we can see his contempt for paganism. He says that Baronius describes this law to the Romans as a shameful attempt to satisfy the people who were aroused at the thought that he wished to abolish their religion. Tillemont himself thinks Constantine permits in his legislation on divination what he does not dare forbid. *V.* vol. iv, p. 173.

[3] *C. Th.* ix-16-3, *vide infra*, p. 163 for text.

suffer in estate or soul through the power of a magician? Then the power that wrought such evil was worthy of harsh punishment. Did certain acts prevent the destruction of God's gifts and man's labors? Then, judging by the results, such deeds were laudable. Whereas men had been encouraged [1] to report any infringement of the law against soothsaying, they were now informed that beneficent magical acts were not to be made the subject of legal complaint. There was, of course, nothing novel in this differentiation between good and bad magic, but this law of Constantine repeats the accepted distinction, and stamps the former with approval.

In the year 320-1, the Flavian amphitheatre was struck by lightning. Now a thunder bolt was one of the recognized vehicles for the transmission of the gods' will to man, and in consequence, any lightning-struck object must be searchingly considered in order to learn the divine message. On this particular occasion, Constantine thought it worth while to make an official statement [2] to the urban prefect that, in future, whenever lightning struck the palace or any other public building, all old customs were to be preserved, and the haruspices were to be called upon and their verdicts reported severally to the Emperor.[3] Constantine further ordered that licenses to practise divination should continue to be given. All haruspices, however, were to remember that while public divination was permissible, private divination had been strictly forbidden. Undoubtedly this reference was to the prohibitions in the two laws of 319.

These four documents that we have been considering

[1] *C. Th.* ix-16-1. [2] *C. Th.* xvi-10-1, *vide infra*, p. 164 for text.

[3] Tillemont, *op. cit.*, vol. iv, p. 173, holds that the requirement that the findings of the haruspices be submitted to the Emperor was a yoke on the pagans. He seems to forget that the Emperor was pontifex maximus, the legal head of paganism.

constitute our only reliable sources for Constantine's legislation on divination. His attitude in these laws does not seem anti-pagan; there was here no attack, open or hidden, on paganism.[1] His position was exactly that of his purely pagan predecessors, who realized the danger of unrestricted divination in the hands of unscrupulous men. Diviners and magicians wielded powers fraught with great dangers to individuals and government. They could easily gain the ascendency over weak minds and move them to do their will.[2] The diviner could work infinite harm to the government with his readings of the future. Hence the state had long sought to control divination and make illegal all independent, unauthorized divination. From ancient times the clear distinction had been drawn between good and bad magic. Malevolent magic was severely dealt with in the Twelve Tables; and thereafter the prohibition against it was renewed from time to time.[3] In the Empire it was found that the practice of foretelling the future of individuals had the tendency to foster conspiracies against the emperor. The heart of an ambitious malcontent might easily be stirred to treasonable acts when he found himself designated by a diviner, as the man who was next to wear the purple. Several emperors passed laws against magicians. Others decided to monopolize the knowledge of the future by controlling the machinery for foretelling it, and in con-

[1] We cannot agree with Schultze, Konstantin und die Haruspicin in *Z. F. K. G.*, 1886, vol. viii, p. 527 that *all private* sacrifices were hereby forbidden for it seems clear that only sacrifices connected with divination were prohibited. We must believe that private worship of any kind, other than rites connected with magic would be the last expression of pagan cults to come under the imperial ban.

[2] *Cf.* present-day action in London against Oriental soothsayers and in New York against palmists.

[3] *Cf.* Hubert, art. Magia in Daremberg, Saglio and Pottier's *Dictionnaire des Antiquités, Grecques et Romaines.*

sequence drew many astrologers to their courts while they banished them from other parts of the empire.[1] Tiberius prohibited secret consultation of haruspices and in his reign a decree of the Senate banished magicians and astrologers.[2] Nero punished magicians severely, and even classed philosophers with magicians. Caracalla penalized what seems a harmless enough superstition: the wearing of amulets for the cure of ailments. He ordered those who performed, or caused to be performed, nocturnal rites for the purpose of bewitching anyone, to be crucified or thrown to the wild beasts. Some magicians were to be burned alive. The knowledge, as well as the practice, of the art of magic was forbidden; all books on magic were to be burned and their possessors to be deported or to suffer capital punishment, according to their rank. Under Diocletian astrology (*ars mathematica*) was formally proscribed.[3]

Certainly this chain of evidence is strong enough to bear the conclusion, that there was nothing anti-pagan or pro-Christian in Constantine's legislation on divination and magic. This conclusion, however, does not exclude the opinion that Constantine, personally, had no great faith in the infallibility of divination and magic. His skepticism in this matter antedated the battle of the Milvian Bridge.[4]

[1] Fowler, *op. cit.*, p. 397 says that Cato advised that a steward of an estate be strictly forbidden to consult Chaldaei, harioli or haruspices. *Cf.* Cumont, *Religions orientales*, p. 230.

[2] Maury, *La Magie et l'Astrologie dans l'antiquité et au Moyen Age*, p. 77.

[3] Artem geometriae discere atque exerceri publice intersit. Ars autem mathematica damnabilis interdicta est. a. 294. *C. J.*, ix, 18, 2.

[4] *V. supra*, p. 28, note 3. See Zosimus, bk. ii, p. 51, for statement that Constantine had great faith in divination, *supra*, p. 24. For the popularity of magic among Christians at this time, *v.* Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio*, vol. ii, col. 1019. *Cf. ibid.*, col. 522.

Eusebius would have us believe that Constantine did not content himself with prohibiting sacrifices connected with divination, but that after 324 he hampered idolatry, and prohibited every kind of sacrifice. There are three separate statements in his works to the effect that sacrifices were forbidden. The first occurs directly after his account of how officials were forbidden to perform sacrifices. It runs as follows: "Soon after this two laws were promulgated about the same time; one of which was intended to restrain the idolatrous abominations which in time past had been practised in every city and country; and it provided that no one should erect images, or practise divination and other false and foolish arts, or offer sacrifice in any way." [1] In the fourth book of the *Vita,* which is largely given over to enthusiastic descriptions of Constantine's Christian virtues, are found the second and third references. The earlier of these reads as follows: "At the same time, his subjects, both civil and military, throughout the empire, found a barrier everywhere opposed against idol worship, and every kind of sacrifice forbidden." [2] In the following chapter Eusebius also states that once, in a company of bishops, the Emperor declared in his hearing, "you are bishops whose jurisdiction is within the Church: I also am a bishop, or-

"Qui vaticinantur et gentium consuetudines sequuntur vel in suas aedes aliquos introducunt ad medicamentorum inventionem, vel lustrationem, in quinquennii canonem incidant secundum gradus praefinitos, tres annos substrationis, et duos annos orationis sine oblatione." *Cf. ibid.*, col. 569. "Quod non oportet eos, qui sunt sacrati, vel clerici, esse magos, vel incantatores, vel mathematicos, vel astrologos, vel facere ea quae dicuntur amuleta, quae quidem sunt ipsarum animarum vincula: eos autem qui ferunt, ejici ex ecclesia jussimus."

[1] *V. C.*, bk. ii, ch. xlv. Allard, *op. cit.*, p. 174, believes this refers to the republishing of the laws against divination. *Cf.* Theod., bk. i, ch. ii, "He enacted laws prohibiting sacrifices to idols."

[2] *V. C.*, bk. iv, ch. xxiii.

dained by God to overlook whatever is external to the Church." . . . "Consistently, with this zeal, he issued successive laws and ordinances, forbidding any to offer sacrifice to idols, to consult diviners, to erect images, or to pollute the cities with the sanguinary combat of gladiators." [1]

There is in a decree of Constantius, drawn up in 341, a reference to a law of Constantine, in which sacrifice had been prohibited.[2] Some scholars,[3] founding their opinion on this reference and the statements of Eusebius quoted above, believe that Constantine, rather late in his career, did publish an edict, now lost, which forbade all sacrifices. Other historians hesitate [4] to believe that a sweeping law was promulgated against all sacrifices and some deny [5] that any

[1] *V. C.*, bk. iv, chs. xxiv-xxv. Soz., bk. i, ch. viii, states that "the worship of false gods was universally prohibited and the dedication of statues and the celebration of pagan festivals interdicted."

[2] *C. Th.* xvi-10-2. For full text *v. infra*, pp. 175-6.

[3] Chastel, *op. cit.*, p. 61; Schultze, *Gesch. d. Unter. d. griech. röm. Heid.*, p. 56 with note 3; Boissier, *op. cit.*, vol. i, p. 72. *Cf.* Pauly-Wissowa, *op. cit.*, in vol. iv, col. 1024. Tillemont has an interesting marshalling of some of the evidence for and against accepting the existence of this law. *V.* vol. iv, pp. 202-3.

[4] Duchesne, *L. His. anc. de l'Eglise*, vol. ii, pp. 76-7. "Comme nous n'avons pas le texte de la loi Constantienne, il serait difficile d'affirmer qu'elle ait prohibé les sacrifices sans réserves ni distinctions. Peut-être s'agissait-il comme pour l'aruspicine, de cérémonies interdites dans les maisons privées, et tolérées dans les temples."

[5] Burckhardt, *op. cit.*, p. 361, thinks the appeals Firmicus Maternus hurled at Constantius proof positive against accepting the statement that idols were banned by Constantine. Beugnot, *op. cit.*, vol. i, p. 100, believes Constantine may have published a law that was, however, so little different from those directed against secret divination, that it was not included in the Code. In Constantius' law he takes "superstitio" to have the pagan connotation and "sacrificiorum insania" to refer to magical rites. Hence he concludes, that Constantine in drawing up an earlier law similar to this, was acting not as a Christian, but as the sovereign pontiff, whose duty it was to keep the state

prohibition was uttered against general sacrifices during his reign. Did, or did not, Constantine before his death nullify the broad toleration he had proclaimed in the West and the East, by forbidding pagans to observe the solemn sacrifices required by their faith? Our answer to this question must follow a weighing of the sources. Against the statement of the Christian Eusebius that Constantine did forbid sacrifices, we can place the equally dogmatic statement of the pagan Libanius to the contrary.[1] As we saw in the matter of the legislation against divination, Eusebius and other Christian historians of that age, are not always trustworthy when reporting actions of the emperor that affect paganism. They are too keenly anxious to represent Constantine as undermining pagan cults, and consequently, read into laws more than the author intended. The law of Constantius that is supposed to contain the reference to the lost edict of his father, offers difficulties. It opens with the phrase, *Cesset superstitio*,[2] and then proceeds to condemn sacrifices. The word *superstitio* is puzzling in its ambiguity.

religion pure. Boissier, *op. cit.*, vol. i, p. 76, thinks it difficult, in the face of the sources, to doubt the passage of such a law. He believes, however, that it was never executed and that Constantius forced the sense in his reference, for it probably contained vague threats, rather than formal prescriptions against sacrificing.

[1] *Oratio pro templis*, p. 75. "But having prevailed over him who at that time gave prosperity to the cities, judging it for his advantage to have another deity, for the building of the city which he then designed, he made use of the sacred money, but made no alteration in the legal worship. The temples indeed were impoverished, but the rites were still performed there. But when the empire came to his son . . . . (he) was led into many wrong actions, and among others, to forbid sacrifices."

[2] *C. Th.* xvi-10-2. "Cesset superstitio, sacrificiorum aboleatur insania. Nam quicumque contra legem divi principis parentis nostri et hanc nostrae mansuetudinis jussionem ausus fuerit sacrificia celebare, conpetens in eum vindicta et praesens sententia exeratur."

It had been used commonly by the Romans, from time immemorial, to characterize some extravagant, or illegal expression of a religion that might, in its sober, accepted form, command the devotion of the nation. It was the usual word employed in referring to improper divinations or magic.[1] On the other hand, *superstitio* was a favorite term with Christians, who applied it lavishly in referring to any form of paganism. How shall we determine whether Constantius was using the term with its common pagan, or with its Christian, connotation? To arrive at a positive conclusion is impossible. It is equally impossible, in view of the inadequate sources, to affirm that Constantine did or did not pass a law forbidding all sacrifices. If Constantius used *superstitio* in this law with the pagan connotation, he probably aimed the decree at the sacrifices connected with divination and referred to similar legislation of his father. On the other hand, even if he were speaking of all paganism as *superstitio* and were seeking to abolish every kind of sacrifices, there is no evidence in this text, that the Constantinian legislation to which he referred was equally comprehensive in its intent. In prohibiting all sacrifices, Constantius might well have reminded his subjects that there were already on the statute books laws of his father forbidding certain kinds of sacrifices. It is interesting to note that this very enactment of Constantius stands in the Code next to one of Constantine's laws touching divination.[2]

[1] When in 58 the Senate proscribed the cult of Isis it referred to it as "turpis superstitio." *V.* Tertullian *Apologia* 6. *Cf. Val. Max. Epit.*, 3, 4, for similar use of the term.

[2] *C. Th.*, xvi-10-1. Chastel, *op. cit.*, pp. 61 *et seq.*, has an interesting hypothesis in regard to this law of Constantius. He sets aside Libanius' statement in reminding us that that author was only twenty-three years old at the time of the death of Constantine, and since he

Constantine's historians credit him with two quite different lines of action as far as his own statue was concerned. For on some occasions he is reputed to have forbidden that it be set up in a heathen temple, while on others he is charged with placing it in a temple, in order to discredit the religious character of the building.[1]

While Constantine was welcoming Christian bishops to his court and showing them favor and respect, he had pagan philosophers among his friends. Sopater, whom Eusebius called the most eloquent of the philosophers after the death of Iamblicus, rose rapidly in imperial favor, and at public audiences occupied the seat at the emperor's left.[2] The emperor's friendship led to his death, for people became jealous of his eminent position and his friendship with the

always had lived at Antioch or Athens, he could scarcely have known what passed at court in 324. Besides, in his speech before Theodosius, it was a great object to prove Constantine a protector of paganism. Chastel calls our attention to the occasion when Libanius declared that Constantine "was the first to light the spark that burst into a flame under Constantius." *V. Orat. Apolog.*, Chastel believes that shortly after his defeat by Licinius, Constantine published a law prohibiting sacrifices. Then, while the Christians were exultantly declaring that paganism was abolished, the pagans, by seditous riots, were making it impossible to execute the law. Chastel does not believe the law was formally revoked, but that it was suspended or modified in some way. *Cf.* Seeck, *Die Gesch. d. Unterg. d. antik-Welt*, vol. i, p. 66.

[1] *V. C.*, bk. iv, ch. xvi. "At the same time he forbade by an express enactment, the setting up of any resemblance of himself in any idol temple, that not even the lineaments of his person might receive contamination from the error of forbidden superstition." Soc., bk. i, ch. viii, says the emperor "set up his own statue in the temples." The popular custom of setting up a statue of the reigning emperor in a temple dates back to the time of Augustus and is an evidence of the recognition of the divine side of the principate. The emperor's statue bore such inscriptions as: divi filius, deus et dominus or deus natus, which naturally seemed gravely sacrilegious to Christians.

[2] Tillemont, *op. cit.*, vol. iv, p. 253, does not believe that Constantine gave him this seat of honor.

emperor. When the corn ships were delayed, they held Sopater responsible for their non-appearance, and charged him with having chained the winds that should have borne the boats to the Roman port. The people seem to have played on the Emperor's credulity and Sopater was condemned to death.[1]

Another philosopher who enjoyed high favor with Constantine was Eustathius.[2] For the most part, however, according to Eunapius, the philosophers were silenced, and it was only the lofty and bold spirit of Sopater that refused to be thus bound.[3]

The statement of later historians[4] that Constantine closed offices in the state and army to pagans, are not borne out by contemporary sources. On the occasion of his vicennial, however, in 326, he refused to conform to customary usage and take part in the pagan ceremonies of the Capitoline at Rome; and, according to Zosimus, he thereby incurred the hatred of the senate and people.[5] However, Zosimus himself relates that as far back as 313, sacred

[1] Eunap., *Vita Aedii*, p. 48, holds Ablabius, pretorian prefect, directly responsible for Sopater's death. Ablabius, a man of humble family, was raised by Constantine to great power. If it were the same Ablabius, and there is every appearance, to whom Constantine wrote in 314 anent the Council of Arles, he had then some government office in Africa, and was a Christian. His religion would account for the way in which Eunap. and Zos. speak of him.

[2] Eunap., *ibid.*, p. 56.

[3] Eunapius, p. 43. "Perchance then his chosen group of disciples found itself forced to maintain a silence full of mystery and to preserve a reserve worthy a hierophant."

[4] *Cf.* Cedrenus, *Historiarum Compendium* in *Corpus Historiae Byzantinae*, vol. ii, p. 272.

[5] Zos., bk. ii, p. 52. "And on a particular festival, when the army was to go up to the capitol, he very indecently reproached the solemnity, and treading the holy ceremonies, as it were, under his feet, incurred the hatred of Senate and people."

games were omitted at Rome, and to this neglect he lays the miserable state of the empire.[1] By his own avowal,[2] Constantine was, at that time, conforming to the requirements of the state religion. Sextus Aurelius Victor,[3] also, records that the ceremonies were not solemnized in 313, and considers it an evidence of the declining interest for the city of Rome.

In 336, when Constantine celebrated the thirtieth year of his reign, all the pomp of pagan ceremonies was conspicuously absent, and in its stead were simple pagan rites.[4] Then it was that Eusebius waxed eloquent over the decline of paganism: "wars were no more for the gods were not; no more did warfare in country or town, no more did effusion of human blood distress mankind as heretofore, when demon worship and the madness of idolatry prevailed." [5] He enumerates the great things Constantine had done for Christianity in honoring it and in building churches: "Hence the universal change for the better, which leads men to spurn their lifeless idols, to trample under foot the lawless rites of their demon deities and

[1] Zos., bk. ii, pp. 39-40.

[2] *V. supra*, p. 24.

[3] *De Caesaribus*, ch. xxviii.

[4] Eus., *Orat.*, ch. viii; *cf.* ch. ix.

[5] Eus., *Orat.*, ch. ii "and he alone of all who have wielded the imperial power of Rome, being honored by the Supreme Sovereign, with a reign of three decennial periods, now celebrated this festival, not as his ancestors might have done, in honor of infernal demons, or the apparitions of seducing spirits, or of the fraud or deceitful arts of impious men . . . He does not, in imitation of ancient usage, defile his imperial mansions with blood and gore, nor propitiate the infernal deities with fire and smoke and sacrificial offerings; but dedicates to the universal sovereign a pleasant and acceptable sacrifice, even his own imperial soul and a mind truly fitted for the service of God . . . this sacrifice our emperor has learned, with purified mind and thoughts to present as an offering without the intervention of fire and blood."

laugh to scorn the time-honored follies of their fathers." [1] Another act of Constantine had an anti-pagan and pro-Christian color. There was an ancient tradition in Egypt that Serapis caused the overflow of the Nile; and consequently it was customary to bear the Nilometer into his temple in Alexandria. Constantine ordered this measure transferred to a church.[2]

During Constantine's reign, the pagan priests enjoyed their old position and privileges. It is true that the emperor dissolved a certain priesthood in Alexandria but it was notorious for its effeminate character and a pagan moralist might have given the same order for its dissolution. There are a couple of interesting laws published within two years of Constantine's death, which seem to confirm ancient prerogatives to certain African priesthoods and officials. The first of these issued August, 335, was addressed to Felix, the pretorian prefect.[3] The occasion for it was a complaint that men of curial rank, after being honored with the position of flamen, priest, or magistrate, were compelled to fill certain onerous offices unsuitable to their dignity. The emperor decreed that these men be exempt from such obligation. Again in May, 337, addressing the Council of the Provinces of Africa, Constantine declared that the flamens and even decimvirs should be immune from the duty of serving as superintendent or in other official capacity. This second decree he ordered cut into bronze tablets in order that it might be perpetually observed.[4] While we cite these laws as evidence of Constantine's fairness and favor to all men, we must not forget that even under previous

[1] Eus., *Orat.*, ch. ix.

[2] Soc., bk. i, ch. xviii and Soz., bk. i, ch. viii.

[3] *C. Th.*, xii, 1, 21. *Vide infra*, p. 165 for text.

[4] *C. Th.* xii-5-2. *Vide infra*, p. 165 for text.

emperors, Christians had been holding, not only the office of municipal magistrate, but even that of flamen of cities.[1] Since 324 all public offices in the East had been secularized, hence, none of the offices mentioned in these edicts, excepting that of priest, may be considered as religious. The edicts, in the last analysis, seem to lack marked religious character of any kind. They safeguard prerogatives of members of corporations and holders of certain public offices, but are not primarily concerned with ecclesiastics as such.[2]

In March, 1733, there was discovered at Spello (Hispellum) in Umbria, an inscription that was published in the same century.[3] It purported to be a rescript of Constantine, but its validity was questioned by scholars, Muratori among them, because of orthographic peculiarities and the nature of the contents. Mommsen, however, who carefully studied it has disposed of the objections raised against accepting it on its face value. According to Mommsen, it was drawn up between 326 and 337. The occasion was this: the people of Tuscany and Umbria held a common annual assembly at Volsenii (Bolsena), with accompanying circuses and theatrical entertainments. On account of the difficulties in the way of traveling, the Umbrians petitioned the Emperor to be allowed to hold an assembly of their own with games at Hispellum, whose second name was Urbs

[1] Duchesne, *L'His. anc. de l'Eglise*, vol. ii, p. 62. A Christian could hold the position without doing violence to his conscience.

[2] Bury in appendix, to his edition of Gibbon, vol. ii, p. 566, says it has been pointed out that sacerdotales as well as flamens, "had ceased to carry on the ritual and simply as a matter of equity, had the old rights secured to them, while they no longer performed the old duties."

[3] Found in Muratori, *Novus thesaurus veterum inscriptionum*, vol, iii, col. 1791 and Orelli-Henzen, vol. iii, col. 5580. See Mommsen in *Berichten über d. Verhandlungen d. Köng. Sächs. Gesell. d. Wiss.*, 1850. p. 199. *V. infra*, pp. 167-8 for text.

Flavia Constans. They further begged to be permitted to erect a temple to the imperial family. The Emperor in the rescript under consideration, granted both petitions, but stipulated that the building dedicated to his honor should not be polluted by the contagious frauds of superstition.[1]

This document is, unquestionably, of great importance for the student of Constantine's religious policy. It presents difficulties, however, which make it hard to determine its real implications.

Schultze[2] believes that we have ample evidence here of Constantine's Christian spirit. In the first place, he points out that the use of the word *aedes* in the rescript, in place of *templum* which occurred in the petition, is significant. *Aedes* may be used as a synonym for *templum,* but again it may indicate a purely secular building. Even where the words are used synonymously, there remains a distinction between the two for the dedication ceremonies of the two edifices differed.[3] According to Schultze, the Hispellum building was to be, not a religious edifice, but a fine hall, in which would be placed the portraits of the Emperor and of his sons; perhaps the rescript itself, inscribed on marble might be set up there too. If the Emperor's statue were in the building, the right of sanctuary that was connected with it might of itself give a cer-

[1] "In cujus gremio aedem quoque Flavie hoc est nostrae gentis ut desideratis magnifico opere perfici volumnus, ea observatione perscripta (praescripta) ne aedes nostro nomini dedicata cujusquam contagiose (sic) superstitionis fraudibus polluatur."

[2] "Inschrift von Hispellum" in *Z. F. K. G.*, vol. vii, pp. 362 *et seq.*

[3] "Non omnes aedes sacras templa esse." Varro apud Gellium, 14-7, quoted by Schultze.

Technically "*templum*" was a locality consecrated by an augur as fanum was a place consecrated by a pontifex. An *ædes* might be inaugurated for state business or consecrated for worship. Some *ædes* might be both *templa* and *fana* for they might be put to both secular and religious uses.

tain religious character to the whole building.[1] Furthermore, Schultze has no doubt but that in the rescript, Constantine meant to forbid any pagan ceremonies from being carried on in the hall. As elsewhere,[2] this author contends that Constantine referred to general pagan practices in using the word *superstitio*.[3]

Mommsen quotes another rescript of Hispellum which proves that even if Schultze rightly interprets the emperor's instructions, they were not observed. This rescript refers to *Coronato Tuscia et Umbriae pontifici gentis Flaviae*.[4]

Now for our own part, although we may grant that Schultze is correct in holding that it was intention, not chance, that led the emperors to use the word *aedes* instead of *templum* in answering the petition of the Umbrians, we are unable to agree with him in his main conclusions. The evidence itself seems too slight to warrant the contention that the word was not used as a synonym

[1] Mommsen believes with Schultze that a purely religious building was not meant. *V.* Mommsen-Marquardt, *Römische staats-verwaltung*, vol. iii, pp. 142 *et seq.*, also 259. *Cf.* Allard, *op. cit.*, p. 178.

[2] *V. supra.*

[3] "Schon seit d. J. 319, (*C. Th.*, ix-16-1) wird in Konstantinischen Gesetzten der Ausdruck "superstitio" für die heidnische Religion und ihre Lebensaüsserungen gebraucht. Die einzige Superstition zu welchem das in Frage stehende Gebäude Veranlassung geben konnte war der Kultus in der üblichen Form, in welcher er sich schon seit längerer Zeit fixert hatte. In dieser Hinsicht sind die Worte sehr verständlich; sie gestatten gar keine andere Beziehung und Deutung." *Z. F. K. G.*, vol. vii, p. 364. Marquardt, however believes a temple was erected and that priests were attached to it. *Culte chez les Rom.*, p. 140, note 1.

[4] Mommsen thinks this was probably Coronatus Antoninus a priest after Constantine's death. He believes the title pontifex was chosen instead of the more natural one of flamen or sacerdos in order not to offend the emperor.

for *templum.*[1] Furthermore, we believe that here as in his interpretation of the Constantinian legislation on divination, Schultze is at fault in neglecting to take into consideration the common pagan use of the term *superstitio.* Our own opinion, strengthened by the references in the second rescript of Hispellum is, that Constantine did not prohibit pagan worship in this edifice at Hispellum, but simply commanded that none of the superstitions of paganism, divination and magic, be indulged in there.

[1] Jordan, in *Harmes*, vol. xiv, 1879, pp. 567, 568 calls attention to the fact that Augustus calls only two buildings in Rome, *templum*; other buildings set apart for the gods he designates as *ædes.* Jordan thinks the building for the gods erected on private soil was a *templum*, that on public ground an *ædes.*

CHAPTER V

Paganism in Constantinople

The next problem in Constantine's pagan policy is to learn, if possible, how he treated pagan cults in his new capital, Constantinople. This New Rome became the imperial residence in 330,[1] so that in examining Constantine's pagan policy in his new city we are concerned with acts which fell within the last seven years of his life.

The motives for founding the new capital on the Bosphorous were largely political. Rome had long ceased to be the political centre of the Roman world. Logically, when the emperors absorbed the powers formerly wielded by the S. P. Q. R., the centre of government was no longer Rome, but any place favored, at the moment, by the monarch. After the territorial expansion of the state, Rome's position became less geographically central and the rulers spent less time there than in their camps or in provincial cities, whence they could more easily advance against the enemy. As the East grew in importance, on account of the activities there and the pressing anxiety concerning the aggressions of the Persians, it was not surprising that Diocletian made Nicomedia the chief imperial residence by tak-

[1] Work seems to have been begun by 329 if not before. Seeck, Die Zeitfolge der Gesetze Constantins in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 1889, vol. x, p. 197, believes we cannot be sure of the date of the founding since authorities differ. Hesychius, *Illustrii Origines Constantinopolitanae*, p. 18, says that Constantine "celebrated the day of dedication upon the 11th of the month of May in the 25th year of his reign."

ing up his abode there. It was natural then, that Constantine, after becoming sole ruler of the Roman world, should feel the value of a capital further East than Rome.

Some personal lack of sympathy with Rome in 326 may have been a contributing motive in founding a new Rome. Zosimus would have us believe that in that year the Roman senators and people were deeply angered at Constantine's refusal to participate in the Capitoline festivities:

Being unable to endure the curses of almost the whole city, he sought for another city as large as Rome where he might build himself a palace. Having, therefore, discovered a convenient site between Troas and old Ilium, he there accordingly laid a foundation and built part of a wall to a considerable height which may still be seen by any that sail towards the Hellespont. Afterwards changing his purpose, he left his work unfinished, and went to Byzantium, where he admired the situation of the place and therefore resolved, when he had considerably enlarged it, to make it a residence worthy of an emperor.[1]

Constantine's final choice of the old commercial port of Byzantium was a most happy one, and it has been said that by that single act he would have proved his political genius. Important as it was, however, for the political history of the later Empire, any mention of it would have no place in this study, if it had not been claimed, that in connection with

[1] Zosimus, bk. ii, p. 52. For another account of how Constantine thought first of founding his city near the site of old Troy, *cf.* Sozomen, bk, ii, ch. iii. There seems to have been the tradition of an oracle that foretold that the rule of Rome should be transferred to the place of its origin, and according to legend, Ilion, was the ancient sacred home of the Romans. *Cf.* Codinus, *De originibus Constantinopolitanis,* p. 7, where he says, "When old Rome had already begun to decline, Constantine, the son of the Emperor Constantius, invested with the government, founded this new and beautiful city, distinguished by the name of Constantine."

the founding of New Rome the Emperor displayed his real feelings toward paganism. Just what the attitude was students are not agreed. Historians, both primary and secondary, in describing the emperor's policy towards paganism in Constantinople are divided into two camps: one declaring he forbade all pagan practices, the other that he built temples, and did not interfere with pagan cults.

The belief grew up and continued to be held, that Constantine in creating New Rome, utterly discountenanced idolatry there; that, in fact, there were no temples nor altars to be found in the city. Eusebius says that Constantine "determined to purge the city from idolatry of every kind that henceforth no statues might be worshiped there in the temples of those falsely reputed to be gods; nor any altars defiled by the pollution of blood; that there might be no sacrifices consumed by fire, no demon festivals nor any of the other ceremonies usually observed by the superstitious." [1] On the other hand, Zosimus says plainly that in the forum Constantine erected two temples,

in one of which was placed the statue of Rhea, the Mother of the gods, whom Jason's companions had formerly fixed on Mt. Dindymous, which is near the city of Cyzicus. It is said that through his contempt of religion he impaired this statue by taking away the lions that were on each side, and changing the position of the hands. For it formerly rested each hand on a lion, but was now altered into a supplicating posture

[1] *V. C.*, bk. iii, ch. xlviii; *cf.* Soz., bk. ii, ch. iii. "As the city became the capital of the empire during a period of religious prosperity, it was not polluted by altars, Grecian temples nor sacrifices." Also Orosius, bk. vii, p. 273 "urbem nominis sui Romanorum regum vel primus vel solus instituit; quae sola expers idolorum ad hoc brevissimo tempore condita a Christiano imperatore provecta est, ut sola Romae tot saeculis miseriis que provectae, forma et potentia merito possit aequari." *Cf.* Tillemont, *op. cit.*, vol. iv, pp. 235-6. S. Hieronymi, *Chronicorum*, bk. ii, col. 497, Anno 335. "Edicto Constantini gentilium templa subversa sunt."

looking towards the city and seeming to observe what the people were doing. In the other temple he placed the statue of the "Fortune of Rome".[1]

In addition, the same historian states that Constantine, in enlarging the hippodrome took into it the "temple of Castor and Pollux whose statues are still standing in the portico of the hippodrome".[2]

Some of the Byzantine historians state that Constantine erected temples and sacred buildings in the new city; but, evidently, except where these are specifically stated to be pagan edifices, Christian churches are meant.[3]

Malalas, however, says that after despoiling three pagan

[1] Zos., bk. ii, pp. 52-53. [2] *Ibid.*

[3] Codinus, or according to Preger, an anonymous author, who goes by this name, wrote in the tenth century, using besides other sources now lost, Hesychius and two anonymous authors. He is an important author for Byzantine history, largely because there is little first-rate material on the subject, and because he is so superior to such chroniclers as Malalas and Cedrenus. The best critical text is that of Preger found in volume ii of *Scriptores originum Constantinopolitanorum,* 1907. Codinus in describing Constantine's founding of Constantinople says that: "Afterwards he built baths and sacred buildings (ἱεροὺς οἴκους)," p. 7, par. A in *Corpus Historiae Byzantinae;* p. 138 in Preger. Later on he says: "First he built two sacred buildings (ἱεροὺς οἴκους), one to St. Irene, the other to the Holy Apostles; then he abolished all the superstitions of the Greeks. Next he erected many temples ναοὺς of which we shall speak shortly," in *C. B. H.,* p. 8, par. A and B; in Preger, p. 139.

Zonaras who compiled a *World Chronicle* about 1118, which ranks high among Byzantine chronicles probably used ναοὶ with the same connotation when he says "And such was formerly the city of Byzantium: but the distinguished Constantine greatly enlarged it and built temples which he lavishly adorned. *V. Annales,* vol. ii, ch. xiii, p. 7, par. D. In the preceding chapter he tells us how the Emperor dedicated the city to the Mother of God.

Cedrenus writing his *Historiarum Compendium* at the end of the eleventh or the beginning of the twelfth century, in speaking of St. Sophia calls it a temple (νάος) but elsewhere refers to churches as (ἐκκλησίας) *v.* p. 284.

temples the Emperor ordered that they be allowed to remain.[1]

One chronicler reports that the Emperor placed the city under the protection of the Tyche of Rome and that to her especial honor was paid.[2] Eusebius, on the other hand, says the Emperor, in building churches in Constantinople, consecrated the city to God and the martyrs.[3]

Pagans and Christians alike testify that Constantinople was full of statues of gods and goddesses collected from all parts of the empire.[4] Codinus reports that even the church of St. Sophia was ornamented with pagan statues.[5]

[1] Malalas, probably a contemporary of Justinian, compiled a *Chronicle of the World* that shows the author to have been strongly anti-pagan. For that reason it is doubly interesting to find him reporting "At the same time the Emperor Constantine ordered that those three temples (νάος), namely of the Sun, Diana the Moon and Aphrodite, which were situated in that place which used to be called the Acropolis, and which had been stripped of their possessions, should, from that time forward, remain standing." *Vide*, bk. xiii, p. 5.

[2] For an account of Tyche *v.* Pauly's *Real-Encyklopaedie der Klassischen Altertumswissenschaft,* vol. vii, Art. Fortuna. In the empire, this goddess became associated with the imperial house and therefore, received, as did many other deities, the additional name of Augusta: Banduri, *Imperium Orientale sive Antiquitates Constantinopolitanae,* ch. xiii, says that Constantine placed a cross on the head of Tyche.

[3] *V. C.*, bk. iii, ch. xlviii. Zonaras, *v.* vol. ii, bk. xiii, p. 6, and chroniclers after him, declare that Constantine dedicated his new capital to the Virgin. In later centuries she was regarded as the patron and protector of the city.

[4] Zos., bk. ii, pp. 52 *et seq.* *Cf. V. C.*, bk. iii, ch. liv.

"From others (i. e. temples) again, the venerable statues of brass, of which the superstition of antiquity boasted for a long series of years, were exposed to view in all the public places of the imperial city: so that here a Pythian and there a Sminthian Apollo excited the contempt of the beholder; while the Delphic tripods were deposited in the hippodrome and the Muses of Helicon in the palace itself. In short, the city which bore his name was everywhere filled with brazen statues of the most exquisite workmanship which had been dedicated to every province and which the deluded victims of superstition had

In the Hippodrome was set up the Delphic tripod, long the visible symbol of Greek independence, and an instrument for communicating with divinity.[1] In the forum Con-

long vainly honored as gods with numberless victims and burnt sacrifices, though now, at length, they learnt to renounce their error, when the emperor held up the very objects of their worship to be the ridicule and sport of all beholders."

S. Hieronymi, *Chronicorum*, bk. ii, col. 498, (Anno 334) "Ditatur Constantinopolis pene omnium urbium nuditate ante Byzantium dicta."

Also Soc., bk. i, ch. xvi. "He also destroyed the superstition of the heathen for he brought forth their images into public view to ornament the city of Constantinople and set up the Delphic tripods publicly in the Hippodrome."

Hesychius of Miletus, also called the Illustrious, wrote in the middle of the sixth century a *History of the World*. Part of the sixth book has survived the early destruction of the rest and preserves the author's account of Byzantium from the earliest days to the time of Constantine. The best text of this is to be found in *T. Preger's Scriptores Origines Constantinopolitanorum*. Preger points out that a great value of Hesychius is that he himself saw the buildings he describes. Hesychius has sometimes been thought to have been a pagan but Krumbacher considers him to have been a Christian. Hesychius, p. 17 states, 'At this time he built the buildings of the Council and called it the Senate, in which he set up also a statue of the Dodonian Zeus and rebuilt two shrines of Pallas." *Cf.* Codinus, *C. H. B.*, p. 7.

[5] Codinus, *C. H. B.*, p. 9, "He erected for the embellishment of the city, all the bronze statues and images which he had collected from the various places and cities." *V.* p. 8, par. B for the account of the pagan statuary decorating St. Sophia's and pp. 13 *et seq.* for the list of pagan images to be found in Constantinople. *Cf.* Band., pp. 4 and 14. Also Malalas, bk. xiii, p. 4.

The horses attributed to Lysippus, which Napoleon was to transport from the Duomo of Venice to Paris, were taken by Constantine from Corinth and set up in the hippodrome of the new city. Today they once more paw the air from the Duomo of Venice.

[1] Zos., bk. ii, p. 52. "He placed on one side of it (the temple of Caster and Pollux) the tripod that belonged to the Delphian Apollo, on which stood an image of the deity." *Cf.* Soc., bk. i, ch. xvi. The Delphic tripod was a cherished possession of Greece for it had been set up after the victory over the Persians at Plataea. It had been made from a tenth part of the spoils taken from the Persian army

stantine erected, at much labor and cost, the porphyry column which came from Egypt, via Rome, and on its pinnacle was placed the statue of Apollo which was renamed for the Emperor. On its head, acording to later chroniclers, was set a crown constructed of nails from the "true cross" inscribed to Constantine who shines like the sun.[1]

It was believed by the fifth century, if not earlier, that a piece of the "true cross" was placed under the column.[2] And the chroniclers tell us how Constantine was believed to have brought the palladium secretly from Rome and to

at Plataea. It consisted of a golden basin, supported by a bronze serpent with three heads (or three serpents intertwined) with a list of the states which had taken part in the war, inscribed on the coils of the serpent. The golden bowl was carried off by the Phocians in the sacred wars. The stand is still in the Atmeidan (hippodrome) but in damaged condition for the heads of the serpent have disappeared, and the golden bowl with which Constantine replaced that appropriated by the Phocians, has been lost.

[1] Hesychius says that in the forum was the "porphyry column on which we see Constantine seated shining justice of the sun on the citizens." *V.* p. 17.

Cf. Malalas, bk. xiii, pp. 4-5, "Also the spacious and handsome forum, in the center of which he set up his wonderful column of porphyry: upon it he placed his own statue whose head was crowned with seven points; this bronze statue the Emperor brought from the city of Phrygia in Ilium where it had formerly stood." Also Zonaras, vol. ii, bk. xiii, pp. 7-8. "The same, they say is a statue of Apollo. But that divine Emperor brought it from Phrygia in Ilium, gave his own name to it, after setting up on the head some of the nails that had fixed the body of our Lord to the saving Cross. And to our own times this column remained standing unbroken but under Alexius Comnenus a heavy wind dislodged it and it fell."

Cf. Codinus, p. 7; also Band., p. 14.

[2] Helena, Socrates says, after finding the cross, left part enclosed in a silver case in the church of the New Jerusalem at Jerusalem. "The other part she sent to the Emperor, who being persuaded that the city would be perfectly secure where that relic should be preserved, privately enclosed it in his own statue, which stands on a large column of porphyry in the forum called Constantine's at Constantinople. I have written this from report indeed; but almost all the inhabitants of Constantinople affirm that it is true." *Vide*, bk. i, ch. vii.

have concealed it also under the porphyry shaft.[1] An anonymous chronicler of the eleventh century is somewhat sceptical as to whether the palladium were really brought from Rome but has no doubt but that there were

placed in the foundations and approaches to this pillar precious woods and relics of saints, and the baskets which bore the blessed bread and the crosses of the two thieves, and the alabaster box of sacred ointment for surety and safety. And if the Senate persuaded him at that time to convey from Rome the Palladium also, well-known symbol of good fortune, as some say they did persuade him, and to place it among the foundations of the pillar, that was the deed of those men (*i. e.*, the Senators) excited over the superstitious legends of good luck.[2]

Certainly Christians held this column and what it contained in great reverence, and horsemen dismounted to pass it respectfully on foot.[3]

Constantine gave to his new capital, at the command of the deity an "everlasting name".[4] Just what this was we

[1] Malalas, bk. iii, pp. 4-5. "There also Constantine placed beneath the column of his statue in the forum built by himself the Palladium, as it is called which he had brought secretly from Rome; as some Byzantines affirm, he concealed it there."

Cf. Chronicon Paschale in *C. B. H.*, p. 284. "Idem Imperator Constantinus, clam ablatum Roma Palladium, uti appellatur, in Foro a se extructo, sub columna, cui imposita est illius statua, recondit; ut quidam ex Byzantiis asserunt, qui et ex traditione acceperunt, Fortunam vero urbis ab eo instauratae, incruento facto sacrificio, Florentem appellavit."

Cf. Band., p. 14; also *Zonaras*, vol. ii, ch. xiii, par. 8.

[2] This is an interpolation in Hesychius which is found almost complete in an 11th century manuscript of *Anonymous Vita Constantini* published by Preger, *op. cit.*, vol. i, p. 17, note, following the original statement that the statue of Constantine was set up on the porphyry column.

[3] Philostorg., bk. ii, ch. xvii. *Cf.* Theod., bk. i, ch. xxxiv.

[4] *C. Th.*, xiii, 5-7, Dec. 1, 334, "Pro commoditate urbis, quam aeterno nomine, jubente deo, donavimus."

cannot be sure but it seems to have been Anthusa, the old priestly name for Rome, meaning flowering.[1]

According to Johannes Lydus, "Praetextatus the pontifex maximus . . . took part with Sopater the initiator and Constantine the Emperor in building the city."[2] This is the passage which is commonly quoted as the one reference we possess to pagan rites of consecration at the formal dedication of New Rome, and from it some historians draw the conclusion that Sopater at the consecration ceremonies, performed magical rites to protect the city from evil, and that Praetextatus the heirophant, or Roman pontiff, was also present on the same occasion.[3]

The problems that open up to the student of Constantine's policy towards paganism, when he looks into the story of the founding of Constantinople, are out of all proportion to the meagre, and sometimes contradictory, sources from which he attempts to solve them. Shall we conclude from the foregoing recital of actions, that at Constantinople the Emperor abandoned the program of toleration that he had maintained even in the East where he had displayed a more radical temper in religious affairs than in the West? In the very founding of Constantinople, was the Emperor partly animated by one of the motives that influenced Peter the Great in creating Petersburg—a desire to have a cap-

[1] Malalas, ch. xiii, p. 5. "But the Emperor had made another golden statue, the Tyche of the city, which he called Anthusa." [This seems to have been the statue that was borne into the circus upon certain anniversaries.] "But making a bloodless sacrifice to God, he wished the Fortune of the City founded by himself and called by his name, to be called Anthusa." *Cf.* Johannes Lydus, *De Mensibus,* excerpt iv, par. 2. "Both Rome and Constantinople were called Flora, that is Anthusa (or flowering)." *Cf. supra,* p. 111, note 1.

[2] De Mensibus, excerpt iv, par. 2.

[3] *Vide,* Schiller's definite statement that there were pagan ceremonies used at the consecration, *op. cit.,* vol. ii, p. 215.

ital where he could be free from the religious fetters that constrained him in the ancient political and religious center of the state? Certainly, Constantine like Peter, was freer in his new capital than in the old stronghold of tradition; but it seems unlikely that Constantine should depart from his old religious policy, or feel it wise to disregard the sentiments of the many pagans in New Rome. Unlike Petersburg, Constantinople was not a city called into being at the command of the ruler from whom it took its name. In "founding" his new capital, Constantine was actually only enlarging, embellishing and re-christening an old commercial city whose life stretched back some centuries into the past. New Rome, then was made up of an ancient town to which had been added new districts. The new capital was planned to meet the multifarious needs of an imperial residence and political center of the empire. After building a "palace little inferior to that of Rome", and embellishing and enlarging both hippodrome and forum, Constantine "built convenient dwellings for the senators who followed him from Rome." [1] How can we believe that these prominent citizens were less free in Constantinople than in Rome, to observe the rites of their private religion?

As far as the rites of consecration are concerned, it is more reasonable to believe that they were more pagan than Christian in character. Those who believe the contrary, have thought it significant that Zosimus, who showed interest in the founding of the city, made no reference to any rites of consecration and they conclude that he knew of none.[2] It is true that both Zosimus and Eusebius are silent

[1] Zos., bk. ii, p. 52-3. Codinus, p. 10, tells how the Emperor had copies of the Roman senator's houses ready as surprises for them when they arrived at Constantinople.

[2] Schultze's *Geschichte d. Unterg. des griech-röm Heidentums*, p. 54.

concerning any dedication of New Rome. If Christian ceremonies had been used, we should expect a mention, if not an account of them, from the pen of the Bishop of Caesarea, who would have been only too eager to point to another evidence of his hero's Christian heart; while at the same time we should look for a bitter reference to them from Zosimus, who would have seen in the affair another evidence for Constantine's responsibility in bringing about the decline of the Empire's prosperity.[1] On the other hand, if ordinary pagan forms of dedication were observed, there would be no point in Zosimus referring to them, and Eusebius would be as tactful in maintaining silence here, as he was in the sad business of the deaths of Fausta and Crispus. Furthermore, two conspicuous pagans who performed religious functions, Sopater and Praetextatus, are reported to have been closely associated with Constantine in founding his new city. It has also been reported,[2] that a famous astrologer cast the city's horoscope.

It is more difficult to dispose of the matter of temples and pagan worship in Constantinople than of the story of the inauguration ceremonies. Schultze, in one of his most careful monographs on Constantine's history, has threshed out the question of temples in Constantinople.[3] Although now and again his conclusions are vitiated, as in his other studies, by his enthusiastic determination to prove Constantine strongly pro-Christian and anti-pagan, the article commands thoughtful consideration.

Schultze believes that the two temples which Zosimus reports that Constantine built in the forum, had a much

[1] *Cf.* his statement in regard to the evils resulting from omitting the Capitoline observances, *op. cit.*, bk. ii, p. 52.

[2] Banduri, vol. i, p. 3.

[3] Tempelbauten in Konstantinopel *Z. F. K. G.*, vol. vii, pp. 352 *et seq.*

earlier origin [1] and that instead of building them the Emperor only altered or beautified them! To support his notion of the impossibility of crediting Constantine with building temples he cites *C. Th.* xv, 1-3, 326 (362), Jun. 29. *Idem A. Secundo P(raefecto) P(raetori)o. Provinciarum judices commoneri praecipimus, ut nihil se novi operis ordinare ante debere cognoscant, quam ea compleverint, quae decessoribus inchoata sunt, exceptis dumtaxat templorum aedificationibus.* This he interprets as forbidding the restoration of decaying temples! [2] Certainly this law could, with equal propriety, be quoted in proof of the great activity in temple-building at this time. In point of fact, its meaning in regard to temples is too uncertain to warrant its use to prove any point concerning temples except, that they were the one class of buildings excepted from the law requiring magistrates to complete buildings begun by their predecessors, before beginning new structures. Furthermore, Schultze points out that just a short while before, in his letter to the inhabitants of Palestine, (*V. C.*, bk. ii, chs. xxiv-xliii) the Emperor urged his subjects to exchange Christianity for paganism. Schultze is certain that the building, in which the Tyche was set up, had neither priests nor sacrifices connected with it. In fact, he is convinced that the worship of Tyche in Constantinople had such blended Christian-pagan elements, that it is to be compared with the common use of amulets which represented a mixture of pagan and Christian superstitions. The commemorative coins that were struck at the founding of the city, he reminds us, bore on the reverse, the Tyche

[1] According to Hesychius, Byzas, the legendary founder of Byzantium had erected the temple to Rhea. Consequently Constantine would be loath to destroy the temple or remove its statue, although he might remodel the latter.

[2] *Z. F. K. G.*, vol. viii, p. 533.

of the city, seated on a throne with a crown on her head and a horn of plenty in her hand, while at her feet is part of a ship. This, Schultze calls a neutral, symbolic figure that might safely find a place in a Christian church. Zosimus, Schultze believes, can hardly have meant to represent these two buildings as real temples, when shortly before he spoke of Constantine's apostasy and disregard of religious conventions at Rome.

Augustus says positively, that the city had no pagan temples or statues and Schultze believes we must reject Zosimus' statements or at least hold them suspect.

For our own part Schultze's conclusions do not seem entirely convincing. Augustine's statement seems to apply more particularly to the Constantinople of his own day, than to that of Constantine. Eusebius records Constantine's intentions in regard to paganism in Constantinople, not his achievements. No Christian or pagan historians of the centuries immediately following the founding of New Rome, anywhere reports the Emperor as destroying the temples he must have found in Byzantium.[1] If, as is likely, the temple of Castor and Pollux suffered at Constantine's hands, it was because in enlarging the hippodrome, he found it in his way, and either had to destroy it, or in some way, incorporate it into the hippodrome. From Zosimus' account, he seems to have done the latter, and it is possible that in consequence, it may have been turned from purely

[1] Even among later historians I have come across only one reference to Constantine's destruction of a temple in the city and this is found in the 11th century addition to Hesychius' list of the churches built by Constantine, *v.* Preger, *op. cit.*, vol. i, p. 19. "You must know that Saint Mocios was built some time ago by Constantine the Great, when a large number of the Greeks were dwelling there; and there was a temple of Zeus there by which (and out of the stones of which) he built his temple; and it was destroyed by Constantine in his third consulship."

religious, to secular, uses. Yet Septimus Severus did something of the same sort when he cut down one of the groves sacred to the Twins to build the hippodrome on its site. We must not forget in either instance, that the hippodrome itself was dedicated to the Dioscuri. Zosimus tells us that next to the altered temple, he placed the Delphic tripod with the statue of Apollo, and does not here charge the Emperor with any disrespect to the old religion. In the following paragraph, however, after stating that in the forum Constantine "erected two temples", he complains bitterly of this impiety in removing Rhea's lions, and giving a supplicating pose to her hands. We are led to believe that Schultze is justified in believing that Constantine made an Orans out of the remodeled statue of the Mother of the gods.[1]

This remodeled Rhea and the Tyche would seem incapable of offending any but the most intransigent Christians. The pagans could still see in the two statues Rhea and Tyche the godesses, while in the first, Christians beheld the Virgin or a symbol of the Christian life; and in the latter, they recognized the personified genius of their country.[2]

Having helped to give to these two important deities an ambiguous character, the Emperor seems not to have inter-

[1] An Orans was a male or female figure standing full face with both arms extended, and the palms of the hands raised. It was one of the earliest attitudes of prayer adopted by the Church. The Orans generally represents the soul of the departed, but it is thought to have symbolized occasionally the Church itself. It is interesting to note that the Virgin, who received at the Council of Ephesus, 431, in spite of the Nestorians, the title of Mother of God, was generally represented in the catacombs as an Orans. Eusebius tells us, *V. C.*, bk. iii, ch. xlviii, how the Emperor had his own statue representing a suppliant set up.

[2] *Vide C. I. L.*, vol. iii, no. 733, for Constantine's own dedication of thanks to Fortune in the year 332. "Fortuna reduci ob devictos Gothos."

fered with old temples or statues. It is possible and highly probable, that in the newer districts he discouraged, if he did not prevent, the erection of new pagan shrines. There is no doubt but that he built many splendid churches in his new city, chief among them, that of the Holy Apostles, and that of St. Irene. We are led, however, to conclude, that while the greater honor was paid Christianity in Constantinople, the pagan religions were freely practised by their devotees, who were there allowed the same tolerance permitted elsewhere in the East.

CHAPTER VI

Conclusion

The examination of Constantine's legislation for the pagans leads to a number of alluring questions: What did the emperor really desire for paganism? Would he have rejoiced at its destruction, and was he deliberately paving the way for its eradication? Or was he hopeful that extinction might gradually be brought about by educating men to exchange Christianity for paganism? Did Constantine, perhaps, believe that the State would maintain the toleration preached by himself, and, controlling all religious organizations, permit paganism as a necessary evil? Interesting as these questions are for speculation, they are more or less futile, since we do not possess material that warrants us in drawing up positive answers.

After all, the charm of guessing what a monarch intended to have done, pales before the interest in examining what he actually achieved. Let us attempt, then, to sum up, in the light of the sources we have been reviewing in this study, what measures Constantine took in regard to paganism.

While favoring the religion into whose communion he was finally baptized, Constantine does not appear to have interfered seriously with other cults. It is true that he secularized state offices in the East, and so there separated the ancient religion from its old-time union with the State. But we must remember that this separation occurred only in the East, and that in the West prominent offices were held by pagans and the usual sacrifices which preceded all

business in the Senate House were being made at the altar of Victory. No temple of any kind was destroyed in the West, and only a peculiar few in the East. Not only did Constantine allow himself to be styled Pontifex Maximus, but he did not dissolve reputable priesthoods, nor curtail their privileges or emoluments. There is no conclusive evidence that he prohibited sacrifices, except certain kinds connected with nefarious magic and divination. He did, however, lessen the prestige of the state religion by allying himself with Christianity; and the favor he showed the Christians, even under a bare system of religious parity, was in the nature of the case, bound to work injury to paganism. Before Christian audiences Constantine seems to have derived vast satisfaction in expressing contempt for paganism and in extolling Christianity.[1] As Julian later was to weary his auditors with long religio-philosophic dissertations, so Constantine must have bored his audiences

[1] *V. C.*, bk. iv, ch. xxix. "He usually divided the subjects of his address, first thoroughly exposing the error of polytheism, and proving the superstition of the Gentiles to be mere fraud and a cloak for impiety. He then would assert the sole sovereignty of God," *etc.* Constantine in the oration attributed to him is reported as saying, "we declare further with all confidence that the very honors and worship which the deities receive from men are accompanied by acts of wantonness and profligacy. Once more; the experienced and skillful sculptor, having formed the conception of his design, perfects his work according to the rules of art; and in a little while, as if forgetful of himself, idolizes his own creation, and adores it as an immortal god. . . . But why do I defile my tongue with unhallowed words, when my object is to sound the praises of the true God? . . . Away then, ye impious, for still ye may while vengeance on your transgressions is yet withheld; begone to your sacrifices, your feasts, your scenes of revelry and drunkenness, wherein, under the semblance of religion, your hearts are devoted to profligate enjoyment, and pretending to perform sacrifices, yourselves are the willing slaves of your own pleasures." *V. Oratio Constantini*, chs. iv, v, xi. Date uncertain. Eusebius reports it among events of 333-4. It may have been given at Nicaea.

with the discourses that so delighted the theological soul of Eusebius. However, a pagan could bear with fair equanimity the literary attacks on paganism while he was allowed to pursue his undisturbed way in practising the derided cults. In closing his *Life of Constantine,* Eusebius speaks of the Emperor as "having alone abolished utterly the error of polytheism and discountenanced idolatry in every form." [1] He may have had in mind simply the Emperor's theological refutations of paganism and his personal adherence to Christianity, and never have intended the meaning usually attached to the statement.

While recommending his pagan subjects to adopt Christianity, Constantine nowhere commands them to take such a step.[2] In referring to Constantine's forbearance towards Christians who were opponents of his party in Church synods, Eusebius testifies "but as to those who proved incapable of sound judgment, he left them entirely at the disposal of God, and never himself desired harsh measures against anyone." [3]

[1] *V. C.*, bk. iv, ch. lxxv. Elsewhere, *ibid.*, bk. ii, ch. lxi, he refers to the Emperor as "warning his subjects against superstitious, (demoniacal?) error and encouraging them in the pursuit of true godliness.

[2] Aur. Vic. says Constantine died deeply beloved by the Romans and Eusebius tells how eager the Romans were to inter his body in the old capital. *V. C.*, bk. iv, ch. lxix. "On the arrival of the news of the emperor's death in the imperial city, the Roman senate and people felt the announcement as the heaviest and the most afflictive of all calamities, and gave themselves up to an excess of grief. The baths and markets were closed, the public spectacles, and all other recreations in which men of leisure are accustomed to indulge, were interrupted. . . . Nor was their sorrow expressed only in words; they proceeded to honor him, by the dedication of paintings to his memory, with the same respect as before his death. The design of these pictures embodied a representation of heaven itself, and depicted the emperor reposing in an ethereal mansion above the celestial vault." This last sounds like a regulation pagan representation of apotheosis!

[3] *V. C.*, bk. i, ch. xlv.

This mildness is elsewhere reflected in the picture Eusebius gives us of Constantine's disposition towards all evildoers in the empire. "Meanwhile since there was no fear of capital punishment to deter from the commission of crime, for the emperor was uniformly inclined to clemency, and none of the provincial governors visited offenses with their proper penalties, this state of things drew no small degree of blame on the general administration of the empire; whether justly or not, let everyone form his own judgment: for myself, I only ask permission to record the fact."[1] There is no warrant for belief that Constantine showed to pagans a less forbearing disposition than that he exhibited to heretics or to criminals.

To those who pointing to the bulk of beneficent legislation for Christians call attention to the absence of anything of the sort for pagans, as evidence of Constantine's anti-pagan temper, several explanations may be offered. There was no need for much legislation for religions which had long held positions of security and favor in the state.[2] Special acts of favor that Constantine may have shown pagan cults or individuals would hardly be recorded by Christian historians, even if they had been brought to their notice. We should not expect to find the records of such acts, if they took legislative form, preserved in the codification of Theodosius' time.

To conclude, we believe that on the whole Constantine,

[1] *V. C.*, bk. iv, ch. xxxi. Julian in his satire on Constantine in the "*Caesars*" pictures that emperor as ranging himself alongside of Wantonness, who receives him with affection, *v.* p. 290.

[2] To the other religion, Judaism, that like Christianity had failed to be placed on the same footing as pagan cults in the state, Constantine granted in 330 and 331 various favors. Its priests were freed from all financial exactions and from that time Judaism enjoyed the pecuniary exemption of other religions in the Empire. *V. C. Th.*, xvi, 8-2, 3, 4.

throughout his whole reign, lived up to the policy of toleration set forth at Milan by himself and Licinius. While we may regard him as the first Christian Emperor and the first to put Christianity quite on a par with paganism, he was neither the first to make Christianity a legal religion, for Galerius had done that in 311, nor the first to legislate against pagan cults; for that his successors are responsible.

PART II

LAWS AGAINST PAGANISM IN THE ROMAN CODES

CHAPTER I

Law in the Later Empire

Most of the laws of Constantine and his successors which have been preserved, are to be found in the two great imperial codifications—that of Theodosius II[1] and that of Justinian.

Although Theodosius commanded his legal commission to include in the codification all general laws from Constantine's time, even those that had become obsolete, there remain a number of laws, as well as all rescripts to private

[1] Theodosius ordered that his code should be modeled on the Codices Gregoriani and Hermogiani. The Emperor directed the compilers to include in the codification edicts and other general laws from the time of Constantine, not omitting those which had been abrogated, for their date and position would distinguish them from those in force. As for the text, they were to reproduce it purely and simply, contenting themselves with omitting what did not absolutely form part of the edict *i. e.* the directions for publication, the superscription of the emperor and even the preface or statements of the *raison d'être* of the law. Besides containing statutes, the code was to set forth responsae of juris consults, *etc.* The commission never finished its task, and a new one was appointed 435 which made a compilation of statute laws, but abandoned the project, as far as it related to case law. This later commission was given more liberal instructions than the earlier group, and was permitted to modify the text if it were ambiguous or ungraceful. The codification was completed Feb. 15, 438, and was in use in the following January. *Vide C. Th.*, p. 2. Also i, 1-5 and 6. *Cf.* P. Krüger, *Geschichte der Quellen und Litteratur der Römischen Rechts*, pp. 279 *et seq.*

The best text of the Theodosian Code is that of Mommsen and Meyer, which was published in two volumes, 1905, and which has largely superseded Haenel's edition of 1842. The edition of Jacques Godefroy, published in 1665 after the author's death, is invaluable, to any student of the code, on account of its learned commentaries.

persons, which must be sought elsewhere. Some of these may be found in an abridgement of the Code, the *Lex Romana Visigothorum:* [1]

Along with the *Theodosian Code* are always cited the *Constitutiones Sirmondianae,* a group of some sixteen or eighteen decrees,[2] and the *Theodosian* and the *post-Theodosian Novellae.*

In the East, in 529, upon the completion of the new codification of Justinian, the Theodosian compilation was sup-

[1] Called sometimes *Breviarum Alarici,* compiled at the order of Alaric II, 506, for his Roman subjects, and composed of extracts from *C. Th.* and *post-Theod. Novellae,* an abridgment of two books of the *Institutes of Gaius,* with extracts from the sentences of Paulus and the two early codifications Gregorian and Hermogenian and a fragment of Papinian. This collection was used as a law book in the Visigothic kingdom until about 653, and continued to be used in the Southern part of France during the Middle Ages. Other barbarian codes, *e. g., Lex Romana Burgundionum, etc.,* contain some Roman enactments.

Certain ecclesiastical collections have a number of imperial decrees of the period, not contained in the *Theodosian Code* or the *Novellae, e. g., Acts of the Ecumenical Councils of Ephesus,* 431, *Chalcedon,* 451 and *Constantinople,* 553; of great importance are the collection of Quesnel and the *Collectio Avellana.* Haenel in his *Corpus Legum ab imperatoribus Romanis ante Justinianum* has brought together a good many of these besides others, found or referred to, in purely literary sources. *Q. v.* vol. i, pp. 186-247.

[2] This collection, mostly touching ecclesiastical questions, was first found in connection with a collection of conciliar decrees of Gaul. They get their name from their first editor, Jacques Sirmond. The first sixteen decrees seem to be in the original, and probably complete, form; the last two contain extracts of statements from the *Theodosian Code.* The decrees included by Mommsen were drawn up between the years 333-408. The validity of this collection was contested at first by Godefroy and others. Both Haenel and Mommsen discuss this question in their editions of the *Theodosian Code.* There are no longer serious doubts as to the trustworthiness of the collection as a whole. The first decree giving wide jurisdiction to bishops is still suspect in some quarters. Mommsen prints the last two of the eighteen as i, 27, 1, and i, 27, 2 in the body of the Code. *V.* Haenel, *op. cit.,* Mommsen Prolegomena in *C. Th.* vol. i, part 1, pp. cccIxxviii *et seq.* also Krüger, *op. cit.,* p. 293.

planted by the *Codification of Justinian,* into which codex was crowded such of the statute law as the compiling legists were commanded to include.[1]

There remains another class of sources for the students of imperial legislation of the fifth century—the histories and chronicles. Imbedded in the text of such works, are to be discovered decrees and rescripts not extant elsewhere. For example, in this group of writings there are preserved for us such invaluable documents as Galerius' Edict of Toleration, and Licinius' Nicomedian decree. Many of the laws transmitted in these literary sources are unfortunately not recorded in their original legal form, and frequently the value of the reference is impaired by our suspicions of the prejudice of the transmitting medium. However, taken in connection with the whole context of the book, and used with the legal codes, they constitute a highly important class of sources for our particular study. The form of the whole mass of imperial legislation varies considerably. The greatest range of variation, naturally, is found in the literary sources.

[1] On February 13, 528, Justinian appointed a commission of ten men, among whom was Tribonius, *magister officiorum,* and Theophilus, professor of law at Constantinople, to undertake the new codification. This new code was not to form a complement to the *Theodosian Code,* but to supplant it, and all others in existence. The commissioners were ordered to exclude all obsolete laws, to avoid repetitions and contradictions, and to give a clear, concise form to such enactments as they preserved. The compilers were even authorized to make a single composite law of a group of similar laws, if this seemed advisable. *Vide* Preface of code for these instructions. The Codex was completed April 7, 529, and went into use April 16th, and from that date it was forbidden to use the older codes or novellae. The Digest and Institutes appeared later. The name *Corpus Juris Civilis* was first applied to this compilation of Justinian about the eleventh century. The best text of the *Corpus Juris Civilis* is that of Krüger-Mommsen-Schoell-Kroll in 2 vols., 1906, Berlin. There is also a very free German translation by Otto-Schilling-Sintenis, Leipsig, 1839, in 7 volumes. The Digest has been translated into French. Both the Digest and Institutes have been translated into English.

There had come by the fourth century to be but one source of legislation in the empire—the emperor. He issued at will edicts, decrees and rescripts whose old distinctions had largely broken down. For the most part a rescript continued to have a narrower application than had an edict or decree,[1] but it sometimes carried equally general application.

Imperial edicts were addressed sometimes to the whole people, sometimes to the inhabitants of a particular locality. Others were addressed to the Senate, but the greater number were directed to the most important officials of the localities affected by the enactment, and to them was allotted the duty of publishing the law throughout their districts. Sometimes, if a large number of officials were affected by the law all the people might be addressed by the imperial chancellery.[2] The chief copy of the edict often mentioned in the inscription only one name, of those to whom copies were addressed, but at the end of the document, all names might be listed. Hence it sometimes happens that two copies of the same edict bear different dates

[1] Seeck in his *Sogen. Edickt v. M.*, pp. 381-2, carefully distinguishes between an imperial decree and an edict. The latter, he says, began with the words *Imperator Caesar,* then the monarch's name and title—*dicit.* If there were more than one emperor, all the names were set down in order and the verb became plural. Such an edict was not addressed to any particular person. A later type of edict was not unlike a letter in form, and was addressed to all the subjects of the empire, or to the population of a particular district. Both forms of edicts had the common characteristic that they were addressed directly to the people. A decree, on the other hand, was directed to an official. Krüger, whom I follow, does not make this distinction. The most important distinction between a rescript and other imperial acts, lies in the fact that a rescript normally deals with an inquiry. As a rule it decided a legal point, although it might run over into a formal legislative act.

[2] Here I follow Krüger.

and addresses. Up to the end of the fourth century, we find edicts of a general nature addressed to provincial governors or inferiors officers and sometimes it appears such a copy, instead of the original edict, was preserved in the collection.[1]

The common way to publish an edict was to hang it up—for an unknown period;[2] it appears to have been exceptional to have it posted for a whole year. The edict was posted in the chief cities; in Rome, Trajan's Forum was one of the regular places for such posting.[3]

As a general rule those to whom the decree was addressed received instructions charging them with publication and notification to lower officials to give the document the utmost publicity in the provinces. If the edict concerned only a few persons, sometimes the formalities of publication were complied with, sometimes neglected.

Constitutions directed to the Senate were read aloud in that body and were not required to be posted. From time to time, the emperor might order a particular law to be engraved upon a bronze tablet, to perpetuate it more effectively.[4]

Whether the law had immediate force upon publication we are not positively informed; but most of the texts imply it, and some formally declare it.[5]

At one time rescripts and edicts had similar legal appli-

[1] *C. Th.*, ii, 27, 1.

[2] *C. Th.*, ix, 7, 6.

[3] *Cf.* Krüger, *op. cit.*, p. 266, note.

[4] *V. C. Th.*, xi, 27-1, 315 May. "Aereis tabulis vel cerussatis aut linteis mappis scribta per omnes civitates Italiae proponatur lex."

[5] Seeck, Die Zeitfolge der Gesetze Constantins, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte,* 1889, vol. x, p. 16, believes that a law became operative in each province the very day it was published. Hence, locally, it was more significant to know the date when a law was *accepta et proposita* than when it was drawn up.

cation, but Constantine decreed that edicts were not to obtain against the provisions of the general law.[1] Arcadius forbade citing rescripts except for the special instance for which they were drawn up.[2] Valentinian confirmed this, but excepted rescripts which stated that the ruling was to have application in analogous cases.[3] Justinian widened this exception by allowing general application,[4] even if no direction for this were stated in the rescript, provided a legal principle seemed set forth in the instrument.[5]

In the fourth century the chief judicial counsellor of the emperor was the *Quaestor sacri palatii*, and it was he, who held the place of influence in the *consistorium* in regard to all legal business.[6] It was his duty to verify and countersign the documents which were written in the style peculiar to the chancellery alone. This done, the emperor signed with purple ink. The document was then registered for the imperial archives.

The laws were likewise transcribed in the regesta of the magistrates to whom they were addressed, and the dates of receiving (accepta) and of posting (proposita) were carefully recorded.

As the division of the labor of government among two or more emperors did not destroy the theory of the unity of the empire, so it did not injure the principle of the unity of Roman law. After Diocletian, we find laws emanating from one or another of the rulers; but such laws were published in the name of all the Augusti, and were applicable to

[1] *C. Th.*, i, 2-2.

[2] *C. Th.*, i, 2-11.

[3] *C. J.*, i, 14, 2 3.

[4] *C. J.*, i, 14-2.

[5] Annotations and pragmatica were akin to rescripts.

[6] For Theodosius II's ruling in regard to the business of drawing up a law *cf. C. J.*, i, 14-8.

the entire empire. This was true not only of edicts but of general laws.[1] The question arises as to whether a prince could, in his own name alone, decree laws directly applicable to the part of the empire which he did not govern. While he could not in general do so, it is certain that Diocletian did this very thing. He did it by virtue of his superiority over his colleagues.[2]

It would appear that when an *Augustus* was appointing a colleague, he could reserve to himself supreme legislative rights.[3] The Senate at Rome seems to have given such a prerogative to Constantine in 312 after his victory over Maxentius.

Mommsen, while granting the existence of the theory in the Roman Empire, that the law was one and the same to the remotest corners of the state, shows that, in practice, there was sometimes no real unity. The theory of this unity was based upon the idea of perpetual harmony among the emperors. In case of discord between *Augusti,* the stronger could, of course, withstand the will of his opponent. This idea of legislative equality and harmony among the *Augusti,* Mommsen declares, did not prevent certain special rights being reserved to the senior *Augustus* alone, when there were several *Augusti,* who had received the imperial title at different times. In fact, Mommsen believes, that complete equality in legal power was enjoyed by imperial

[1] See Krüger, *op. cit.*, p. 365, in the French translation. *Cf.* Schiller, *op. cit.*, vol. ii, p. 36.

[2] *Ibid.*

[3] See *Ammianus Marcellinus*, bk. xxvii, ch. vi, p. 16. "But in this affair, Valentenian went beyond the custom which had been established for several generations, in making his brother and his son, not Caesar, but emperors; . . . Nor had any one yet ever created a colleague with powers equal to his own, except the emperor Marcus Aurelius, who made his adopted brother, Verus, his colleague in the empire without any inferiority of power."

colleagues, only when the *Augusti* were brothers. Even a son did not share full power with his father.[1]

We do not know how the law of one emperor was made operative throughout the territory of his colleagues. A single example that we possess sheds very little light. The emperor of the East granted a privilege to the Jews, and that race in the West claimed this also; but the emperor of the West decided that this enactment did not apply to his dominions.[2]

Evidently the theory of the unity of the Roman law was not always practised. Theodosius II seemed to be conscious of this, and in 429 published a decree confirming the general theory of the unity of the law, yet seemingly recognizing the practical need for latitude in its application. He decreed [3] that whatever law was promulgated in one part

[1] *Römisches Staatsrecht*, vol. ii, pp. 1066 *et seq.*

[2] *Cf.* Krüger, *op. cit.*, p. 365. *C. Th.*, xii, 1, 158. 398 Feb. 13 vel Sep. 13. Idem AA. Theodoro P. Po. Vaccillare per Apuliam Calabriamque plurimos ordines civitatum comperimus, quia Judaicae superstitionis sunt et quadam se lege, quae in Orientis partibus lata est, necessitate subeundorum munerum aestimant defendendos. Itaque hac auctoritate decernimus, ut eadem, si qua est, lege cessante, quam constat meis partibus esse damnosam, omnes, qui quolibet modo curiae jure debentur, cujuscumque superstitionis sint, ad conplenda suarum civitatum munia teneantur. Dat. Id. Sept. Med(iolano) Hon(orio) A. II. et Eutychiano Conss.

On the other hand, Krüger points out that Licinius, *De vita sua*, ed. Reiske, p. 97, states that a law of Valentinian I in his favor (*C. Th.*, iv, 6, 4) was confirmed by Valens. Might not this formal confirmation itself prove legislative independence, as conclusively as does Honorius' action in the law cited above?

C. J., v, 14, 19, contains a law of Arcadius of the year 405, in which he abrogates the prohibition of marriage of *consobrini*. *C. Th.*, iii, 10, 1, has, on the other hand, a law of Honorius of 409, implying that the law forbidding such marriages is still in force. Godefroy, in his note to *C. Th.*, iii, 12, 3, concludes that the law of Arcadius had never been in force in the West.

[3] *C. Th.*, i, 1, 5. 429 Mart 26.

Impp. Theod. et Valent. AA. ad Senatum.

. . . In futurum autem si quid promulgari placuerit, ita in conjunc-

of the empire should have force in the other part, as soon as the legislating monarch should formally transmit it to his colleague. This provision, that a law of one *Augustus* must be forwarded, with due formalities to another *Augustus,* before it could become operative in the latter's district, while safeguarding the common legislative prerogatives of all *Augusti,* seems at the same time, to imply that certain laws were local in character and would not be forwarded beyond the district for which they were originally drawn up.[1] In this same decree Theodosius reserved to himself the right of amending or rejecting any law sent him by a colleague.[2]

Theodosius himself sent Novellae in 447 to Valentinian III who published some the following year,[3] but Mommsen says we cannot tell whether Valentinian published all that his father-in-law sent him.[4] Leo, in 468, sent one law to Anthemius to whom he had given power in the West. There is of course in the fifth century, less question of the transmission of laws from the West to the East, than vice versa. It seems as though it were less common for laws to be transmitted from the West, than from the East, to other parts of the empire. At least in the Code of Justinian there are no western laws later than 438.[5]

tissimi parte alia valebit imperii, ut non fide dubia nec privata adsertione nitatur, sed ex qua parte fuerit constitutum, cum sacris transmittatur adfatibus in alterius quoque recipiendum scriniis et cum edictorum sollemnitate vulgandum. Missum enim suscipi et indubitanter optinere conveniet, emendandi vel revocandi potestate nostrae clementiae reservata. Declarari autem invicem oportebit nec admittenda aliter. Dat. vii Kal. April. Constp. Florentio et Dionysio Conss.

[1] *Cf.* Mommsen in his *Prolegomena* to *Novellae Theodosiani,* p. 1.

[2] "Emendandi vel revocandi potestate nostrae clemtiae reservata." Krüger, *op. cit.,* p. 390, interprets this as meaning that the right of emending or rejecting was exercised by all Augusti. It doubtless was practiced, but this clause hardly can mean to authorize it.

[3] *Novellae Theodosiani, 2,* par. i.

[4] *V. Prolegomena* to *Novellae Theod.,* p. 2.

[5] Krüger, *op. cit.,* p. 391 Fr. translation.

CHAPTER II

The Religious Legislation of Constantine

A. DECREES OF TOLERATION

1. Decree of Nicomedia

Lactantius, *De Mortibus Persecutorum,* ch. xlviii, in *Ante-Nicene Fathers:*

Not many days after the victory, Licinius having received part of the soldiers of Daia into his service and properly distributed them, transported his army into Bithynia, and having made his entry into Nicomedia, he returned thanks to God through whose aid he had overcome; and on the Ides of June, while he and Constantine were consuls for the third time, he commanded the following edict for the restoration of the church directed to the president of the province to be promulgated: "When we, Constantine and Licinius, emperors, had an interview at Milan, and conferred together with respect to the good and security of the commonweal, it seemed to us that amongst those things that are profitable to mankind in general, the reverence paid to the Divinity [1] merited our first and chief attention; and that it was proper that the Christians, and all others, should have liberty to follow that mode of religion which to each of them seemed best; so that God,[2] who is seated in heaven, might be benign and propitious to us, and to every one under our government. And therefore, we

[1] Quibus divinitatis reverentia continebatur.

[2] Quo quicquid (est) divinitatis in sede caelesti.

judged it a salutary measure, and highly consonant to right reason, that no man should be denied leave of attaching himself to the rites of the Christians, or to whatever other religion his mind directed him; that thus the supreme Divinity,[1] to whose worship, we freely devote ourselves, might continue to vouchsafe His favor and beneficence to us.[2] And accordingly, we give you to know that without regard to any provisions in our former orders to you concerning the Christians,[3] all who choose that religion are to be permitted, freely and absolutely, to remain in it, and not to be disturbed anyways, or molested. And we thought fit to be thus special in the things committed to your charge, that you might understand that the indulgence which we have granted, in matters of religion to the Christians, is ample and unconditional; and perceive at the same time, that the open and free exercise of their respective religions is granted to all others, as well as to the Christians. For it befits the well-ordered state, and the tranquillity of our times that each individual be allowed, according to his own choice, to worship the Divinity;[4] and we mean not to derogate aught from the honour due to any religion or its votaries. Moreover with respect to the Christians, we formerly gave certain orders concerning the places appropriated for their religious assemblies, but now we will that all persons who have purchased such places either from our exchequer or from anyone else, do restore them to the Christians, without money demanded or price claimed, and that this be performed peremptorily and unambiguously; and we will also, that they who have obtained any right to

[1] Ut possit summa divinitas.

[2] Here begin the special provisions of the decree of Nicomedia.

[3] For the discussion of the meaning of this clause, *v. supra*, pp. 46 *et seq.*

[4] Ut in colendo, quod quisque delegerit habeat liberam facultatem.

such places by form of gift, do forthwith restore them to the Christians; reserving always to such persons, who have either purchased for a price or gratuitously acquired them, to make application to the judge of the district, if they look on themselves as entitled to any equivalent from our beneficence. All those places are by our intervention, to be immediately restored to the Christians. And because it appears that besides the places appropriated to religious worship, the Christians did possess other places, which belonged not to individuals, but to their society in general, that is to their Churches, we comprehend all such within the regulation aforesaid, and we will that you cause them all to be restored to the society or Churches, and that without hesitation or controversy. Provided always, that the persons making restitution without a price paid shall be at liberty to seek indemnification from our bounty. In furthering all which things for the behoof of the Christians, you are to use your utmost diligence, to the end that our orders be speedily obeyed, and our gracious purpose in securing the tranquillity promoted. So shall that divine favour, which in affairs of the highest importance, we have already experienced, continue to give success to us, and in our successes, make the commonweal happy. And that the tenor of these our gracious ordinances may be made known to all, we will that you cause it by your authority to be published everywhere.

Licinius, having issued this ordinance, made an harangue in which he exhorted the Christians to rebuild their religious edifices.

2. Imperial Decree of Constantine and Licinius

Copy of Imperial Laws

Eusebius, *H. E.*, bk. x, ch. v, in *Nicene and post-Nicene Fathers.*

Let us finally subjoin the translations from the Roman tongue of the imperial decree of Constantine and Licinius. "Perceiving long ago that religious liberty ought not to be denied, but that it ought to be granted to the judgment and desire of each individual to perform his religious duties according to his own choice, we had given orders that every man, Christians as well as others, should preserve the faith of his own sect and religion.[1] But since in that rescript, in which such liberty was granted them, many and various conditions [2] seemed clearly added, some of them, it may be, after a little retired from such observance. When I, Constantine Augustus, and I, Licinius Augustus, came under favorable auspices to Milan and took under consideration everything which pertained to the common weal and prosperity, we resolved among other things, or rather first of all, to make such decrees, as seemed in many respects for the benefit of everyone; namely such as should preserve reverence and piety toward the deity.[3] We resolved that is to grant both to the Christians and to all men freedom to follow the religion which they choose, that whatever Heavenly divinity exists [4] may be propitious to us, and to all that live under our government. We have, therefore, determined, with sound and upright purpose, that liberty is to be denied to no one, to choose and follow the religious ob-

[1] As to whether this clause refers to the edict of Galerius or that of Constantine or the rescript of Maximin, *v. supra*, pp. 46, 50, 52, 53.

[2] For discussion of the interpretation of this *v. supra*, p. 47, note 1.

[3] *πρὸς τὸ θεῖον*, this vague neuter adjective seems better translated as *divinity.*

[4] *ὅ τί ποτέ ἐστι θειότης καὶ οὐρανίου πράγματος.*

servances of the Christians, but that to each one freedom is to be given to devote his mind to that religion which he may think adapted to himself, in order that the deity [1] may exhibit to us in all things his accustomed care and favor. It was fitting that we should write that this is our pleasure, that those conditions being entirely left out which were contained in our former letter concerning the Christians which was sent to your devotedness, everything that seemed very severe and foreign to our mildness may be annulled, and that now everyone who has the same desire to observe the religion of the Christians may do so without molestation. We have resolved to communicate this most fully to thy care, in order that thou mayest know that we have granted to these same Christians freedom and full liberty to observe their own religion. Since this has been granted freely by us to them, thy devotedness perceives that liberty is granted to others also who may wish to follow their own religious observances; it being clearly in accordance with the tranquillity of our times, that each one should have the liberty of choosing and worshiping whatever deity he pleases. This has been done by us in order that we might not seem in any way to discriminate against any rank or religion. And we decree still further in regard to the Christians, that their places in which they were formerly accustomed to assemble and concerning which in the former letter sent to thy devotedness a different command was given, if it appear that any have bought them, either from our treasury or from any other person, shall be restored to the said Christians, without demanding money or any other equivalent, with no delay or hesitation. If any happen to have received the said places as a gift, they shall restore them as quickly as possible to these same Christians; with the understanding that if those who have bought these

[1] Τὸ Θεῖον.

places, or those who have received them as a gift, demand anything from our bounty, they may go to the judge of the district, that provision may be made for them by our clemency. All these things are to be granted to the society of Christians by your care immediately and without delay. And since the said Christians are known to have possessed not only those places in which they were accustomed to assemble, but also other places, belonging not to individuals among them, but to the society [1] as a whole, that is, to the society of Christians, you will demand that all these, in virtue of the law which we have above stated, be restored, without any hesitation, to these same Christians; that is, to their society and congregation; the above mentioned provision being of course observed, that those who restore them without price as we have before said, may expect indemnification from our bounty. In all these things, for the behoof of the aforesaid society of Christians, you are to use the utmost diligence, to the end that our command may be speedily fulfilled, and that in this also, by our clemency, provision may be made for the common and public tranquillity. For by this means, as we have said before, the divine favor toward us which we have already experienced in many matters, will continue sure through all time. And that the terms of this, our gracious ordinance, may be known to all, it is expected that this which we have written will be published everywhere by you and brought to the knowledge of all, in order that this gracious ordinance of ours may remain unknown to no one."

[1] McGiffert, Eusebius, *H. E.*, p. 380, states that the use of this word "is a distinct recognition of the full legal status of the Christian Church and of their right as a Corporation in the eyes of the law to hold property. The right did not on this occasion receive recognition for the first time, but more distinctly and in broader terms than ever before. Upon the right of the Church to hold property before the publication of this edict see especially Hatch's *Constit. of the Early Christian Churches,* p. 152, note 25."

3. Decree for the Inhabitants of Palestine

Eusebius, *Vita Constantini,* from *N. P. N. F.,* bk. ii, chs. xxiv-xlii.

Law of Constantine respecting Piety towards God, and the Christian Religion:

" Victor Constantinus, Maximus Augustus, to the inhabitants of the province of Palestine.

" To all who entertain just and sound sentiments toward the character of the Supreme Being, it has long been most clearly evident, and beyond the possibility of doubt, how vast a difference there has ever been between those who maintain a careful observance of the hallowed duties of the Christian religion and those who treat this religion with hostility or contempt. But at this present time we may see, by still more decisive instances, both how unreasonable it were to question the truth and how mighty is the power of the Supreme God, since it appears that those who faithfully observe His holy laws and shrink from the transgression of His commandments are rewarded with abundant blessings, and are endued with well-grounded hope as well as ample power for the accomplishment of their undertakings. On the other hand, they who have cherished unpious sentiments have experienced results corresponding to their own evil choice. . . .

(Then follows an account of the rewards of the righteous and the penalties of the evil and how God had chosen Constantine to be his minister.) " I myself then, was the instrument whose services he chose and esteemed suitable for the accomplishment of his will." Ch. xxviii. " Let all therefore who have exchanged their country for a foreign land, because they would not abandon that reverence and faith toward God to which they had devoted themselves with their whole hearts, and have in consequence at different

times been subject to the cruel sentence of the courts; together with any who have been enrolled in the registers of the public courts, though in time past exempt from such office; let these, I say, now render thanks to God the Liberator of all, in that they are restored to their hereditary property, and their wonted tranquillity. Let those also who have been despoiled of their goods, and have hitherto passed a wretched existence, mourning under the loss of all that they possessed, once more be restored to their former homes, their families and estates, and receive with joy the bountiful kindness of God." . . .

Ch. xxxi. Provides for the release of those who have been exiled on islands.

Ch. xxxii. Frees those ignominiously employed in mines and public works.

Ch. xxxiii. Provides that Christians who have been dismissed from the army may enter it again if they choose.

Ch. xxxiv. Frees Christians who have been condemned to work in the women's apartments or in other servile capacity.

Ch. xxxv. Deals with the "Inheritance of the Property of Martyrs and Confessors," also of those who have suffered banishment or Confiscation of Property.

Ch. xxxvi. Declares that the Church is heir of those who leave no kindred; and free gifts to it are confirmed.

"But should there be no surviving relation to succeed in due course to the property of those above mentioned, I mean the martyrs, or confessors, or those who for some such cause have been banished from their native land, in such case we ordain that the church locally nearest in each instance shall succeed to the inheritance. And surely it will be no wrong to the departed that the church should be their heir, for whose sake they have endured every extremity of

suffering. We think it necessary to add this also, that in case any of the above-mentioned persons have donated any part of their property in the way of free gift, possession of such property shall be assured, as is reasonable, to those who have thus received it."

Ch. xxxvii. "Lands, Gardens or Houses, but not actual Produce from them are to be given back."

Ch. xxxviii. "In what manner requests should be made for these."

Ch. xxxix. "The Treasury must restore Lands, Gardens and Houses to the Churches."

Ch. xl. "The Tombs of Martyrs and Cemeteries to be restored to the possession of the Churches."

Ch. xli. "Those who have purchased property belonging to the Church or received it as a gift, are to restore it."

Ch. xlii. "And now, since it appears by the clearest and most convincing evidence, that the miseries which erewhile oppressed the human race are now banished from every part of the world, through the power of Almightly God, and at the same time the counsel and aid which he is pleased on many occasions to administer through our agency; it remains for all, both individually and unitedly, to observe and seriously consider how great this power and how efficacious this grace are, which have annihilated and utterly destroyed this generation, as I may call them, of most wicked and evil men; have restored joy to the good, and diffused it over all countries, and now guarantee the fullest authority both to honor the Divine law as it should be honored, with all reverence, and pay due observance to those who have dedicated themselves to the service of that law. These rising as from some dark abyss and, with an enlightened knowledge of the present course of events, will henceforward render to its precepts that becoming reverence and honor which are consistent with their pious character.

"Let this ordinance be published in our Eastern provinces." [1]

4. Constantine's Edict to the People of the Provinces Concerning the Error of Polytheism.

Eus., *V. C.*, bk, ii, chs. xlviii-lx.

Victor Constantinus, Maximus Augustus, to the people of the Eastern Provinces:

Whatever is comprehended under the sovereign laws of nature, seems to convey to all men an adequate idea of the forethought and intelligence of the divine order. . . .

[1] This is the first of the series of enactments given by Eusebius in the *Vita Constantini* which are rejected as spurious by certain historians. The list of the questioned letters and edicts is as follows: (1) Edict to the provincials of the Orient, given above. (2) Letter to Eusebius and all the bishops of the East concerning the rebuilding of churches, bk. ii, ch. xlvi. (3) Letter to the Inhabitants of the East in which the Emperor confesses his faith in Christianity, bk. ii, chs. xlviii-lx. (4) Letter to Alexander and Arius, bk. ii, chs. lxiv-lxxii. (5) Circular letter to Christian communities with the conclusions of the Council of Nicaea, bk. iii, chs. xvii-xx. (6) Letter to Macarius, Bishop of Jerusalem, bk. iii, chs. xxx-xxxii. (7) Letter to the Bishop of Palestine about building the Church at Mamre, bk. iii, chs. lii-liii. (8) Letter to the Congregation of Antioch on their choice of Eusebius as Bishop, bk. iii, ch. lxi. (9) Letter to Eusebius on the same subject, bk. iii, ch. lxii. (10) A letter to the Synod of Antioch, bk. iii, ch. lxii. (11) The edict against heresies, bk. iii, chs. lxiv-lv. (12) Letter to Sapor on the spread of Christianity, bk. iv, chs. ix-xiii. (13) The Sunday prayer of the army, bk. iv, ch. xx. (14) A letter of thanks to Eusebius for his letter on Easter, bk. iv, ch. xxxv. (15) A letter to Eusebius concerning a manuscript of the Bible for the newly-erected churches in Constantinople, bk. iv, ch. xxxvi. (16) A letter to the Synod of Tyre. (17) Constantine's oration "Ad Sanctorum Coetum."

Crivellucci, "*Della fede storica di Eusebio*," Leghorn, 1888, and "*Gli editti di Constantino ai provinciali della Palestrina e agli Orientali*," *Studi storichi*, vol. iii, pp. 369 *et seq.*, concluded that this quoted list was a series of falsifications of Eusebius. Schultze at first doubted the justice of the conclusion, but after investigation conceded the main points. *Z. F. K. G.*, vol. xiv. Mommsen too recognied the weight of Crivellucci's proofs. Pauly-Wissowa, *Real-Ency. d. Alter-*

Ch. xlix. The former emperors I have been accustomed to regard as those with whom I could have no sympathy, on account of the savage cruelty of their character. Indeed, my father was the only one who uniformly practiced the duties of humanity, and with admirable piety called for the blessing of God the Father on all his actions.

(Then follows an outline of the Christian persecutions.)

tums-Wiss. article on Constantine, vol. iv, p. 1018, agrees with Crivellucci that the edict of the provincials of Palestine and to the people of the Orient are forgeries. In 1898, Seeck reopened the whole question in his article entitled, "Die Urkunden der Vita Constantini," *Z. F. K. G.*, vol. xviii, pp. 321 *et seq.* He confesses he had thought with relief that the question had been settled and as the documents were forgeries he need never again drag his mind through these dreary phrases. Now he finds to his astonishment that they need new consideration. The chief reason that Crivellucci and Schultze refuse to credit the documents is, that the style does not correspond to that of the rest of Constantine's legislation. These critics find the curious intermingling of rhetorical and ecclesiastical language an evidence that Eusebius forged the series. Seeck, on the other hand, points out that one may find in the edicts of earlier emperors all the faults Crivellucci considers the obstacles to accepting the documents as valid. Seeck thinks it would have been impossible for Eusebius to attempt to falsify or forge a document in the very part of the empire where the originals would have been publicly posted not more than ten years before. Of the documents under consideration, Seeck shows that all but two would naturally have come under Eusebius' immediate notice, if they were not directed to him personally. The two exceptions are: the Letter to Sapor and Constantine's address to the Assembly of the Saints; and it would not have been difficult for him to get copies of these. Seeck finds that the superscriptions of these documents are not unlike those of Constantine's laws in the Theodosian Code, where something has been sacrificed to space. While Seeck believes that Eusebius may have changed the form of some of the documents, to meet the exigencies of the translation into Greek, or for some other practical reason, he departs definitely from the company of Crivellucci and Schultze, and denying the charge of falsifying or forging laid to Eusebius' door, accepts the whole series as genuine. Boissier, *La Fin du Pag.*, vol. i, p. 17, believes the documents are valid, as does Allard, *op. cit.*, p. 170. In this matter we take our stand with Seeck and his party.

Ch. lv. And now I beseech thee, most mighty God, to be merciful and gracious to thy Eastern nations, to thy people in these provinces, worn as they are by protracted miseries; and grant them healing through thy servant. . . . Under thy guidance have I devised and accomplished measures fraught with blessing; preceded by thy sacred sign have I led thy armies to victory; and still on each occasion of public danger, I follow the same symbol of thy perfections while advancing to meet the foe. Therefore have I dedicated to thy service a soul duly attempered by love and fear. . . . I hasten then to devote all my powers to the restoration of thy most holy dwelling place, which those profane and impious men have defiled by the contamination of violence.

Ch. lvi. "My own desire is, for the common good of the world and the advantage of all mankind, that thy people should enjoy a life of peace and undisturbed concord. Let those, therefore, who still delight in error, be made welcome to the same degree of peace and tranquillity which they have who believe. For it may be that the restoration of equal privileges to all will prevail to lead them into the right path. Let no one molest another, but let everyone do as his soul desires. Only let men of sound judgment be assured of this, that those only can live a life of holiness and purity whom thou callest to a reliance on thy holy laws. With regard to those who will hold themselves aloof from us, let them have, if they please, their temples of lies; we have the glorious edifice of thy truth, which thou hast given us as our native home. We pray, however, that they too may receive the same blessing and thus experience that heartfelt joy which unity of sentiment inspires. (Then follow the three chapters devoted to the glorification of God for sending "a pure light in the person of thy Son" . . . for governing the universe, and being the constant teacher of good.)

Ch. lix. Abundant thanks, most mighty God and Lord of all, be rendered to thee, that, by so much as our nature becomes known from the diversified pursuits of man, by so much the more are the precepts of thy divine doctrine confirmed to those whose thoughts are directed aright, and who are sincerely devoted to true virtue. As for those who will not allow themselves to be cured of their error, let them not attribute this to any but themselves. For that remedy which is of sovereign and healing virtue is openly placed within the reach of all. Only let not anyone inflict an injury on that religion which experience itself testifies to be pure and undefiled. Henceforward, therefore, let us all enjoy in common, the privilege placed within our reach; I mean the blessing of peace, endeavoring to keep our conscience pure from all that is contrary.

Ch. lx. Once more let none use that to the detriment of another which he may himself have received on conviction of its truth; but let everyone, if it be possible, apply what he has understood and known to the benefit of his neighbor; if otherwise, let him relinquish the attempt. For it is one thing voluntarily to undertake the conflict for immortality, another to compel others to do so from the fear of punishment.

These are our words; and we have enlarged on these topics more than our ordinary clemency would have dictated, because we were unwilling to dissemble or be false to the true faith; and the more so, since we understood there are some who say that the rites of the heathen temples, and the power of darkness, have been entirely removed. We should indeed have earnestly recommended such removal to all men, were it not that the rebellious spirit of those wicked errors still continues obviously fixed in the minds of some, so as to discourage the hope of any general restoration of mankind to the ways of truth.

B. PRO-CHRISTIAN LAWS

1. Letter to Anulinus Respecting the Restoration of Property to Christians

Eus., *H. E.*, bk. x, ch. v, par. 15.

Copy of another imperial decree which they issued, indicating that the grant was made to the Catholic Church alone.

Greeting to thee, our most esteemed Anulinus. It is the custom of our benevolence, most esteemed Anulinus, to will that those things which belong of right to another, should not only be left unmolested, but should also be restored. Wherefore, it is our will that when thou receivest this letter, if any such things belonged to the Catholic Church of the Christians, in any city or other place, but are now held by citizens or any others, thou shalt cause them to be restored immediately to the said churches. For we have already determined that those things which these same churches formerly possessed shall be restored to them. Since therefore thy devotedness perceives that this command of ours is most explicit, do thou make haste to restore to them, as quickly as possible, everything which formerly belonged to the said churches,—whether gardens or buildings, or whatever they may be,—that we may learn that thou hast obeyed this decree of ours most carefully. Farewell, thou most esteemed and beloved Anulinus.[1]

[1] Anulinus was pro-consul of the province of Africa whose chief city, Carthage, had a large Christian population. Probably this communication was sent shortly after the edict of Milan, since it concerns practical questions touching the property of the churches. Eusebius in the title of the chapter calls the document "Copy of another imperial decree which they issued, indicating that the Grant was made to the Catholic Church alone." McGiffert in a note points out that there is no indication in the text itself that the phrase "Catholic Church" was used in any but a general sense, or that the schismatics were to be excluded from the enjoyment of the provisions of the law.

2. Copy of an Imperial Epistle in which Money is Granted to the Churches.

Eus., *H. E.*, bk. x, ch. vi.[1]

Constantine Augustus to Caecilianus,[2] bishop of Carthage.

Since it is our pleasure that something should be granted in all the provinces of Africa and Numidia and Mauritania to certain ministers of the legitimate and most holy Catholic religion, to defray their expenses, I have written to Ursus, the illustrious finance minister of Africa, and have directed him to make provision to pay to thy firmness 300 folles.[3] Do thou, therefore, when thou hast received the above sum of money, command that it be distributed among all those mentioned above, according to the brief sent to thee by Hosius.[4] But if thou shouldst find that anything is wanting for the fulfilment of this purpose of mine in regard to all of them, thou shalt demand without hesitation from Heracleides, our treasurer, whatever thou findest to be necessary. For I commanded him when he was present that if thy firmness should ask him for any money, he should see to it that it be paid without delay. And since I have learned that some men of unsettled mind wish to turn the people of the most holy and Catholic Church by a certain method

[1] For discussion on the title of this chapter *v.* McGiffert' note 1, to ch. v.

[2] Caecilianus as an archdeacon had been identified with the anti-Donatists.

[3] An uncertain sum, perhaps equal to $90,000, but there is no way of being positive. See Petavius' essay in Dindorf's edition of Epiphanius, vol. iv, pp. 109 *et seq.*

[4] Probably the famous Bishop of Cordova in Spain, for many years an influential advisor of Constantine. He was conspicuous in all the great controversies of the first half of the fourth century; died about 360.

of shameful corruption,[1] do thou know that I gave command to Anulinus, the proconsul, and also to Patricius, vicar of the prefects, when they were present, that they should give proper attention not only to other matters but also above all to this, and that they should not overlook such a thing when it happened. Wherefore, if thou shouldst see any such men continuing in this madness, do thou without delay, go to the above-mentioned judges, and report the matter to them; that they may correct them as I commanded them when they were present. The divinity of the great God protect thee for many years.[2]

3. Exemption of the Clergy.

Eus., *H. E.*, bk. x, ch. vii.

Copy of an epistle in which the emperor commands that the rulers of the churches be exempted from all political duties.

Greeting to thee, our most esteemed Anulinus. Since it appears from many circumstances that when that religion is despised, in which is preserved the chief reverence for the most holy celestial Power, great dangers are brought upon public affairs; but that when legally adopted and observed it affords the most signal prosperity to the Roman name and remarkable felicity to all the affairs of men, through the divine beneficence—it has seemed good to me, most esteemed Anulinus, that those men who give their services with due sanctity, and with constant observance of this law, to the worship of the divine religion, should re-

[1] McGiffert thinks this a reference to the Donatists.

[2] Here the State begins to subsidize the Christian clergy and hence to put them in the same financial relation to the Government as the pagan priesthoods. From this time voluntary contributions fell into gradual disuse and the clergy depended for their maintenance, not upon the offerings of the faithful, but the government stipends.

ceive recompense for their labors. Wherefore it is my will that those within the provinces intrusted to thee, in the catholic Church over which Caecilianus presides, who give their services to this holy religion, and who are commonly called clergymen, be entirely exempted from all public duties, that they may not by any error or any sacrilegious negligence be drawn away from the services due to the Deity, but may devote themselves without any hindrance to their own law. For it seems that when they show greatest reverence to the Deity, the greatest benefits accrue to the state. Farewell, our most esteemed and beloved Anulinus.[1]

4. Catholic Clergy exempt from Certain Civic Duties.

C. Th., xvi, 2, 1. 313 (?), Oct. 31.

The Emperor Constantine Augustus. We have learned that the clergy of the Catholic Church are so harrassed by a faction of heretics as to be burdened with nominations to office and common public business, contrary to the exemptions granted to them. Wherefore, it is ordered that if your gravity should find anyone thus annoyed, another man is to be substituted for him, and from henceforth, men of the religion above mentioned are to be protected from wrongs of this kind.[2] Given the thirty-first of October, in the third consulships of Augustus Constantine and Licinius.[3]

[1] This exemption had long been enjoyed by the heathen priesthoods and some of the learned professions. The heavy expense attendant upon public offices in the later Roman empire made them an intolerable burden to all but the very rich or ambitious.

[2] Godefroy thinks this was addressed to Anulinus, proconsul of Africa, and is the same letter found in Eus., *H. E.*, bk. x, ch. 7; Mommsen disagrees with Godefroy.

[3] Mommsen believes that the correct reading is: the Augustus Constantine being consul for the fifth time when Licinius the Caesar was also consul.

5. The Catholic Church freed from Tribute.

C. Th., xi, 1, 1; 315 June 17 [360, Jan. 18].[1]

The Emperor Constantine Augustus, to Proclianus. Except our private property and the Catholic churches, and the household of Eusebius of distinguished memory, the ex-consul and ex-master of the cavalry and infantry, and the household of Arsaces, the king of the Armenians, no one by our order shall enjoy special advantages of family property. For Ditianus, a distinguished man and a patrician, who had formerly obtained this favor, has requested that he be deprived of this, with as much insistance, as that with which others are wont to request it. Therefore all must pay whatever is charged against them in the assessments imposed by our authority but shall be pressed for no more. And if any vicar or governor of a province thinks that allowance should be made to any man, he shall be compelled to pay from his own property what he has remitted to the other. Given the seventeenth of June, at Constantinople, in the fourth consulships of Constantine Augustus and Licinius.

6. Clergymen freed from Financial Burdens.

C. Th., xvi, 2, 2. 319, Oct. 21.

The Emperor Constantine to Octavianus, the Corrector of Lucania, and of the Bruttii.[2]

Those who conduct the religious services of divine worship,—that is,—those who are called clergymen,—shall be freed from all financial contributions whatsoever that they

[1] *Cf. C. J.*, x, 16, 4. See Mommsen's note to this law. From the persons referred to in the text, he is inclined to think this a law of Constantine.

[2] Inhabitants of the southern part of Italy.

may not be called away from their sacred duties [1] by the sacrilegious malice of certain persons.[2]

7. The Church Allowed to Receive Bequests.

C. Th., xvi, 2, 4. 321, July 3.

The same Augustus to the People.

Every man, when dying, shall have the right to bequeath as much of his property as he desires to the holy and venerable Catholic Church. And such wills are not to be broken.[3]

Given the third of July, at Rome in the second consulship of the Cæsars, Crispus and Constantine.

8. Christian Priests to have the Right of Manumitting Slaves.

C. J., i, 13, 1. June 8, 316.

The Emperor Constantine Augustus to Bishop Protogenes.

It has long been allowed that masters may within the Catholic Church grant freedom to their slaves, if they do it in the sight of the people and in the presence of Christian priests, so that to preserve the memory of the deed a paper may be drawn up as record which they may sign as witnesses. Therefore, you also may deservedly grant and

[1] This did for these provinces what an earlier letter did for Africa. See *H. E.*, bk. x, ch. vi; *cf.* Soz., *op. cit.*, bk. i, ch. ix, "Constantine exempted the clergy everywhere from taxation."

[2] *Cf. C. Th.*, xvi, 2, 7, Feb. 5, 330, in which clergymen of various grades were freed from curial burdens. For the laws of 320 and 326, which perscribed what men were permitted to become clergymen, *vide C. Th.*, xvi, 2, 3 and 6.

[3] Godefroy comments that up to the time of Constantine, the Christian Church, like the Jewish corporations, had not been granted the privilege of inheriting property bequeathed in wills. Nevertheless, between the time of Marcus Aurelius, who gave such privilege to certain colleges and corporations, and the accession of Constantine, the Church, from time to time, did enjoy testamentary gifts. After 312, undoubtedly, wealth flowed into the Church, so that actually this edict legalizes what had been certainly permitted for some nine years.

allow freedom, by whatever arrangement pleases anyone of you, provided only there be clear testimony to your intention. Given the eighth of June in the consulships of Sabinus and Rufinus.

9. Clergy to have the Right to Manumit Slaves.

C. Th., iv, 7, 1. 321, April 18.[1]

The Emperor Constantine Augustus to Bishop Hosius.

Those in the bosom of the Church who in the spirit of religion have given merited freedom to their slaves, seem to have done this in the same way that Roman citizenship is customarily given at the conclusion of solemn rites; provided, however, that they did this in the presence of bishops. But we allow furthermore to the clergy that wherever they give the full fruits of liberty, not only by granting freedom to their slaves in Church and before religious people but even by enfranchising them in their last will, or by orally ordering it to be given,—such liberty shall take effect from the day of the publishing of the wish, without any legal witness or agent.

10. Episcopal Jurisdiction.

C. Th., i, 27, 1. . . . June 23, 318?

The Emperor Constantine Augustus. A judge must observe with care, that if a case is appealed to an episcopal court, he shall allow the proceedings to be stopped, and if any one desires to transfer his case to the Christian law and to accept its judgment, he shall be permitted, even if the case has been already begun before the judge; and whatever is decreed by them (*i. e.*, the bishops) shall be held as sacred; with this provision however, that it shall not be carried so far that one of the litigants shall go to the

[1] *Cf. C. J.*, i, 13, 2.

above-mentioned hall of justice, and report its decision. For a judge ought [to hear both parties [1]] in person and to have the settlement of the entire case, so that he may pronounce when everything has been offered for approval.

Given the twenty-third of June at Constantinople . . . in the consulship of the Augustus and Crispus the Caesar.

11. Bishops' Powers as Judges and Witnesses.

C. S., i. 333, May 5.

The Emperor Constantine, Augustus, to Ablabius, the pretorian prefect. We are considerably surprised that your gravity, which is replete with justice and blameless religion, has wished to inquire of our clemency, what our moderation decreed formerly concerning the decisions of bishops or what we may now desire to be observed, dearest and most affectionate Ablabius. And so because you have desired to be instructed by us, we set down again for our prosperous empire the order of the law which has been already promulgated. For indeed, we have commanded, as the provisions of our edict set forth, that episcopal decisions rendered in any kind of case, shall always be maintained inviolate and unaltered without distinction as to their date; namely, that whatever may be settled by a sentence of bishops shall ever be held as sacred and venerable. And so if a judgment is given by bishops in a case between minors or adults, we wish it to be carried out by you, who hold the highest position in the courts, and by all the other judges. Consequently, if anyone is involved in a law suit, whether as a defendant or plaintiff, whether at the begin-

[1] Supplied according to the reading of Mommsen's note. This law was found at the end of the Constitutiones Sirmondianae, and is there, number 17, in the Haenel edition. It owes its present place in the Mommsen edition because it bore the inscription *lex de Theodosiano sub titulo xxvii de episcopale definitione*. Mommsen believes it was probably drawn up in 318.

ning of the law suit or after the passage of time, whether during the trial of the case, or when judgment has begun to be given, chooses the sentence of a bishop of the holy law, thither, to the bishop, let the litigants be directed, without any delay, even if the other party resist. For the authority of the sacrosanct religion searches into, and makes public, many things which the captious limitations of legal custom do not permit to be brought out in ordinary trials. So all cases which come under the pretorian or the civil law, whenever settled by the decision of bishops shall be maintained by unchanging law; neither shall a case which has been decided by the sentence of bishops be subject to further review. All testimony given, even by a single bishop, shall be accepted without hesitation, by every judge, neither shall any other witness be heard, when the testimony of a bishop is brought forward by either party. For that is confirmed by the authority of truth, that is uncorrupted, which is spoken by a holy man, in the consciousness of an upright mind. This we have already decided by a wholesome decree, this we now confirm by perpetual law, destroying the pernicious seeds of litigation, that miserable men entangled in long and well-nigh continuous snares of law suits, may be set free at an early date from iniquitous claims or monstrous cupidity. So, whatever our clemency has decreed, and has now comprised in this law, concerning the sentences of bishops, we wish your gravity, and the rest to observe for the advantage of all. Given the fifth of May, at Constantinople, in the consulships of Dalmatius and Zenofilus.[1]

[1] Professor Munroe Smith authorizes the writer to cite him as holding that the constitutions which deal with the civil jurisdiction of Christian bishops and which are attributed to Constantine cannot well be accepted as genuine unless it be assumed that these laws were meant to operate only against Christians who brought suit in the secular courts. It is his opinion that this assumption is justifiable, and that

12. The Day of the Sun a Time for Rest.

C. J., iii, 12, 2. March 3, 321.

The Emperor Constantine Augustus, to Helpidus. All judges and city folk and all craftsmen shall rest on the venerated day of the sun. Country people, however, may freely, and according to their own pleasure, attend to the cultivation of their land, since it frequently happens that no other day is so opportune for sowing the grain in the furrows, or setting out the vines in the ditches; so that the advantage of a favorable moment granted by providence may not be lost. Published the third of March in the second consulships of Crispus and Constantine.

13. Manumissions Permitted on the Day of the Sun.

C. Th., ii, 8, 1. 321, July 1.

the laws would have been construed, at the time, in this narrower sense. The first Sirmondian constitution, in particular, seems to have been drawn by a Christian ecclesiastic who was not a lawyer, and his object was to regularize the brief-established Christian practice of submitting controversies between Christians to the ecclesiastic determination. To compel a pagan plaintiff, on the demand of a Christian defendant, to transfer his suit to the episcopal tribunal, lay wholly outside of this object; and to have imposed upon pagan litigants such compulsion would have been regarded by them as an affront and would have been quite inconsistent with Constantine's general policy. Any one versed in legal hermeneutics, and particularly any one familiar with the regard paid by Roman lawyers to the *voluntas legis* and the freedom with which they read into laws such exceptions as seemed to be demanded by their general purpose and spirit, can have little doubt that these laws of Constantine would have been construed in the sense here indicated.

Also Soz., *op. cit.*, bk. i, ch. ix. Constantine "permitted litigants to appeal to the decision of the bishops if they preferred them to the state rulers. He enacted that their decree should be valid and as far superior to that of other judges as if pronounced by the emperor himself; that the governors and subordinate military officers should see to the execution of these decrees; and that the definitions made by synods should be irreversible." *Cf. C. Th.*, i, 27, 1.

The Emperor Constantine Augustus, to Helpidus.[1]

As it has seemed most unworthy that the day of the sun, famous by its venerable character, should be filled with the wrangles of legal disputes and obnoxious contentions of parties, so it is grateful and pleasant on that day to carry out those things which are especially desired. And therefore on the festive day all shall have the right of emancipating and manumitting, and in connection with these things public business shall not be prohibited. Given the third of July, at Caralis,[2] in the second consulships of the Caesars Crispus and Constantine.[3]

14. Christians Exempt from Making Lustral Sacrifices.

Th. C., xvi, 2, 5. 323, May ? 25. Constantine to Helpidius.[4]

Whereas we have learned that certain ecclesiastics and other persons devoted to the Catholic faith have been forced by men of different religions to make lustral sacrifice; by this decree we ordain that anyone who believes that the followers of the most holy law should be compelled to take part in the rite of another religion, if his position allow of

[1] Other edicts were addressed to him. According to Godefroy, vol. i, p. 118, he was Praeses Sardiniae. Mommsen suggests that perhaps he was acting Urban Prefect. Jerome refers to one of the name as Praefectus Praetorio.

[2] Chief city of Sardinia.

[3] *Cf. C. J.*, iii-12, 1. Also Eus., *V. C.*, bk. iv, ch. xviii. "He ordained too, that one day should be regarded as a special occasion for prayer; I mean that which is truly the first and chief of all—the day of our Lord and Saviour."

[4] Godefroy, vol. iii, p. 27, note, believes Helpidius was acting pretorian prefect. *Cf.* Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio,* vol. iii, pp. 515 *et seq. Ancyranum Concilium,* Canon iv, "De his qui vi sacrificarunt et praeterea ad idola pransi sunt," etc. Godefroy believes these lustral sacrifices were without question not private but public and were probably connected with the procession of the Ambarvales or Amburbium.

it, shall be publicly beaten with rods. But if his rank protect him from such punishment, he shall suffer the severest penalty which can be inflicted by the State. Given on the twenty-fifth of May in the consulships of Severus and Rufinus at Sirmium.

15. Churches Enlarged and Built at the Government's Expense.

Constantine's letter to Eusebius and other bishops respecting the building of churches and instructions to repair the old and erect new ones on a large scale, with the aid of the Provincial Governors. *V. C.*, bk. ii, ch. xlvi, *N. P. N. F.*

Victor Constantinus, Maximus Augustus, to Eusebius.

Forasmuch as the unholy and wilful rule of tyranny has persecuted the servants of our Saviour until this present time, I believe and have fully satisfied myself, best beloved brother, that the buildings belonging to all the churches have either become ruinous through actual neglect or have received inadequate attention from the dread of the violent spirit of the times.

But now that liberty is restored, and that serpent driven from the administration of public affairs by the providence of the Supreme God, and our instrumentality, we trust that all can see the efficacy of the Divine power, and that they who through fear of persecution or through unbelief have fallen into any errors, will now acknowledge the true God, and adopt in future that course in life which is according to truth and rectitude. With respect, therefore, to the churches over which you yourself preside, as well as the bishops, presbyters, and deacons of other churches with whom you are acquainted, do you admonish all to be zealous in their attention to the buildings of the churches, and either to repair or enlarge those which at present exist, or in cases of necessity, to erect new ones. We also empower you, and the others through you, to demand what is needful for the

work, both from the provincial governors and from the Praetorian Praefect. For they have received instructions to be most diligent in obeyance to your Holiness's orders. God preserve you, beloved brother.[1]

B. HUMANITARIAN LAWS

1. Criminals no Longer to be Gladiators.

C. Th., xv, 12, 1. 325, Oct. 1.

The Emperor Constantine Augustus, to Maximus,[2] pretorian prefect.

Bloody shows are not pleasing during civic peace and domestic quiet. Therefore we prohibit altogether those from being gladiators who perhaps on account of crime used to merit this condition and sentence. Rather you will have them serve in the mines that they will pay without blood the penalties of their crimes.

Given at Berytus,[3] the first of October, in the consulships of Paulinus and Julianus.

2. Criminals not to be Branded in the Face.

C. Th., ix, 40, 2. 315 (316?), March 21.

The same Augustus to Eumelius.[4] If any one, on account

[1] Eus. says, "A copy of this charge was transmitted throughout all the provinces to the bishops of the several churches: the provincial governors received directions accordingly, and the imperial statute was speedily carried into effect."

[2] Vicar of the Orient.

[3] Beirut in Syria.

Cf. V. C., bk. iv, ch. xxv; also Soz., bk. i, ch. viii. The provisions certainly did not extend to Italy though they are expressed in general terms, for in Constantius' and Honorius' codes there are laws regulating gladiatorial performances in Rome. *Cf.* Godefroy, vol. iii, p. 397, note; *cf. C. J.*, xi, 44, 1. Imp. Constantinus A. Maximo pp. Cruenta spectacula in otia civili et domestica quieta non placent, quapropter omnino gladiatores esse prohibemus. PP. Beryto k. Oct. Paulino et Juliano conss. [a. 325]. *Cf. C. Th.*, xv, 12, 2.

[4] Vicar of Africa.

of the crimes in which he is detected, should be condemned to the arena or the mines, by no means let him be branded in the face, although both on his hands and legs the penalty of his condemnation may be marked in a single brand; while the face which is formed in the likeness of heavenly beauty shall not be dishonored.[1]

Given the twenty-first of March, at Cavillunum, in the fourth consulates of Constantine, the Augustus, and Licinius.

C. CONCERNING DIVINATION AND MAGIC

1. Private Divination Forbidden.

C. Th., ix, 16, 1. Feb. 1 (Sept. . . .), 319.

The Emperor Constantine Augustus to Maximus.[2]

No soothsayer shall cross another's threshold and for no other reason but that the ancient friendship for men of this sort ought to be checked. That haruspex who goes to another man's house ought to be burned; and the man who persuaded or bribed him to come, should suffer the confiscation of his property and should be banished to an island. For if they are eager to maintain this superstition, they will be ready publicly to celebrate their peculiar rite.

Moreover the reporter of this crime we consider not a delator but rather worthy of reward.

Set forth the first of February at Rome, in the fifth consulate of the Augustus Constantine when Licinius the Caesar was also consul.[3]

[1] *Cf.* Sex Aur. Victor, *De Caes.*, xli, for the abolition of the punishments of crucifixion and the breaking of legs. For references to other humanitarian laws of Constantine, see *supra*, pp. 75-76.

[2] *Cf. C. J.*, ix, 18, 3.

Prefect of the City of Rome.

Here it is patent that public divination is in no way interfered with; the ban touches only those who have to do with private soothsaying.

[3] *Cf. C. Th.*, xi, 36, 1, where the emperor denies convicted magicians the right of appeal.

2. Private Soothsaying Forbidden but Public Divination Allowed in the Day Time.

C. Th., ix, 16, 2. May 15, 319.

The same Augustus to the People.

We prohibit all soothsayers, priests of prophecy, and those who are wont to administer such rites, from entering a private house, or, under the guise of friendship, from crossing another's threshold. And if they despise this law penalties shall be meted out to them. You, who think this applies to yourselves, go to the public altars and shrines, and celebrate your customary ceremonies, for we do not forbid the full services of ancient tradition from being conducted in the day time.[1]

Given on the Ides of May, when Constantine the Augustus was Consul for the fifth time, and Licinius was Consul with him.

3. Malevolent Magic Prohibited but Beneficial Magic Encouraged.

C. Th., ix, 16, 3. May 23, 321-4 (317-319).

The same Augustus and the same Caesar to Bassus, the Prefect of the City.

The professed knowledge of those men should be punished and justly visited by the severest laws, who provide themselves with magical arts, or work against the welfare of men and are discovered to have turned pure minds to lust.

But the remedies sought for human bodies, or in rural places, the efforts harmlessly put forth (through which no one's well-being or reputation suffers) in order that storms need not be feared at the vintage season, nor the crop destroyed by a hailstorm, are not to be made matters for legal

[1] Here not only is private soothsaying forbidden as in the decree of February, but evidently nocturnal rites at the public altars and shrines are frowned upon, if they have not been actually prohibited.

complaint. Such acts prevent the destruction of God's gifts and man's labors.

Given the twenty-third of May at Aquileia in the Consulship of Crispus and Constantine, Caesars.[1]

4. Legal Divination Permitted.

C. Th., xvi, 10, 1. Dec. 17, 320-1.

The Emperor Constantine to Maximus.[2]

If a part of our palace, or any other public building, be struck by lightning, let the customs of the old religion be observed and the haruspices be consulted for the meaning of the omen, and let their words be very carefully brought together and reported to us. Permission for the practice of the custom should also be granted to others, provided that no household sacrifices are made, for these are specifically forbidden. Know moreover, that the announcement and explanation which is given touching the striking by lightning of the amphitheatre which you have written Heraclianus, the tribune and chief of the officials, has been reported to us.

Given at Serdica, the seventeenth of December, received the ninth of February, in the second Consulship of the two Caesars, Crispus and Constantine.

[1] *Cf. C. J.*, ix, 18, 4.

There is some dispute about the date of this law. Crispus and Constantine were consuls together in 321 and again in 324. Bassus appears to have been Urban Prefect from 317-319.

.Here the distinction is clearly drawn between good and bad magic, and the former is recognized as valuable. This distinction was commonly made not only by pagan but also by Christian minds.

[2] Prefect of the City of Rome.

Godefroy gives the date of the decree as 321. The occasion of this edict was the striking by lightning of the Flavian amphitheatre. Legal divination is here permitted. Licenses are to be granted for divination —the only stipulation being that the practices shall not be conducted in private houses.

D. LAWS CONCERNING PAGANISM

1. Exemption for Flamen, Priest and Magistrate.

C. Th., xii, 1, 21. 335, Aug. 4.

The same Augustus to Felix, pretorian prefect.

Since the African curials have complained that members of their corporation after receiving the honor of a flamen and priest or magistrate were compelled to be superintendents of inns (praepositos mansionum)[1] an office which in every curia is usually filled by men of lower merit and rank; we decree that no man decorated with the aforesaid honors shall be forced to perform the above service that no injustice may seem to be done by our decision.

Given the fourth of August at Viminacio, in the consulships of Constantius and Albinus.

2. Exemptions for Priests and Perpetual Flamens.

C. Th., xii, 5, 2. 337, May 21st.

The same Augustus to the Council of the Province of Africa.

We decree that priests and perpetual flamens and even the duumviri are to be immune from offices of superintendents and lower officials. In order that this may be confirmed by everlasting observation, we order this law to be cut in bronze tablets and published.

Set forth the twenty-first of May at Carthage.

Felicianus and Tetianus being Consuls.

[1] These houses were maintained by the government to provide accommodation and supplies for persons traveling on public business. The *praepositi* were therefore men set in charge of these establishments, whose business it was to arrange for the comfort of the guests. This position is not to be confused with that of *praepositus horreorum*, or *praepositus annonarum*. From this law it seems the position of *praepositus mansionum* was a position inferior in dignity to those of flamens, priests or magistrates. *Cf.* Godefroy, vol. iii, pp. 364-365.

3. Destruction of the Temple at Mamre.

Eus., *V. C.*, bk. iii, chs. lii-liii, in *N. P. N. F.*

Victor Constantinus, Maximus Augustus, to Macarius and the rest of the Bishops in Palestine.

One benefit, and that of no ordinary importance, has been conferred on us by my truly pious Mother-in-law, in that she has made known to us by letter that abandoned folly of impious men which has hitherto escaped detection by you: so that the criminal conduct thus overlooked may now through our means obtain fitting correction and remedy. . .

She assures me, then, that the place which takes its name from the oak of Mamre, where we find that Abraham dwelt, is defiled by certain of the slaves of superstition in every possible way. She declares that idols which should be utterly destroyed have been erected on the site of that tree; that an altar is near the spot, and that impure sacrifices are continually performed. Now since it is evident that these practices are equally inconsistent with the character of our times, and unworthy of the sanctity of the place itself, I wish your Reverences to be informed that the illustrious Count Acacius, our friend, has received instructions by letter from me, to the effect that every idol which shall be found in the place above-mentioned shall immediately be consigned to the flames; that the altar be utterly demolished, and that if anyone, after this our mandate, shall be guilty of impiety of any kind in this place, he shall be visited with condign punishment. The place itself we have directed to be adorned with an unpolluted structure, I mean a church, in order that it may become a fitting place of assembly for holy men. Meantime, should any breach of these our commands occur, it should be made known to our clemency without the least delay by letters from you, that we may direct the person detected to be dealt with, as a transgressor of the law, in the severest manner. For you are not ignorant that the

Supreme God first appeared to Abraham and conversed with him in that place. There it was that the observance of the divine law first began; there first, the Saviour himself, with the two angels, vouchsafed to Abraham a manifestation of his presence. . . .

For these reasons, it seems to me right that this place should not only be kept pure through your diligence from all defilement, but restored also to its pristine sanctity; that nothing hereafter may be done there except the performance of fitting service to him who is the Almighty God and our Saviour and Lord of all. And this service it is incumbent on you to care for with due attention, if your Reverences be willing (and of this I feel confident) to gratify my wishes, which are especially interested in the worship of God. May he preserve you, beloved brethren!

4. Rescript of Hispellum.

Orelli-Henzen, *Inscriptionum latinarum selectarum amplissima collectio,* vol. iii, no. 5580.

The Emperor Caesar Flavianus Constantinus Maximus, Triumphant Victor of the Germans, the Sarmati and Goths, Augustus; and Flavianus Constantinus and Flavianus Julianus Constantius and Flavianus Constans.

Everything for which the associations of the human race have regard, we include in our thoughtful care, but the greatest need of our forethought is, that every city which is distinguished by the beauty of its appearance as the ornament of the provinces and the regions should preserve not only the ancient dignity, but even by the munificence of our bounty, advance to a more perfect condition. Therefore, inasmuch as you declare that you have a union with Tuscany of such a character, that by a rule of ancient custom every year you appoint priests to display at Volsenii, a city of Tuscany, theatrical shows and gladiatorial games; but that, on account of the mountain steeps and dangerous

forests along the roads, you more urgently request that aid be granted to your priest, and he be not required to travel to Volsenii to celebrate these performances, but that the city which is now called Hispellum and which you state is bordering on the Via Flaminia, and adjacent to it, be endowed with our name in which a temple [1] of the Flavian gens shall be built of beautiful workmanship, to accord with the greatness of the title which it bears; and that there this priest might display the spectacle both of theatrical shows and gladiatorial games which Umbria had been wont to present in its yearly turn, while the custom of Tuscany shall remain as before, that there the appointed priest at Volsenii shall continue the spectacle of the aforesaid performances as he has been accustomed to do.

To this request and desire of yours we readily give our consent, and grant the eternal word and the venerable name from our own title to the city of Hispellum, namely that in the future the aforesaid city shall be called Flavia Constans; we are willing that within it a temple [2] of Flavia, that is, of our own gens may be built of beautiful workmanship as you request upon this condition: that the temple [3] dedicated to our name be not polluted with the deceit of any contagious superstition. Furthermore, we give you permission to hold performances in the aforesaid city, namely, as has been said from time to time, the solemn performances shall not be abandoned at Volsenii, where having originated through the priests of Tuscany, their ancient fame shall be continued, so that little loss come to ancient customs, and you, who for the afore-mentioned reasons are our suppliants, shall rejoice in receiving that for which you have so earnestly entreated.

[1] Templum. [2] Aedes

[3] Aedes

For discussion of this rescript *vide supra*, pp. 100 *et seq.*

CHAPTER III

Laws of the Sons of Constantine

Constantine was succeeded, upon his death in 337, by his three sons, among whom he had divided his empire. The early murder of Constantine II, left Constans and Constantius colleagues of the West and the East. They had been educated as Christians, but they displayed few Christian virtues and no brotherly feeling. They had little in common except their dislike of paganism and heresy; and even here there was ground for dispute when Constantius became converted to the teachings of the Arian party. In 350, Magnentius, a German commander of a couple of legions, assumed the imperial purple at Autun. Constans, fleeing into the Spanish provinces, was murdered. His brother carried on the war with the usurper and Magnentius' suicide in 353 made him the sole and undisputed emperor of the Roman world until the time of his death eight years later.

In principle, Constantine's sons seem to have abandoned their father's policy of religious toleration, for they ordered that the temples be closed and sacrifices cease. In practice, these laws were not generally carried out, and Constantius continued to confirm privileges and prerogatives to pagan priesthoods. Let us glance at the conspicuous religious legislation of this period.

Many laws were passed between 337 and 361 confirming or granting privileges to Christians. A long series of laws exempted the clergy from contributions and curial exac-

tions.[1] Even the wives and children of clergymen were freed from financial burdens.[2] Church lands also were not to be taxed.[3] Bishops were to be tried only in episcopal courts.[4] In the very year of his death Constantius reassured the Christian clergy of his protection.[5] With reference to the pagans Constantius issued laws commanding that temples be closed and all sacrifices discontinued.[6] Some of the temples were evidently bestowed upon Christian churches or private individuals.[7]

The harsh law[8] threatening with capital punishment anyone guilty of sacrificing or of worshiping idols, appears never to have been carried out, as there is no record of any pagan

[1] *C. Th.*, xiii, 1, 1; xvi, 2, 8, Aug., 343; xvi, 2, 9, April, 349; xvi, 2, 10, May, 353; xvi, 2, 11, February, 354; xvi, 2, 13, November, 357; xvi, 2, 16, February, 361.

[2] *C. Th.*, xvi, 2, 14, Dec.(?) 357.

[3] *C. Th.*, xvi, 2, 15, June, 360. This law provides however that clergymen in business must meet the regular business taxes.

[4] *C. Th.*, xvi, 2, 12, Sep., 355.

[5] *C. Th.*, xvi, 2, 16, Feb., 361.

[6] *Vide infra*, pp. 175 *et seq*, for the texts of these laws. Also, Libanius, *Pro templis*, p. 75. "But when the emperor (Constantius) came to his state or rather the form of the empire for the government was really in the hands of others who from the beginning had been his masters, and to whom he vouchsafed equal power with himself; he therefore being governed by them, even when he was emperor, was led into many wrong actions, and among others, to forbid sacrifices."

[7] Soz., bk. iii, ch. xviii. "They confirmed the laws enacted by their father, and enforced new ones prohibiting the offering of sacrifice, the worship of images, or any other pagan observance. They commanded that all temples, whether in the city or the country, should be closed. Some of these temples were presented to the churches when either the ground they stood on or the materials for building were required." *Cf.* Ammianus Marcellinus, bk. xxii, ch. iv. "Some of them had been fed on the spoils of temples, had smelt out gain on every occasion, and having raised themselves from the lowest poverty to vast riches."

[8] *Cf. infra*, p. 177, for text of *C. Th.*, xvi, 10, 6.

suffering death for his religion. And yet Constantius' laws did not crush paganism. Firmicus Maternus [1] saw temples standing and sacrifices steaming from the altars. Alexandria was full of temples where worship went on without check.[2] Sozomen reports that finally an edict was published to put a stop to this.[3] In 359, according to Ammianus, when Rome

> was fearing distress from an impending scarcity of corn; and the violence of the common people infuriated by the expectation of that worst of all evils, was vented upon Tertullus, who at that time was prefect of the city. . . . And soon by the favor of the deity who has watched over the growth of Rome from its first origin, and who promised that it should last forever, while Tertullus was at Ostia sacrificing in the temple of Castor and Pollux, the sea became calm, the wind changed to a gentle south-east breeze, and the ships in full sail entered the port laden with corn to fill the granaries.[4]

The Roman Calendar of 354[5] cites pagan festivals as though they were still observed; and during this period pontiffs were still protectors of the monuments of the dead and priesthoods had their prerogatives assured to them.[6] Constantius

[1] *De errore profanarum religionum.*

[2] *Vetus orbis descriptio*, ed. Godefroy, p. 17. Amm. Marc., bk. xix, ch. xii, shows that the oracle of Abydon was still active in 359.

[3] Bk. iv, ch. x. "The following day edicts were transmitted to the governors from the emperor, by which it was commanded that the pagans were not to be permitted to assemble in the temples to perform their usual ceremonies, nor to celebrate their festival; and thus was abolished the most solemn and magnificent feast which the pagans had retained."

[4] Amm. Marc., bk. ix, ch. x.

[5] See Mommsen, *C. I. L.*, vol. i, p. 334, and *Abhandlung d. Koeng. Sachs. Gesch. d. W.*, 1850, p. 565. *Cf.* Schulze, *Der Untergang*, vol. ii, pp. 90 *et seq.;* also Allard, *op. cit.*, pp. 187 *et seq.*

[6] *C. Th.*, ix, 17, 2; xii, 1, 46.

retained the title of Pontifex Maximus as had his father before him.

In 357, Constantius celebrated his twentieth anniversary at the old capital. He expressed interest in the temples that were pointed out to him and seemed to be genuinely impressed by them. He confirmed privileges to Vestal Virgins and subsidies to pagan cults and appointed members of the Roman aristocracy to priestly offices. Yet it was during this visit in the stronghold of conservative paganism that Constantius struck a blow at the old state religion. He removed the famous and deeply-revered statue of Victory, that had stood from time immemorial in the senate house, and to which each senator made a sacrifice upon entering the building. That this act seemed to pagans a sacrilege and dire calamity there can be no doubt. Yet the presence of the statue must have long irritated Christian senators. Their number was evidently large enough to make their desires seem reasonable to Constantius. The act itself is very significant of the emperor's anti-pagan spirit.[1] And yet he seems to have hated pagans less than heretics.[2] When he wished to harry the Athanasians in Egypt, he made use of the pagan mob that went to their work of destruction chanting pagan hymns. Allard declares it is difficult to decide

[1] Symmachus, *Ep.*, x, 54, says the emperor never attempted to deprive the empire of the sacred worship of antiquity.

[2] The pagan Ammianus Marcellinus (bk. xxi, ch. xvi) has painted this side of Constantius' character:

"He confused the Christian religion which is plain and simple, with old women's superstitions; in investigating which he preferred perplexing himself to settling its questions with dignity, so that he excited much dissension, which he further encouraged by diffuse, wordy explanations: he ruined the establishment of public conveyances by devoting them to the service of crowds of priests, who went to and fro to different synods, as they call the meetings, at which they endeavor to settle everything according to their own fancy."

whether Constantius were waging war against the followers of the gods or the Christians who had remained faithful to the creed of the Council of Nicaea.[1]

Constantine's sons also passed harsh laws against divination; and fears of a political conspiracy led to their rigid application. Something like a real persecution of private soothsayers occurred in the late years of Constantius' reign.[2] There is no doubt that it was on political, not religious, grounds that the investigation was made.[3] There is, however, no indication that the legitimate, public divination with its college of augurers was more disturbed in this than in Constantine's reign.

To sum up our conclusion of Constantius' attitude towards paganism: he adopted an intolerant policy towards paganism, but even in the largely Christian East, did not consistently enforce the laws forbidding sacrifices and ordering the temples closed. He did remove the altar of Victory from the Roman senate, but he continued to act as the conventional Pontifex Maximus.

[1] *Op. cit.*, p. 192.

[2] See Amm. Marc., bk. xix, ch. xii, for a detailed account of how Constantius' fears of treasonable attempts against his crown, led to miserable persecution of all who had been known to make sacrifices, or consult an oracle.

12. "There was also Demetrius . . . a philosopher, of great age, but still firm in body; he, when charged with having frequently offered sacrifices in the temples of his oracle, could not deny it; but affirmed that, for the sake of propitiating the deity, he had constantly done so from his early youth, and not with any idea of aiming at any higher fortune by his questions; . . . at length he was acquitted."

[3] Amm. Marc., bk. xix, ch. xii, gives no hint that paganism as such was attacked in this war on soothsaying.

A. CONCERNING MAGIC AND DIVINATION

1. Divination Forbidden.

C. Th., ix, 16, 4. Jan. 25, 357.[1]

The Emperor Constantius Augustus to the People.

No one shall consult a haruspex or an astrologer;[2] nor shall anyone consult a quack.[3] The vicious belief in augurs and soothsayers must cease. Neither shall Chaldeans, magicians,[4] and others whom the people call enchanters,[5] on account of their great deeds, attempt to do anything in this direction. Curiosity to divine the future shall be forever denied to all. For whoever refuses obedience to these commands shall be struck down by the avenging sword and shall suffer the penalty of death.

Given the twenty-fifth of January at Milan in the eighth consulship of Constantius Augustus and in the second of Julianus Caesar.

2. Malevolent Magic Prohibited.

C. Th., ix, 16, 5. Dec. (?) 4, 357.[6]

The same Augustus to the people.

After other provisions:

Many have dared with magical arts to stir up the elements, and do not hesitate to endanger the lives of innocent persons; and have dared to disturb them by summoning spirits so that everybody may despatch his enemies by means of evil arts. Since they are vagabonds of nature, let a deadly destruction consume them. Given at Milan the fourth of December when the Emperor Constantius was consul for the eighth time, and the Caesar Julian for the second time.[7]

[1] *Cf. C. J.*, ix, 18, 6. [2] *Mathematicum.*

[3] *Hariolum.* [4] *Magi.* [5] *Maleficos.*

[6] *Cf. C. J.*, ix, 18, 6. For the date of this see Mommsen's note.

[7] *Cf. C. Th.*, xi, 36, 7. There in 344 magicians were denied the right of appeal.

3. Magic and Divination Forbidden.

C. Th., ix, 16, 6. July 5, 358.[1]

The same Augustus to Taurus, the pretorian prefect.

Although men of position are exempt from torture, except when convicted of those crimes which are indicated in the laws, and although all magicians,[2] in whatever part of the earth they may be, should be considered as enemies of the human race, nevertheless since some are in our court, they strike near to majesty itself. Therefore if any magician [3] or person devoted to magical, polluting practices, who, in common parlance, is called an enchanter,[4] or an haruspex, or a soothsayer,[5] or even an augur, or an astrologer,[6] or one who conceals an art of divination in tales of dreams, or who practises unmistakably anything of the sort; if such a one was detected in my court or in the court of the Caesar, he shall not be protected by his rank from torture and fetters.

If convicted of that particular crime, and he makes resistance to those who have discovered it, by stoutly denying his guilt, he may be given to the wooden rack and the claws which furrow the sides, and suffer the penalties suitable to that especial crime.

Given the fifth of July at Arimini in the consulship of Datianus and Cerealis.

B. ANTI-PAGAN LEGISLATION

1. Sacrifice Prohibited.

C. Th., xvi, 10, 2, 341. . . .

The Emperor Constantius to Madalianus, acting in the place of the pretorian prefect.

Let superstition and the folly of sacrifices be abolished.

[1] *Cf. C. J.*, ix, 18, 7.
[2] *Magi.*
[3] *Magus.*
[4] *Maleficus.*
[5] *Hariolus.*
[6] *Mathematicus.*

Whoever has dared in the face of the law of the divine prince, our father, and of the mandate of our own clemency to make sacrifices, shall have appropriate penalty, and immediate sentence dealt to him.

Received during the consulships of Marcellinus and Probinus.

(For the discussion of the implication of this law, *vide supra*, pp. 93 *et seq.*)

2. Temples Without the Walls not to be Injured.

C. Th., xvi, 10, 3. 346 (342), Nov. 1.

The same Emperors to Catullinus, the prefect of the city.

Although all superstition ought to be completely rooted out, nevertheless, we desire that the temples [1] that are situated outside the walls should remain untouched and uninjured. For, since from some of these originated the shows and the circuses and the public games, it is not fitting that they be overturned; for in them the festivals of former days may be represented for the Roman people.

Given on the first day of November in the fourth consulate of Constantius and in the third of Constans the Emperors.

3. All Temples to be Closed and Sacrifices Forbidden.

C. Th., xvi, 10, 4. 346 (354?), Dec. 1.[2]

The same Emperors to Taurus, pretorian prefect.

It is our will that in all districts and in every city, the temples [3] be straightway closed and access to them forbidden and no opportunity of transgressing afforded any in-

[1] Aedes templorum.

[2] *Cf. C. J.*, i, 11, 1. This is the first law cited in the *C. J.*, in the section *De Paganis, Sacrificiis et Templis.*

[3] *Templa.*

corrigible person.[1] For we require that all refrain from sacrifices; but if any one commit any offense of this sort, let him fall by the avenging sword. We further decree that the dead man's property shall be forfeit to the fisc. If rectors of provinces neglect to mete out penalties for these offenses, they shall be similarly punished.

Given on the first day of December in the fourth year of the consulship of Constantius and in the third of Constans the Emperors.

4. Evening Sacrifices Forbidden.

C. Th., xvi, 10, 5. 353, Nov. 23.

The same Emperors to Cerealis, prefect of the city.

Evening sacrifices permitted by Magnentius[2] are to be abolished and the execrable permission to conduct them is hereafter to be refused.

Given the twenty-third of November in the sixth consulship of the Emperor Constantius and in the second of Caesar.

5. Sacrificing and Idolatry Punishable by Death.

C. Th., xvi, 10, 6. 356, Feb. 19.

The same Emperor to Julianus Caesar.

We order that all found guilty of attending sacrifices or of worshiping idols shall suffer capital punishment.[3]

Given the nineteenth of February at Milan in the seventh consulship of Constantius when Julianus the Caesar was also Consul.

[1] In this same year, and for five following years, Orfitus, who was prefect of Rome, is mentioned in inscriptions as pontiff of the Sun and Vesta. *Cf. C. I. L.*, vol. vi, nos. 1737-1742.

[2] The usurper had made a bid for pagan support by making sacrifices legal, at least if performed at night.

[3] *Cf. C. Th.*, xii, 1, 46. Here directions are given for the manner of the appointment of provincial priests.

CHAPTER IV

Valentinian and Valens

The name of Julian, who succeeded his cousin in 361, stands out clearly in the religious history of the fourth century. The policy of the "Apostate" toward the Christians, and indeed toward religion in general, is perhaps one of the best-known chapters in the history of the Roman Empire. Yet when we come to look at the actual legislation of his reign, we are struck by a fact which the imaginative elaboration of interested historians tends to obscure: that his reign after all lasted but two years, and even then was largely taken up with many problems outside the struggle of rival religions. He himself, in spite of his professions of syncretism, shared largely in the intolerance of his predecessor, though the object of his scorn was Christian, instead of pagan cult.

His early Christian training had bred in him a deep dislike of the new religion and an ardent devotion to paganism. In his short reign of two years he attempted to re-quicken paganism. To this end he gave it an elaborate ritual,[1] and attempted to set forth a clarified philosophy of neo-platonism that might unite all pagan sympathies. The ineffectualness of his attempt is taken often as evidence of the weakened condition of paganism, but two years was too

[1] Amm. Marc., bk. xxii, ch. xii, "the rites and ceremonies were marvelously multiplied with a vastness of expense hitherto unprecedented; and as it was now allowed without hindrance, everyone professed himself skilful in divination," etc.

short a time in which to expect to turn a current that had been setting in one direction for half a century; and furthermore, Julian's kind of paganism repelled some pagans. Ammianus Marcellinus says "he was too much devoted to divination. . . . He was rather a superstitious than a legitimate observer of sacred rites." [1]

While laboring to re-invigorate paganism, Julian attacked Christianity both directly and indirectly, although he did not actually persecute its adherents, and particularly "charged the people not to commit any act of injustice against any Christian, not to insult them, and not to constrain them to sacrifice unwillingly." [2] He did, however, deprive the clergy of privileges and immunities they had acquired, and he appropriated Church property.[3] He forbade Christians to teach the Greek classics,[4] and Ammianus Marcellinus says it was a cruel action not to allow Christians to receive instruction in rhetoric and grammar.[5] He ordered Christian sects to allow their opponents to follow their own creeds.

He did this the more resolutely because as long as license increased their dissensions, he thought he should never have to fear the unanimity of the common people, having found by experience that no wild beasts are so hostile to men as Christian sects in general are to one another. [6]

Julian came to his death in a campaign against the Per-

[1] Bk. xxv, ch. iv.

[2] Soz., bk. v, ch. v.

[3] *Ibid.*

[4] Julian's *Epistle*, 42.

[5] Bk. xxii, ch. x. "But his forbidding masters of rhetoric and grammar to instruct Christians was a cruel action and one deserving to be buried in everlasting silence." *Cf.* bk. xxv, ch. iv.

[6] Am. Marc., bk. xxii, ch. v; *cf.* Soc., bk. iii, ch. xvi.

sians and Jovian ruled in his place for less than a year.[1] The new emperor was evidently a Christian,[2] and he is believed, on somewhat inconclusive evidence, to have published an edict restoring Christianity to the privileged position it had lost under Julian.[3] On the other hand, there is no evidence that he directed any laws against paganism.[4]

After a reign of eight months, Jovian died suddenly and the army elected Valentinian as his successor.[5] The soldiers clamored for the newly-appointed emperor to select a colleague, and although Valentinian refused to do so at that time, he did shortly afterwards make his younger brother Valens Augustus of the East.[6] Both Valentinian and Valens were Christians, but like Constans and Constantius, they held opposing views on the burning theological question of that day, the relation of God the Son to God the Father. Valentinian agreed with Athanasius, while Valens was a warm partisan of Arianism.[7] The brothers reigned about an equal term of years; the older dying in 375, the younger perishing at the battle of Adrianople, three years later.

The most difficult problem during these reigns was how to keep the barbarians out of the Empire. At the opening of Valentinian's rule the Alemanni and Burgundians were threatening Italy, and other tribes were pressing into the outlying provinces. In the East the persistent Goths were threatening the Danube. It was when Valens was protect-

[1] June, 363, to February, 364.

[2] Amm. Marc., bk. xxv, ch. x.

[3] Themistius, *Oratio,* v, Philostorgius, *His. Ecc.*, bk. viii, ch. v.

[4] Theodoret says he extinguished the heathen sacrificial fires, but this seems improbable.

[5] Zos., bk. iii, p. 93; Am. Marcel., bk. xxvi, ch. ii; Soz., bk. vi, ch. vi.

[6] Am. Marcel., *ibid.*; Soz., *ibid.*

[7] Soc., bk. iv, ch. i.

ing his frontier against these Germans, that Procopius, whom Julian had named as his successor, assumed the title of Emperor. To his support flocked the men who had suffered under Valens' cruelty and injustice, and it was some months before the revolt was crushed. In view of these ever-recurring plots against the emperors, it is not surprising that they should have been suspicious of divination, that might have for its object the picking of the next emperor.

In spite of these absorbing political cares, Valentinian gave attention to religious matters in the empire. His religious policy, which was also that of Valens (except in regard to the treatment of heretics), appears to have been identical with that of Constantine—complete toleration for all cults. He referred, in a law of 371,[1] to the enactments he had made at the beginning of his reign, when he had assured every man full liberty to follow any religion he chose.

Evidently during Julian's reign certain privileges and exemptions secured to the Church under Constantine and his sons had fallen into disuse, if they had not been formally rescinded. To Valentinian, then, fell the duty of restoring Christianity to the position it had held under Constantius. In a general law, he confirmed to the clergy the privileges granted them by Constantius.[2] More particularly he freed

[1] *C. Th.*, ix, 16, 9. For text, *vide infra*, p. 186.

[2] *C. Th.*, xvi, 2, 18, 370, Feb. 17. Idem AA. ad Claudium Pro(consulem) Afric(ae). Quam ultimo tempore divi Constanti sententiam fuisse claruerit, valeat, nec ea in adsimulatione aliqua convalescant, quae tunc decreta vel facta sunt, cum paganorum animi contra sanctissimam legem quibusdam sunt depravationibus excitati.

N. B.—This is the first law in which the term *pagani* is found. *Cf. C. Th.*, xvi, 2, 19. The term "ultimo tempero" was required since the emperor, in the earlier part of his reign was under Arian influences. The "depravationibus" were the wiles of the Donatists working on the mind of Julian. Schultze, *Untergang*, p. 316, has an interesting note on the word *paganus*. He says it appeared in the 2nd century in

certain ecclesiastics from curial burdens.[1] The day of the Sun was again declared a holiday, at least for Christians.[2] Eastertide was to be a season of general pardon for all but a small group of peculiarly dangerous offenders.[3] Any judge or official who forced a Christian to care for a temple was to be severely punished.[4] Christian criminals were not

contradistinction to *miles*, as the expression for burgher or civilian, and out of it later developed the difference between *jus militum* and *jus paganorum*. *Jus paganorum* is here identical with the old Roman law, the private law. Kuntze (*Exkurse über röm. Recht*, Leipsig, 1880, pp. 644 *et seq.*) believes the expression arose from the fact that the soldiers considered their walled fortifications (castra) which became important places for meeting and for protection, even important cities, as the most important places in the empire and what lay outside as inferior. *Pagani* were therefore the people who lived outside the castra. The expression was very appropriate in the province where the majority of the population still were settled in scattered groups, and the castra was frequently the only district enclosed. In the fourth century there was a recoining of the expression, and in ecclesiastic and juristic language, and *pagani* came to be used as a synonym of *gentiles*, and in place of employing *pagani* in contradistinction to *milites* the word *privati* came into use. Since in the Roman state, only the cities counted and since in them Christianity had triumphed while in the outlying districts the old cults lingered longer, it is easy to understand this later use of the term *pagani*. At the same time that *pagani* with this connotation is discovered in the laws, it is found in ecclesiastic literature. In the fifth century it became the usual popular term for the heathen; e. g. *C. Th.*, xvi, 5, 46, "gentiles quos vulgo paganos appellant." *Cf.* Aug. Retract. ii, 43 "quos usitato nomine paganos vocamus." In the Louvre there is a grave stone of a fourth century Christian inscribed "pagana nata . . . fidelis facta; see de Rossi Bull. di archeol. crist. 1868, p. 75. Orosius explains the term *paganus*, bk. i, § 9 "qui alieni a civitate Dei ex locorum agrestium conpitis et pagis pagani vocantur sive gentiles quia terrena sapiunt, qui cum futura non quaerant etc." Prudentius i, 260, speaks of "pago implicitos."

[1] *C. Th.*, xvi, 2, 21, May, 371. *Cf. C. Th.*, xvi, 2, 22, 23, 24.

[2] *C. Th.*, viii, 8, 1; *cf.* xi, 7, 10.

[3] *C. Th.*, ix, 38, 3, 4; *vide infra*, p. 188, for texts.

[4] *C. Th.*, xvi, 1, 1.

to be condemned to the arena.[1] Actors who were converted to Christianity during an illness, were not, upon recovery, to be forced to remain in that profession.[2] Julian's provision that no Christians should teach philosophy was abrogated by a positive enactment declaring academic fitness the qualification for teachers.[3]

On the other hand, the Emperor forbade wealthy men becoming clergymen.[4] For some time there had been a grave scandal over the large bequests Christian women were leaving the clergy. Ambrose [5] deplored the condition, and Valentinian set himself to cure it by decreeing that the clergy should not receive gifts or legacies from Christian women, unless they were their natural heirs at law.[6]

Ammianus Marcellinus [7] gives high praise to Valentinian for his liberal policy in religious affairs. He declares that

> he was especially remarkable during his reign for his moderation in this particular, that he kept a middle course between the different sects of religion; and never troubled anyone, nor issued any orders in favor of one kind of worship or another; nor did he promulgate any threatening edicts to bow down the necks of his subjects to the form of worship to which he himself was inclined; but he left these parties just as he found them, without making any alterations.

Themistius [8] is warm in praising Valens also for his toleration of paganism. During the reigns of the two brothers no laws seem to have been passed against the pagan cults. Libanius says that "sacrifices were forbidden by the two

[1] *C. Th.*, ix, 40, 8; *cf.* ix, 40, 11.
[2] *C. Th.*, xv, 7, 1.
[3] *C. Th.*, xiii, 3, 6.
[4] *C. Th.*, xvi, 2, 17.
[5] Epistle 18.
[6] *C. Th.*, xvii, 2, 20.
[7] Bk. xxx, ch. ix.
[8] Oration 12.

brothers, but not incense," [1] and it is probable that these sacrifices were connected with divination or magic, which were both under the imperial ban. At the same time Ammianus Marcellinus informs us that temples were open and oracles fully consulted. Laws have been preserved which confirmed priests in their privileges,[2] and show that temples were cared for.[3] Valentinian did publish a law ordering that all temple property that had been acquired by private parties, under former emperors, should be turned over to the imperial treasury. Schultze points out [4] that this law his Christians rather than pagans, for it was the former who had entered into such possessions under Constans and Constantius. It was evidently a canny expedient for enriching the treasury, and its author may have wished it interpreted rather as a pro-pagan than an anti-pagan measure.

In both the West and the East severe laws were passed prohibiting all but legal divination.[5] The historians give detailed accounts of the harsh way in which these laws were administered.[6] They were finally made to apply to all philosophers.

[1] *Pro paganis*, p. 76.

[2] For texts, *vide infra*, p. 189.

[3] *C. Th.*, xvi, 1, 1; *vide infra*, p. 189, for text.

[4] *Cf. Der Untergang*, p. 200; *C. Th.*, x, 1, 8.

[5] For text, *vide infra*, pp. 186 *et seq.*

[6] Ammianus Marcellinus, bk. xxvi, ch. iii, *passim*, but particularly, pars. 3 and 4. "At last, after many punishments of this kind had been inflicted, he condemned to death the charioteer Hilarius, who was convicted on his own confession of having intrusted his son, who was but a very young boy, to a sorcerer to be taught some secret mysteries forbidden by the laws, in order that he might avail himself of unlawful assistance without the privity of any one. But, as the executioner held him but loosely he suddenly escaped and fled to a Christian altar, and had to be dragged from it, when he was immediately beheaded.

But soon ample precautions were taken against the recurrence of

Zosimus, however, records a case where the law was suspended. He says of Valentinian:

Resolving likewise to institute some new laws, he began by prohibiting the nocturnal sacrifices, intending by that measure to restrain and prevent vicious actions. However when Praetextatus, the proconsul of Greece, a person endowed with good virtues, represented to him that the Greeks could not subsist under such a law, by which they were withheld from the performance of those sacred mysteries, which were to them the great bond of society, he allowed them to be celebrated in the usual manner without regard to his own edict, and took care that everything should be performed according to the ancient custom of the country.[1]

Valens was a cowardly creature and fearful of conspiracies. In consequence private divination was cruelly punished in his dominions. The observance of harmless superstitions might cause a man to lose his life.[2] It became notor-

this and similar offences, and there were none or very few who ventured afterwards to insult the rigor of the public law by practising these iniquities. But at a later period long impunity nourished atrocious crimes; and licentiousness increased to such a pitch that a certain senator followed the example of Hilarius, and was convicted of having almost articled by a regular contract one of his slaves to a teacher of the black art, to be instructed in his impious mysteries, though he escaped punishment by an enormous bribe, as common report went." *Cf.* bk. xxviii, ch. i.

[1] Bk. iv, p. 94.

[2] Zos., bk. iv, pp. 100-101. Am. Marcel., bk. xxix, ch. ii, especially par. 26. "There was a certain simple old woman who was wont to cure intermittent fever by a gentle incantation, whom he put to death as a witch, after she had been summoned, with his consent, to his daughter, and had cured her." Also par. 28. "A young man was seen in the bath to put the fingers of each hand alternately against the marble and against his own chest, and then to repeat the names of the seven vowels, fancying that a remedy for a pain in the stomach. For this he was brought before the court, put to the torture, and then beheaded." *Cf.* Soc., bk. iv, ch. xix.

ious that the rapacious Emperor allowed his officials to charge subjects with the offenses of magic or divination, simply as an excuse for confiscating their property.[1] It is perfectly clear that in all the persecutions for magic and divination under Valentinian and Valens, there is no anti-pagan animus to be discerned. The attitude of these emperors in the matter is that of Constantine and his pagan predecessors.[2]

A. LEGAL DIVINATION AND FULL RELIGIOUS TOLERATION PERMITTED

C. Th., ix, 16, 9. May 29, 371.

The Emperors Valentinian, Valens and Gratian Augusti, to the Senate.

We adjudge that divination has no connection with sorcery, nor, furthermore, do we consider that divination itself, nor any other religious observance permitted or sanctioned by our ancestors is criminal in character. The laws given by me at the opening of my reign are witnesses that to every one is granted the freedom of worshiping what he has determined in his own mind.

We do not condemn divination but we forbid its being practised harmfully.

Given the twenty-ninth of May at Treves in the second consulship of Gratian the Augustus and the first of that of Probus.

B. CONCERNING MAGIC AND DIVINATION

1. Nocturnal Sacrifices and Magic Forbidden.

C. Th., ix, 16, 7. Sep. 9, 364.

The Emperors Valentinian and Valens Augusti to Secundus, the pretorian prefect.

[1] Am. Marc., bk. xxix, ch. ii; *cf.* bk. xxi, ch. xiv.

[2] *Vide supra.*

From henceforth let no one attempt at night to raise abominable prayers, or to elaborate calamitous sacrifices or magical [1] ceremonies. We decree by our eternal authority that any one detected or convicted shall suffer a fitting punishment.

Given the ninth of September when the divine Jovian and Varronianus were consuls.

2. Astrology Forbidden.

C. Th., ix, 16, 8. Dec. 12, 370 (?); 373 (?).

The same Augusti to Modestus, the pretorian prefect.

Astrologers are to give up their profession. Moreover, anyone discovered publicly, or privately, by day or by night, in the forbidden transgression shall suffer capital punishment. It is equally a misdemeanor to learn or teach what is forbidden.

Given the twelfth of December at Constantinople in the consulships of Valentinian and Valens.[2]

3. The Treatment of Senators Charged with Sorcery.

C. Th., ix, 16, 10. Dec. 6, 371.

The same Augusti to Ampelius, the prefect of the city.

Since some persons of senatorial rank were touched by the charge and odium of sorcery, therefore we have granted that business of this sort shall be handled through the office of the pretorian prefect. But whenever a matter of this sort does come up, which it is considered cannot be adjusted or finished by a decision of the aforesaid tribunal, we ordain, that those whom the business touches, along with an account of all past and present acts, shall be transferred to the court of our clemency for its serious investigation.

[1] *Apparatus magicos.*

[2] *Cf. C. J.*, ix, 18, 8. Concerning the date of this law, see Mommsen's note.

Given on the sixth of December in the second consulship of Gratian when Probus was also consul.

4. Easter Pardons not to Apply to Magicians.

C. Th., ix, 38, 3. May 5, 367 (369).

The Emperors Valentinian, Valens and Gratian Augusti to Viventius, prefect of the city.

Because of Easter which we celebrate with heartfelt feeling we strike off the fetters of all who under a charge of guilt are lying in prison.

Nevertheless the man who is guilty of *lese-majesty,* the criminal who has injured the dead, the poisoner or the magician, the adulterer, the ravisher, and the homicide shall not enjoy this pardon.

Given the fifth of May at Rome in the consulship of Lupercinus and Jovinus.

5. Sorcerers not to be Pardoned at Easter Time.

C. Th., ix, 38, 4. June 6, 368.

The same three Augusti to Olybrius, the prefect of the city.

The Easter celebration demands that we pardon those who are now looking forward apprehensively to the pain of torture or to the horror of punishment.

Nevertheless the old custom of decrees is to be preserved, in order that we may not allow the crime of homicide, the monstrousness of adultery, the violence of *lese-majesty,* the sin of sorcery, the craftiness of poisoners and the outrage of abduction to escape boldly.

Read the sixth of June in the sixth consulate of Valens and the first of Valentinian the Augusti.[1]

[1] *Cf. C. Th.*, ix, 38, 5.

C. PRO-PAGAN

Temples Open.

C. Th., xvi, 1, 1. Nov. (?) 17, 365.

The Emperors Valentinian and Valens to Symmachus, the prefect of the city.

Any judge or public official who appoints Christians to care for temples shall suffer in body and estate.

Given the seventeenth of November at Milan during the consulships of the Emperors Valentinian and Valens.

2. Privileges of Priests Confirmed.

a. *C. Th.*, xii, 1, 60. Sep. 12, 364.[1]

The same Augusti to the Byzacenians.

Neither priests nor curials may be commanded to present themselves beyond the limits of their own city. In creating priests and the privileges which are conferred upon them, the ancient custom shall be preserved.

Given on the twelfth of September at Aquileia when the divine Jovian and Varronianus were consuls.

b. *C. Th.*, xii, 1, 75. June 28, 371.

The same Augusti to Viventius, the pretorian prefect.

All who rise to the honor of the priesthood of a province, or chief magistracy, step by step, filling each office in its order by their own labor, not by favor, or by begging votes, and whose acts are approved by the favorable report of the citizens and by the whole body public, shall enjoy immunity and the peace which they deserve by their continuous labor, and shall be exempt from those bodily penalties which are not suitable for *honorati* to undergo.

Given the twenty-eighth of June at Treves in the second consulship of Gratian when Probus was also consul.

[1] *Cf. C. J.*, x, 32, 25.

CHAPTER V

Gratian and Theodosius

In 367 [1] Valentinian had a severe illness. Upon his recovery he obtained his soldiers' consent to make his young son, Gratian, his second colleague. The boy was evidently about sixteen years of age [2] at the time of his father's death in 375 when his real reign began. Six days after Valentinian's death, Gratian's half brother, Valentinian, a child of four,

was declared lawful emperor, and saluted as Augustus with the usual solemnities. And although at the time many persons thought that Gratian would be indignant that any one else had been appointed emperor without his permission, yet afterwards, when all fear and anxiety was removed, they lived in greater security, because he, wise and kind-hearted man as he was, loved his young relative with exceeding affection and brought him up with great care.[3]

After Valens' miserable end at Adrianople 378, Gratian chose as his uncle's successor, Theodosius, a Spaniard of exceptional military ability and experience, who was to protect the eastern part of the Empire from the Germans.[4] Gratian himself met his death on the twenty-fifth of Au-

[1] Am. Marcel., bk. xxvii, ch. vi.

[2] Gibbon puts his age at seventeen. If he were twenty-four at his death (*cf.* Rauschen, *Jahrbücher der Christlichen Kirche*, p. 144), Gratian was sixteen in 375.

[3] Am. Marcel., bk. xxx, ch. x.

[4] Zos., bk. iv, p. 107.

gust, 383, at the hands of an assassin, at Lyons, where he had fled before the usurper Maximus.

Gratian was an Athanasian and passed many measures against the heretics,[1] but concerned himself less with enactments for orthodox Christians. He did not subsidize the Church, and even failed to abrogate some of the restrictive laws against its officers. In some ways Christian clergymen were less well off than pagan priests:[2] a curial could not enter holy orders without giving up his property;[3] in certain cases ecclesiastics were forbidden to receive legacies, even of personal effects. On the other hand, clergymen were freed from some civic obligation[4] and Christian daughters of actors did not have to follow the profession of their parents.[5]

Apostasy from the Christian faith, long severely punished by the Church, was first made a legal offense during the reigns of Gratian and Theodosius. In May, 383 two laws were enacted against apostasy; one was published on the twentieth of the month at Constantinople by Theodosius, the other a day later at Padua[6] by Gratian, a fact which shows that the emperors were in sympathy in this matter. A law promulgated at Padua 382, indicates that suits could be brought against the estates of deceased apostates within a specified term of years.[7]

[1] *C. Th.*, xvi, 5, 4-5-6-7-8-9-10-11.

[2] Allard, *op. cit.*, p. 258.

[3] *C. Th.*, xii, 1, 99, Apr. 18, 383.

[4] *C. Th.*, xvi, 2, 24, 26; *cf.* xiii, 1, 11. In *C. Th.*, xi, 16, 15, certain special burdens are bound upon the Church while its officers are freed from common civic duties.

[5] *C. Th.*, xv, 7, 4; *cf.* xv, 7, 8, 9.

[6] *C. Th.*, xvi, 7, 2, 3; for texts *vide infra*, pp. 197-198.

[7] *C. J.*, i, 7, 2; for text *vide infra*, p. 197. For the remaining law given by these emperors on this subject, *vide infra*, p. 197.

For paganism Gratian's eight years of rule were of vast significance. Although educated by Ausonius who praised his pupil for his tolerance, Gratian later came under the influence of Ambrose, the militant bishop of Milan, whose spirit can be detected in some of the Emperor's actions. In the very year [1] of his father's death, Gratian refused to receive the robe of the Pontifex Maximus declaring it unsuitable for a Christian.[2]

During his reign Gratian was much concerned with the imminent peril of a Gothic invasion and some years were to elapse before he took action directly against paganism. In 382, however, the Emperor dealt paganism several disastrous blows.[3] He appropriated the income of the pagan priesthoods and the Vestal Virgins and gave their property to the fisc, and later, according to Symmachus, squandered it "on base money-changers and on the hire of worthless porters (ad degeneres trapezitas, ad mercedem vilium

[1] *C. Th.*, xvi, 10, 7.

[2] Zos., bk. iv, pp. 115-116. "Upon the elevation of any one to the imperial dignity, the pontifices brought him the priestly habit, and he was immediately styled, Pontifex Maximus, or chief priest. All former emperors, indeed, appeared gratified with the distinction, and willingly adopted the title. Even Constantine himself, when he was Emperor, accepted it, although he was seduced from the path of rectitude in regard to sacred affairs, and had embraced the Christian faith. In like manner did all who succeeded him to Valentinian and Valens. But when the Pontifices in the accustomed manner, brought the sacred robe to Gratian, he, considering it a garment unlawful for a Christian to use, rejected their offer. When the robe was restored to the priests who brought it, their chief is said to have made this observation, "If the emperor refuses to become Pontifex, we shall soon make one." Schultze, *Untergang*, p. 214, believes that in refusing the title and robes of the Pontifex Maximus, Gratian in no wise gave up the rights attached to the position, for these rights were too important to relinquish for a religious sentiment.

[3] The main sources for our knowledge of these acts of Gratian are Symmachus, *Relationes* and a couple of letters; nos. xvii and xviii, of Ambrose to Valentinian II.

baiulorum) as well as on public thoroughfares." [1] Even the personal possessions of the colleges were confiscated to the fisc.[2] The colleges were to receive no future gifts,[3] and also lost their immunities.[4] Finally, to crown all the Altar of Victory was removed from the Senate House at Rome.[5]

The goddess of Victory was the most highly honored of all the deities in the Roman State. She was regarded as the symbol of the power of Rome, the bringer of victories, and was often called *Victoria Adveniens*; to her the most solemn vows were paid. The figure of Victory which stood in the Senate House, was a bronze statue of a winged maiden of exalted beauty standing on a globe with a laurel wreath in her hand. It had been brought from Tarentum and was the most famous of the statues of the goddess. Men believed that as long as it endured and received the accustomed reverence, Roman arms would be victorious and the state impregnable. Before the Victory stood the altar Augustus had erected after Actium and upon it, during four centuries, every Senator, upon entering the senate house, had thrown a few grains of incense, before giving his attention to the weighty affairs of state. Towards this altar a man held his hands in taking the oath to the new Emperor. At it were paid the vows for the health of the Emperor and the prosperity of the state on the third of January.[6] The

[1] Sym., *Relatio* iii, Seeck's ed., p. 288, 3.

[2] *C. Th.*, xvi, 10, 20.

[3] Sym., *Relatio* i, c. 282, 27 and Ambrose, *Ep.* 18, 7.

[4] Symmachus, *Relatio* i, 282, 18 and Ambrose, *Ep.* 17, 4.

[5] Sym., *Relatio* i, c. 281, 8; Ambrose, *Ep.* 17, 9. Godefroy, *C. Th.*, ix, 35, 3. believes the deed was done 376. For an account of the Altar of Victory, *vide*, Richter, *op. cit.*, pp. 551 *et seq.* and Dill, *op. cit.* and Glover, *Life and Letters in the Fourth Century*, pp. 269 *et seq.*

[6] Boissier, *La Fin du Paganisme*, vol. ii, p. 295.

altar was removed by Constantius during his visit to Rome, but after his departure was set up again. Julian naturally did not disturb it and even Valentinian allowed it to remain in its accustomed place.

There was great excitement when Gratian removed the altar. Pagans felt themselves wounded both in their religion and their national pride. They feared also that the empire would suffer in consequence of this sacrilegious act. Those Christians too, who saw in the statue only a symbolic figure of Rome's power, disapproved of its removal.[1] The Senate sent a deputation [2] to appeal to Gratian to restore the Altar of Victory, and the endowments to the Vestal Virgins, and the priestly colleges. The Christian Senators,[3] on the other hand had forwarded a *libellus* by Pope Damasus to Ambrose who presented it to the Emperor. The result was that Gratian denied an audience to the pagan senators.[4] He refused to rescind his decrees which robbed paganism of state support in the West, and affronted the devotees of the ancient protectrice of the Roman world. He did not, however, take any steps to abolish pagan cults.[5] He did not prohibit sacrifices nor cere-

[1] Boissier, *La Fin du Paganisme*, vol. ii, p. 302; *Cf.* Allard, *op. cit.*, p. 254.

[2] There is difference of opinion as to whether the Roman Senate at this time had a Christian or pagan majority. Rauschen, *op. cit.*, p. 119, relying upon St. Ambrose's statement, *Ep.* 17, 9, believes the Christians were in the majority.

[3] Ambrose, *Ep.* 17, 10; Sym., *Relatio* i, 280, 22 and 283, 32.

[4] *Cf.*, O. Gerhard, *Der Streit um den Altar der Victoria.*

[5] It is probable that the law *C. Th.*, xvi, 10, 7, forbidding sacrifices by day or by night for the object of consulting the future, given in the East had its parallel in the West under Gratian. For in granting a general pardon for Eastertide, *C. Th.*, ix, 38, 6, *cf. C. S.*, 7, Gratian particularly includes magicians among a small group of notorious offenders who are not to enjoy this.

monies;[1] he simply denied financial support for these purposes. Nevertheless, Allard[2] declares that the actions against the Altar of Victory and the religious colleges, reduced paganism in the occident to a private cult, free to live, but no longer supported by the state—that Gratian broke the bonds between the state and paganism.

Meanwhile Gratian's colleague, Theodosius, had been actively legislating in religious matters.[3] In January, 380, he was taken dangerously ill at Thessalonica and there baptized. In February he addressed his remarkable law on the orthodox faith to the people of Constantinople.[4]

In the same year he prohibited criminal suits during the forty days before Easter[5] and passed many other laws showing his lively interest in Christianity.[6] Nevertheless curials who wished to become clergymen must first relinquish their patrimony.[7] The series of laws published against apostates has been referred to above. Christians who became pagans or who visited altars and temples[8] lost the right to make a will.

[1] *Cf.* Rauschen, *op. cit.*, pp. 93 and 127. [2] *Op. cit.*, p. 255.

[3] His first religious legislation had to do with the perpetuation of an old pagan ceremony; in 379 he granted the superintendent of public games, in Antioch, the privilege of cutting down one cypress tree in the grove of Daphne, provided he planted more in its place, *C. Th.*, x, 1, 12. The boughs of these cypress trees were borne in festive processions in honor of Apollo. Private individuals were not permitted to cut trees in this grove. Arcadius and Honorius withdrew the privilege granted to the superintendent of public games. *C. J.*, xi, 77, 1.

[4] *C. Th.*, xvi, 1, 2; *C. J.*, i, 1, 1. *Cf.* Soz., bk. vii, ch. iv; Theod., bk. v, ch. ii. *Cf. C. Th.*, xvi, 2, 25 or *C. J.*, ix, 29, 1, which Godefroy holds to be part of *C. Th.*, xvi, 1, 2, but which Rauschen, p. 68, believes an independent enactment.

[5] *C. Th.*, ix, 35, 4. [6] *C. Th.*, xv, 7, 4; *cf.* xv, 7, 8; xvi, 2, 26.

[7] *C. Th.*, xii, 1, 104; *cf.* 123 and Ambrose, *Ep.* 18.

[8] *C. Th.*, xvi, 7, 1; 2, 3. For texts *vide infra*, p. 197.

As regards paganism, Theodosius made no attacks upon it during Gratian's lifetime. He did indeed forbid sacrifices for purposes of divination;[1] and while he ordered the commander of Osdroena, a district of which Edessa was the chief city, to see that temples were kept open and the people permitted to visit them[2] he stipulated that the prohibited sacrifices were not to be allowed there on the occasion of these visits.

A. CONCERNING DIVINATION

Sacrifice for the Purpose of Divination Forbidden

C. Th., xvi, 10, 7. 381 Dec. 21.

The Emperors Gratian, Valentinian and Theodosius Augusti to Florus, the pretorian prefect.

If any one insanely and sacrilegiously betakes himself to the forbidden daily or nightly sacrifices to consult the future, or thinks that he should appropriate a shrine or temple, or thinks of going to one for that purpose let him know that he is liable to proscription, since we give warning by our just decree that God ought to be worshiped with pure prayers and not profaned by abominable incantations.

Given on the twenty-first of December at Constantinople in the consulships of Eucherius and Syagrius.

[1] *C. Th.*, xvi, 10, 7. For text *vide infra*. This is sometimes wrongly called Theodosius' first law against paganism.

[2] *C. Th.*, xvi, 10, 8. For text *vide infra*, p. 198.

[3] Rauschen, *op. cit.*, p. 93, calls this a law of Theodosius. There seems no reason to believe it did not apply to the West as well as the East.

B. APOSTASY

1. Wills of Apostate Christians to be Set Aside

C. Th., xvi, 7, 1. May 2, 381.

The Emperors Gratian, Valentinian and Theodosius Augusti to Eutropius, pretorian prefect.

The right of making a will shall be taken from Christians who become pagans; and if such persons leave wills, they shall be set aside without regard to circumstances.

Given at Constantinople the second of May in the consulships of Syagrius and Eucherius.

2. Directions for Bringing Suits Against the Estates of Apostates

C. J., i, 7, 2. May 21, 382.[1]

The Emperors Gratian, Valentinian and Theodosius to Hypatius, the pretorian prefect.

If any one charges a deceased with injuring the Christian religion, or with apostasy from it, and maintains that he has visited the sacrilegious rites of the temples or gone over to the Jewish worship, and therefore was incompetent to make a will, he must bring his own suit and procure the beginning of the trial of the question within the space of five years, the limit appointed for the bringing of unofficial suits.

Given at Padua, the twenty-first of May, 382 under the second consulate of Merobaudes and under that of Saturninus.

3. The Right to Bequeath or Inherit Property Denied Apostates

C. Th., xvi, 7, 2. May 20, 383.

The same Augusti to Postumianus, the pretorian prefect.

We deny to Christians and the faithful who have adopted pagan rites and religion all power of making a will in favor

[1] *Cf. C. Th.*, ii, 19, 5.

of any person whatsoever, in order that they may be without the Roman law. But those who, as Christians or catechumens, have merely neglected the venerated religion and visited altars and temples, if they have sons or own brothers, that is direct or legitimate heirs, shall forfeit the right of making a will according to their own choice for any other person whatsoever.

And a like rule should be observed in regard to these persons who may receive inheritances. Except for direct and legitimate bequests which may come to them from the property of parents or own brothers, they shall, by the judgment of our established will, have no rights at all in inheriting by law whatever may fall to them. Without doubt they ought to be excluded not only from all right of making a will but even of enjoying a will with the power of acquiring an inheritance.

Given the twentieth of May at Constantinople in the second consulship of Merobaudes and the first of Saturninus.

4. The Right of Making a Will Denied Christians who Enter Temples

C. Th., xvi, 7, 3. May 21, 383.[1]

The same Augusti to Hypatius, the pretorian prefect.

Christians who visit altars and temples shall be denied the right of making a will.

C. PRO-PAGAN

Temples to Remain Open

C. Th., xvi, 10, 8. 382 Nov. 30.

The same Emperors to Palladius, Commander of Osdroena.

By the authority of the public council, we decree that a

[1] *Cf. C. J.*, i, 7, 2.

building,[1] formerly dedicated as a place of assembly for the multitude and now open to the people and said to contain images valued for their worth as art rather than their divinity, shall remain open constantly; nor do we suffer the imperial rescript obtained by fraud to stand in the way of this. In order that the temple may be visited by city folk and large numbers of people, let your experience, on every festal celebration of votive offerings, maintain the authority of our rescript and permit the temple to remain open, provided that prohibited sacrifices are not allowed there on the occasion of these visits.

Given the thirtieth of November at Constantinople when Antonius and Syagrius were consuls.

[1] *aedem.*

CHAPTER VI

Theodosius and Valentinian II

After the death of Gratian, Valentinian was accustomed to consult with Theodosius on all important questions, and it appears that Theodosius exercised a constant oversight over affairs of the West, particularly those of the city of Rome. Theodosius was so clearly the guiding influence throughout the whole empire after Gratian's death, that we shall make no attempt to distinguish the laws of this period as those of Theodosius or those of Valentinian. We shall content ourselves with stating in some particular cases where the law was given, remembering, however, that while Valentinian was nominally the Emperor in the West, Theodosius was frequently in Milan and its neighborhood. Although both Valentinian and Theodosius formally recognized the usurper Maximus in 384, neither entered into friendly relations with him. Maximus was a Christian, but was either too busy to work against paganism [1] or quite willing to gain adherents among pagans by seeming to stand for complete religious toleration.

The fate of Gratian had seemed to the pagans a judgment from the gods whose worship he had attacked, and they prepared to regain the lost ground.[2] For a time it seemed as if they were likely to do so. Their hearts must have beaten with high hopes when they saw distinguished pagans raised to power in important offices in the state.

[1] Schultze, *Untergang*, p. 230.

[2] *Ibid.*

In 384 Symmachus [1] was Urban prefect, Praetextatus [2] was pretorian prefect of the city while Flavianus [3] held the post of pretorian prefect. Praetextatus succeeded in having a law passed 384, restoring former possessions to public buildings, and this law he applied to temples. It is probable however that not much was restored to the temples. In the same year another attempt was made to persuade the government to restore the income to priesthoods and Vestal Virgins and to re-establish the Altar of Victory. Symmachus, as Urban prefect, was commissioned

[1] For a biographical sketch of Symmachus, see Seeck's Introduction to his edition of Symmachus' *Opera* in *M. G. H.* and Dill, *op. cit. passim*, Rauschen, *op. cit. passim*. He numbered among his friends conspicuous heathen, such as Praetextatus and distinguished Christians as St. Ambrose. He resigned the office of *U. P.* 385 but was made consul 391. See Glover, *Life and Letters in the Fourth Century*, p. 155.

[2] Dill considers him probably the true representative of the last generation of paganism. A man of exceptional learning and piety, his monument describes him as augur, priest of Vesta, priest of the Sun, curial of Hercules, devoted to Liber and the Eleusinian deities, cleansed by the rite of the taurobolium; *cf. C. I. L.*, vol. vi, no. 1779 and Macrobius, *Sat.*, i, 1, who pays a high tribute to his nobility of character. His house was the scene of the *Saturnalia*. It was he who as proconsul of Achaia won Valentinian's consent to except the Eleusinian mysteries from the ban pronounced against such rites. *Cf. supra*, p. 185. His official position made it necessary for him to interfere in the struggle between Damasus and Ursinus for the Roman Episcopate; see Am. Marcel., *cf.* Glover, *Life and Letters*, p. 163. He used to say sarcastically to Damasus, "Facite me Romanae ecclesiae episcopum, et ero protinus Christianus," Jerome, *Contra Joannem Hierosolymit*, c. 8. He died 384 when about to enter the consulate. *Cf.* Jerome, *Ep.* i, 23.

[3] He was prominent under Julian. In retirement under Valentinian I, he was Vicar of Africa under Gratian. He fell into disfavor with that monarch on account of his indulgence to heretics, but in 383 under Theodosius became prefect of Italy. He was again prefect in 391. For the discussion of the probability of his having been prefect in 389 also, see Rauschen, *op. cit.*, pp. 150, 337.

to draw up in the form of a petition the demands of the Senate. As a result the so-called *Third Relation* [1] was sent to Valentinian II. at Milan. It is a lofty and patriotic plea for the restitution of the visible sign of Rome's ancient faith. Symmachus makes a magnificent appeal for unrestricted religious freedom for men who all look up to the same stars. There are, he says, more than one path to the heart of the great truth that all men are seeking and men should be at liberty to choose their own way.

Ambrose who had already addressed Valentinian [2] on the subject of the content of the petition, begged to be allowed to reply to Symmachus. The Emperor permitted it and the rejoinder took the form of a letter to the Emperor,[3] which so skillfully disposed of Symmachus' points that Valentinian refused to grant the petition.[4]

Praetextatus died in 384 and in the following year Symmachus retired from public life. In consequence the pagan movement was much weakened.

In 387 Maximus invaded Italy and Valentinian fled to Theodosius in Thessalonica. The Emperor of the East took up arms for Valentinian and after a two months' war defeated Maximus who was beheaded.

[1] Ed. by Seeck, *M. G. H.*, Eng. trans. in Ambrose's works in *N. P. N. F.*; also in Ayer, *A Source Book for Ancient Church History.*

[2] *Ep.*, 17; *cf.*, *De Obitu Valentinii*, 19.

[3] *Ep.*, 18. Prudentius describes the whole affair in his polemic *Contra Symmachum, q. v.* These two books of hexameter verses were published in 404, Glover, *Life and Letters in the Fourth Century*, p. 271, agrees with Boissier in this connection that the world was not fully converted and men of letters were still heathen and Christians of education longed for a literary presentment of Christianity. Symmachus' plea for the Altar of Victory was still read; in the eyes of people of taste, though Ambrose had outmanoeuvred the orator, his reply was no match in eloquence with the dignified appeal of the pagan.

[4] *Cf.*, Rauschen, *op. cit.*, pp. 184 *et seq.*

It has been said [1] that Theodosius passed more laws in favor of the Church than did all of his predecessors together, but that he gave it no material advantages. A great mass of this ecclesiastical legislation had to do with protecting the orthodox and threatening the heretics. Of the twenty-two laws [2] concerning curials that were passed between the time of the death of Gratian and that of Valentinian II, many have to do with the problem of curials who desired to become clergymen.[3]

In 386 Sunday was made a legal holiday.[4] Three years later it was decreed that for forty days before Easter no corporal punishments should be inflicted.[5] In 392 Sunday circuses were prohibited [6] and in the same year the first law making churches sanctuary for public debtors was set forth,[7] and another enactment suspended all judicial business during the fifteen days of Eastertide.[8] Bishops were to be tried in ecclesiastical courts,[9] and it was definitely stipulated who could become a deaconess.[10]

Divination and sorcery were prohibited during the rule of Theodosius and Valentinian. A law was passed in 385 [11] at Constantinople forbidding sacrifices for divination. Four

[1] Allard, *op. cit.*, p. 263.

[2] *C. Th.*, xii, 1, 104-125 inclusive.

[3] *C. Th.*, xii, 1, 104, Nov. 383; xii, 1, 115, Dec. 386; xii, 1, 121, June 390; xii, 1, 123, July 391.

[4] *C. Th.*, ii, 8, 18; also given under viii, 8, 3 and xi, 7, 13 "Solis die quem dominicum rite dixere majores," etc.

[5] *C. Th.*, ix, 35, 5.

[6] *C. Th.*, ii, 8, 20; April.

[7] *C. Th.*, ix, 45, 1; October.

[8] *C. Th.*, ii, 8, 21; May 27.

[9] *C. S.*, 3.

[10] *C. Th.*, xvi, 2, 27.

[11] *C. Th.*, xvi, 10, 9. *Vide infra*, for text, p. 209.

years later [1] sorcery was condemned at Rome. At Milan in 384 it had been decreed that sorcerers should not enjoy the benefit of a general pardon [2] and at the same place a year later it was laid down that Easter pardons should not apply to magicians.[3] Severe laws penalizing apostates were published in 391 at Concordia, addressed, curiously enough, to the pagan pretorian prefect, Flavianus.[4]

Turning now to our chief interest, the attitude of the government towards paganism we find in the earlier part of the period that temples were open and well cared for and pagan festivals given; for in 386, a law was directed to the pretorian prefect of Egypt, commanding him to cease appointing any but pagans to care for the temples and festivals.[5]

According to Allard it was between 381 and 385 or after the second date that Cynegius was sent on his mission to Egypt [6] and Asia Minor to crush Hellenism.

In 389, paganism suffered a severe blow in the destruction of the famous Serapeum in Alexandria. This was one of the most illustrious temples in the Roman Empire and its destruction is of great significance.[7] But even more drastic measures were to follow. In 391 two laws were

[1] *C. Th.*, ix, 16, 11, *Vide infra*, for text, p. 210.

[2] *C. Th.*, ix, 38, 7, *vide infra*, p. 210, for text.

[3] *C. Th.*, ix, 38, 8, *vide infra*, p. 211, for text; *cf.*, *C. S.*, 8.

[4] *C. Th.*, xvi, 7, 4-5, *vide infra*, pp. 213 *et seq.*, for text.

[5] *C. Th.*, xii, 1, 112, *vide infra*, p. 218, for text.

[6] *Op. cit.*, p. 270. *Cf.* Zos., bk. iv, p. 116 and Soc., bk. v, ch. xvi. Allard, p. 270, criticizes Zosimus' statement that Cynegius was ordered to close all the Egyptian temples. He believes that Cynegius probably received the instruction to close those temples where, contrary to the laws of 381 and 385, divination was practised.

[7] Rauschen, *op. cit.*, pp. 301 *et seq.*, also pp. 534 *et seq.*, for the discussion of the date of the destruction of the temple. *Cf.* Soc., bk. v, ch. xvi and Soz., bk. vii, ch. xv.

published, one addressed to the pretorian prefect and given at Milan, the other addressed to the prefect and the count of Egypt and given at Aquileia,[1] forbidding men to sacrifice, to visit temples or to worship idols. Heavy penalties were fixed for officials who failed to punish breaches of these laws. The second law furthermore declared the temples closed. By this legislation paganism was outlawed, the machinery of the pagan cults was forbidden to be used. A year later Theodosius was to amplify these prohibitions in a longer document reiterating the legal ban on heathen religions.

In 391, when Flavianus was pretorian prefect and Symmachus consul, the latter was commissioned by the Senate to petition Theodosius for the re-erection of the altar to Victory. The pagan advocate this time was hurried from the imperial presence and set down at the hundredth mile stone from Milan.

Valentinian's youth made it seem wise to set an older man of military experience near him, and for this reason Theodosius made Arbogastes, a Frank who had served under Gratian and Theodosius himself, Master General of the Armies of Gaul, after the defeat of Maximus. Gradually Arbogastes acquired all the real power in the West and Valentinian's position became that of a dependent, if not a captive. Valentinian's attempts to rid himself of his hated servant who held the reins of government were fruitless. May 15, 392, Valentinian was found strangled, probably with the knowledge, if not by the order of Arbogastes. Fifteen days before his tragic end, the Emperor had repulsed a pagan deputation from Gaul begging that the altar of Victory be restored.[2]

[1] *C. Th.*, xvi, 10, 10, 11, *vide infra*, p. 215, for texts.

[2] Ambrose, *Ep.* 57. Valentinian remained firm without any intervention of Ambrose on this occasion. See Rauschen, *op. cit.*, p. 361.

After Valentinian's death Arbogastes persuaded Eugenius to allow himself to be made Emperor in the West. It is difficult to determine to what religion Eugenius himself belonged,[1] but he believed in the value of divination and in his government wanted to maintain a system of parity between Christianity and paganism. The Senate made a couple of attempts to have the altar of Victory restored and the subsidies re-established for the priesthoods. After refusing the latter petition twice he seems to have yielded so far as to grant the members of the deputation, as private individuals, the property of temples as gifts, and to have allowed Flavianus to set up the Victory and to restore their income to the priesthoods.[2] This was taken by Rome as the signal of the restoration of paganism. Christian authors of the time were scandalized. One whose name has been lost has left the record of his sad and horrified amazement in the poem known as *Carmen codicis Parisini*.[3] He tells how Egyptian priests were again encountered in the streets, how processions to Cybele with Senators accompanying her chariot wound through the city. The festival of Flora was re-established and the procession of Amburbium, which Rome had not seen since the time of Aurelian, was again carried on.[4] The soul of this pagan revival was Flavianus, the pretorian prefect.

In November of the very year in which paganism was displaying this strength in Rome, Theodosius at Constanti-

[1] Soz., bk. vii, ch. xxii, calls him insincere. Schultze, *Untergang*, p. 281, calls him a Christian as does Allard. Hodgkin, *Theodosius*, p. 109, believes him a pagan. *Gibbon*, vol. iii, p. 180, declares he professed Christianity but was secretly attached to paganism.

[2] Ambrose, *Ep.* 57 and 61; *Paulin. Vita*, 26; *cf.* Dill, *op. cit.*, ch. ii.

[3] A Latin poem written ca. 394 in *Hermes Zeitschrift für Classische Philologie, 1869*, ed. by Mommsen, also by Morel, *Revue Archéologique*, 1868.

[4] Rauschen, *op. cit.*, p. 369.

nople published a decree,[1] proscribing both official and private observance of pagan rites. Bloody sacrifices were sternly prohibited.[2] Even the burning of incense to idols or the winding of a tree with fillets was forbidden. The government's determination to eradicate paganism is patent in the clauses forbidding men to observe the pagan rites of private religion within their own gates. A householder's intimate devotion to the lares, the penates and the genius of the house were all, like the more public acts of his private religion, made legal offenses. Penalty was even fixed for the man whose property had been used for forbidden rites without his knowledge. This decree of November 8, 392 is an elaboration of the two decrees of the previous year,[3] and with them marks the beginning of what became the uninterrupted policy of the government: the proscription of paganism.[4]

In 393 Theodosius was ready to begin war against Eugenius and Arbogastes. The deciding battle of the conflict occurred 394 on the river Frigidus to-day called Wippach, not far from Aquileia. Eugenius was captured and beheaded. Arbogastes fled but committed suicide when he found himself closely followed by his enemies. Flavianus also committed suicide.

[1] *C. Th.*, xvi, 10, 12. *Vide infra*, p. 216, for text. *Cf.* Rauschen, p. 375.

[2] At this very time Flavianus underwent the taurobolium.

[3] *Vide supra*, p. 215.

[4] The law was evidently intended for the whole Roman world. Paganism found its last stronghold in the many private sanctuaries, in the garden chapels to the Fortune of the house or family. These Theodosius outlawed. St. Augustine, *Ep.* 93, has recorded the result of this law, "pagani nos blasphemare possunt de legibus, quas contra idolorum cultores Christiani imperatores tulerunt, et tamen ex eis multi correcti et ad deum vivum verumque conversi sunt et quotidie convertuntur." And *Ep.* 36 written in the year 397, "ecclesiam toto terrarum orbe diffusam exceptis Romanis et adhuc paucis orientalibus."

All the Christian world seemed to recognize in the fall of Eugenius a judgment of God and the triumph of Theodosius' orthodoxy.[1] The pagans saw their last hope shattered and many turned to the Church.[2] Zosimus [3] says that after the defeat of Eugenius the Emperor went to Rome and there insulted the religion of the gods; and before his departure convoked the conscript fathers and appealed to them to abandon the errors of paganism and to accept the faith which promised absolution from sin. According to Zosimus his petition was ineffectual.[4]

[1] Rauschen, *op. cit.*, p. 431. [2] *Ibid.*

[3] Bk. v, p. 163, "when the elder Theodosius after defeating the rebel Eugenius, arrived at Rome and occasioned in all persons a contempt and neglect of divine worship, by refusing to defray the charge of the holy rites from the public funds, the priests of both sexes were dismissed and banished and the temples were deprived of sacrifices. Serena, insulting the deities with derision, was determined to see the temple dedicated to the mother of the gods. In this perceiving some ornaments around the statue of Rhea, suitable to the divine worship that was paid to her, she took them off the statue and placed them upon her own neck. An aged woman, who was the only one remaining of the vestal virgins, upbraided her severely for so impious an action," etc. See Allard, *op. cit.*, p. 277, note 4, for a discussion of Theodosius' presence in Rome after the defeat of Eugenius. Rutilius Namantianus, *De Reditu Suo*, ii, 46 *et seq.*, says the Emperor burned the Sibylline books.

[4] Bk. iv, p. 129. "Before his departure he convened the Senate, who firmly adhered to the ancient rites and customs of their country, and could not be induced to join with those who were inclined to contempt for the gods. In an oration he exhorted them to relinquish their former errors as he termed them and to embrace the Christian faith which promises absolution from all sins and impieties. But not a single individual of them would be persuaded to this, nor recede from the ancient ceremonies which had been handed down to them from the building of their city, and prefer to them an irrational assent, having as they said lived in the observance of them almost 1200 years, in the whole space of which their city had never been conquered, and therefore should they change them for others, they could not foresee what might ensue. Theodosius, therefore, told them, that the treasury was too much exhausted by the expense of sacred rites

We must not forget that while intolerance for paganism became now the government's attitude, along with it went the greatest toleration for individual pagans. High honors were paid the devotees of non-Christian cults. Libanius [1] the most passionate champion of paganism in the East, was distinguished with place and favor.

On January seventeenth, 395, Theodosius died and his two young sons ruled jointly over the Roman world.

A. CONCERNING MAGIC AND DIVINATION

1. Sacrifices for the Purpose of Divination Forbidden

C. Th., xvi, 10, 9. 385 May 25.[2]

The same three Augusti to Cynegius, the pretorian prefect.

Let no mortal so presume as to sacrifice in order to acquire the hope of an empty promise that comes from the examination of liver or from divination by entrails; or what is worse, search the future through abominable inquiry. For the suffering of a severer penalty threaten all who in spite of the prohibition, attempt to learn the truth of the present or the future.

and sacrifices, and that he should therefore abolish them since he neither thought them commendable nor could the exigencies of the army spare so much money. The Senate in reply observed, that the sacrifices were not duly performed unless the charges were defrayed from the public funds. Yet thus the laws for the performance of sacred rites and sacrifices were repealed and abolished, besides other institutions and ceremonies, which had been received from their ancestors. By these means, the Roman Empire having been devastated by degrees, is become the habitation of barbarians, or rather, having lost all its inhabitants is reduced to such a form that no people can distinguish where its cities formerly stood." We are ignorant as to whether Theodosius removed the Altar of Victory or allowed it to remain.

[1] This distinguished sophist has left us in his *Pro Templis* one of our most interesting and valuable sources for the state of paganism towards the close of Theodosius' reign.

[2] *Cf.*, *C. J.*, i, 11, 2.

Given at Constantinople on the twenty-fifth of May in the first consulship of Emperor Arcadius when Bautones was consul for the fifth time.

2. The Treatment of Sorcerers

C. Th., ix, 16, 11. Aug. 16, 389.[1]

The Emperors Valentinian, Theodosius and Arcadius Augusti to Albinus, the prefect of the city.

Whoever hears of or detects or becomes acquainted with, a man polluted with the disease of sorcery, on the instant let him hale such a person to the magistrate and show the enemy of the public weal to the judges.

But if a charioteer or any other sort of person attempts to run counter to this edict or makes way by furtive violence with a palpable culprit in the nefarious art, he puts himself under a two-fold suspicion and shall not escape the extreme penalty, because either he has removed a common criminal from the law's severity and appropriate torture, lest he should reveal the accomplices of his act, or possibly, for a worse object, he has destroyed an enemy of his own under this guise of vengeance.

Given the sixteenth of August, at Rome in the consulships of Timasius and Promotus.

3. General Pardons not to Apply to Sorcerers

C. Th., ix, 38, 7. March 22, 384.

The same three Augusti to the vicar, Marcian.

We are impelled by the sanctity of our religious anniversary to order all to be released entirely from the danger of prison and the fear of punishment who are held as guilty of a minor crime. From this obviously they should be excepted whom frightful passion has driven to more barbarous crimes. In which category is first and foremost: the crime of lese-majesty, then that of homicide, poisoning,

[1] *Cf.*, *C. J.*, ix, 18, 9.

sorcery, debauchery, adultery, and with like enormity of sacrilege the profanation of graves, abduction, and debasing the coinage.

Given the twenty-second of March at Milan during the consulates of Richomer and Clearchus.

4. Easter Pardons not Applicable to Magicians

C. Th., ix, 38, 8. Feb. 25, 385.[1]

The same three Augusti to Neoterius, pretorian prefect.

Let no one wait for the dicta of our perennity which may be tardy. Let judges carry out the indulgences that we have been wont to grant. At the opening of Eastertide, prison is to hold no one within its walls, and all fetters are to be loosed.

But we except from these privileges those persons who, if set at large, would, we feel, contaminate the general enjoyment and happiness. For who would show indulgence on holy days to sacrilegious men or who would pardon an adulterer or one guilty of incest during a time of purity? Who would not punish more severely during a time of the greatest peace and joy an abductor? He shall enjoy no respite from chains who with the cruelty of crime has not allowed the dead to rest in peace in their grave; the poisoner, the magician, the debaser of coin shall suffer torture; the homicide may expect what he has himself done; the man guilty of treason need not hope for indulgence from the lord against whom he attempted such a deed.

Given the twenty-fifth of February, at Milan in the first consulship of Arcadius Augustus and the fifth of Bautones.

5. General Pardons not to Apply to Astrologers and Magicians

Constitutiones Sirmondianae. Number 8. April 22, 386.

The Emperors Valentinian, Theodosius and Arcadius.

[1] *Cf., C. J.*, i, 4, 3.

The time desired by good men approaches our serenity when even beyond the practice of statutory annual leniency for promulgating customary indulgence, we are ever animated by natural benevolence. For never is it more fitting for imperial piety to show equity by deeds of charity than when throughout almost the whole world the sacred day is celebrated with solemn festival. And we indeed beyond the traditionally prescribed clemency for the observation of religion, give expression to our sacred will spreading our humanity far and wide, to liberate almost all who are bound by the severity of the law.

For from now on until the special days that are to be celebrated, we free from chains, we recall from exile, we release from the mines, we excuse from deportation, since it is right that there should be hardly a day when we do not order some act of mercy and righteousness believing that we also suffer harm as the hours pass if it chance that no one is set free.

Wherefore it is readily seen that we always seize upon that need for loosening laws as far as true humanity suffers it and we continue the voluntary sanctity to the utmost limits of the season. For it is not fitting that dissonant voices of the wretched break in upon the festive ceremonies and the venerated rites of the sacred time or that criminals with rough dishevelled hair, exciting the pity of all be dragged to their death; nor that groans wrung from the depths of a man's heart should be heard when everywhere the sacred and the joyous go well together. And it is not seemly that anything sad should be felt, heard or seen in the midst of tranquil vows and pious voices consecrated to divine majesty. Wherefore we do not suppress our leniency known by our former favors, but we open the prison, knock off the chains and will remove in all decency the unkempt tenant of the filthy and dusky prison house. We will save

all from capital punishment except those whose crimes are too great to admit of it.

These crimes shall meet their fate and shall be excepted from the general pardon and the proper end shall overtake the guilty. We will do injustice to no one's shade by absolving murderers. We do not leave any one's bed unavenged by remitting penalties of adulterers or similar criminals. We reserve unaffected the case of lese-majesty which has wide effects. We do not admit to the good fortune of pardon astrologers, poisoners, magicians nor counterfeiters; for indeed, they are not worthy to enjoy the festive light who have committed crimes so grave that it is not proper that prudent clemency should pardon them.

And in order not to direct my happy discourse further to this series of crimes, we release all except customary and notorious criminals, dearest and most delightful Antiochinus. Wherefore your worthiness will order the decrees of our clemency to be fulfilled as quickly as possible so that the joyful news may more rapidly be spread abroad; that [1] those who deserve to be set free in the general festivity shall not be hung.

Given at Constantinople the twenty-second of April when Honorius the very noble boy and Evagrius were consuls.

B. APOSTASY

1. Testamentary Disqualification for Christian Apostates

C. Th., xvi, 7, 4. May 11, 391.

The Emperors Valentinian, Theodosius and Arcadius, Augusti to Flavianus, the pretorian prefect.

Those who betray the sacred faith and profane holy baptism are shut off from association with all and from giving

[1] *Neque* substituted for *adque* on Mommsen's suggestion. See Rauschen, p. 233 for the question of the validity of this law.

testimony. As we have hitherto decreed they may not exercise the right of making a will; they may not enter upon any inheritance; they may not be made any one's heir.

We would even have commanded that they be sent to a distant place and exiled there if it did not seem to be a greater punishment to remain among men and yet to be deprived of the rights of men.

But they are never to revert to their earlier state; nor is the shame of the deeds wiped out by penitence; neither is any shadow of a defense or excuse, (however carefully sought) to be advanced, for things which are devised and arranged cannot succor those who have polluted the faith which they gave to God and who have left the divine mystery and gone over to profane ones.

For both the fallen and erring can be cured; but the lost, that is those who profane holy baptism, can be cured by no medicine of penitence which is efficacious for other crimes.

Given the eleventh of May at Concordia in the consulships of Tatianus and Symmachus.[1]

2. Apostates to Lose Position and Rank

C. Th., xvi, 7, 5. May 11, 391.

The same Emperors to Flavianus, the pretorian prefect.

Any honor or dignity belonging either by birth or preferment to those men who through the inconstancy of their faith or the blindness of their minds have fallen away from the worship and reverence of the most holy religion and given themselves over to sacrifices, shall be lost. Thus they shall be degraded from their place and station and suffer perpetual infamy and shall be reckoned not even among the meanest part of the vulgar herd.

For what can these have in common with other men who

[1] This law is given also in xi, 39, 11. *Cf., C. J.*, i, 7. 3.

in the abomination of their dead minds hate the grace of communion and withdraw themselves from men.

Given at Concordia on the eleventh of May in the consulships of Tatianus and Symmachus.

C. ANTI-PAGAN

1. Sacrificing and Visiting Shrines Prohibited

C. Th., xvi, 10, 10. Feb. 24, 391.

The same three Augusti to Albinus, the pretorian prefect.

Let no one defile himself with animal sacrifices; let no one slaughter an innocent victim; let on one visit shrines; let everyone instead, purify the temple; let him distrust images made by human art lest he be judged a criminal according to the ordinance of God and man.

This rescript is for the guidance of judges: if any one of them given over to the unholy usage, enter a temple to worship when travelling anywhere or while in the city, he himself shall be forced at once to pay 15 pounds of gold and with like expedition, his officials shall be fined a similar sum, if they have not withstood that judge and at once reported it openly. Men of consular rank shall pay six times as much, their officials a similar amount, bailiffs and governors, correctores and praesides four times as much; their public servants by the same rule shall pay a like sum.

Given the twenty-fourth of February at Milan in the consulships of Tatianus and Symmachus.

2. Sacrifices Forbidden and Temples Closed

C. Th., xvi, 10, 11. June 16, 391.

The same three Augusti to Evagrius, the Augustalian prefect and to Romanus, count of Egypt.

To no one shall the right of sacrificing be given, nor shall anyone go the rounds of the temples nor do honor to the shrines. Let them recognize that the profane approaches

are closed by our law, so that if any one attempt anything which is forbidden touching the gods or worship let him be fully aware that he shall be punished without mercy.

Likewise any judge, who during his term of office, relying upon the privilege of his power, has like a sacrilegious violator entered these polluted places shall pay 15 pounds of gold; and his officials shall assuredly pay a like sum to our treasury unless they forcibly opposed the deed.

Given at Aquileia the sixteenth of June, in the consulships of Tatianus and Symmachus.

3. Paganism outlawed by Theodosius

C. Th., xvi, 10, 12. Nov. 8, 392.[1]

The Emperors Theodosius, Arcadius and Honorius Augusti to Rufinus, the pretorian prefect.

No official or dignitary of whatsoever class or rank among men, whether he be powerful by fortune of birth or humble in the condition of his family, shall in any place or in any city slay an innocent victim for sacrifice to senseless idols, or in more secret rite, honor the lares with fire, the genius of the house with pure wine, the penates with sweet odors and light the lamps, offer the incense and hang up the garlands.

But if any one in order to make a sacrifice dares to offer a victim or to consult the quivering entrails, let any man be free to accuse him and let him receive as one guilty of lese-majesty, a fitting punishment for an example, even if he have sought nothing contrary to, or involving the welfare of, the authorities. For it is sufficiently a crime to wish to undo nature's laws and to investigate what is forbidden, to lay bare secrets, to handle things prohibited, to look for the end of another's prosperity or to predict another's ruin.

[1] For the effects of this law *vide* Soz., bk. vii, ch. xx and Aug. *Ep.* 36 and 93.

But if anyone worship with incense idols made by human toil and enduring for a generation, and foolishly fearing on a sudden his own handiwork, seeks to do reverence to vain images, winding a tree with fillets or erecting an altar or turf (for although the worth of the gift be slight, yet the injury to religion is great) let him be judged a violator of religion and a fine be levied on the house or the estate in which he is proved to have committed the deed of heathen superstition. For every place where the smoke of incense has ascended, provided that these places are proved in law to be the property of those who offered the incense, shall be appropriated to the fisc.

But if anyone has sought to make such a sacrifice in public temples or shrines or in buildings or in fields belonging to some one else, if it be proved that the place was used without the owner's knowledge, he shall pay a fine of 25 pounds of gold; and the same penalty for the man who connives at this crime or who makes the sacrifice.

This statute we wish to be observed by judges, defensors and curials of every city so that offenses discovered by the latter may be reported to the courts and there punished by the former. But if they think anything may be concealed by favor or passed over by negligence, let them be subjected to judicial action; but if the former being warned, postpone giving sentence and dissimulate, they shall be fined 30 pounds of gold and members of their court shall be subjected to a like penalty.

Given the eighth of November at Constantinople in the second consulate of Emperor Arcadius when Rufinus was also consul.[1]

[1] For the effects of this law *vide* Soz., bk. vii, ch. xx and Aug. *Ep.*, 36 and 93.

D. PRO-PAGAN

Pagans only to be appointed as chief priests

C. Th., xii. 1, 112. June 16, 386.

The same three Augusti to Florentius, the Augustalian prefect.

In appointing a chief priest, that man is to be preferred who has done the most for his country and yet has not abandoned the worship of the temples for the observance of Christianity. Indeed it is unfitting, nay to speak more plainly, it is wrong that the temples and the rites of the temples should come into the care of those whose mind has been enlightened with the true reason of divine religion and who ought to avoid such an office even if it were not closed to them. Sent out the sixteenth of June from Constantinople when Honorius and Evodius were consuls.

CHAPTER VII

Honorius, Arcadius, Theodosius II and Valentinian III

Before his death, Theodosius had designated his two young sons, Arcadius and Honorius, as his successors. He had made Stilicho, *magister utriusque militiae*, for the West and had thus assured him of the dignity equal to that of a pretorian prefect; and had further appointed him guardian of Honorius who was to rule in the West. It is a disputed question whether he was made guardian of Arcadius also.[1] Stilicho, who was an unscrupulous, able man, sought to exercise unlimited power in the Occident and even to extend his sway over the Orient. Until his death he was the real power in the West and the enactments given there between 395 and 408 are the expression of his policies. He seems to have exercised moderation in religious affairs and to have favored no particular religious party.[2] While the law proscribing pagan rites still maintained,[3] the powerful minister decreed that pagan temples with their ornaments should be preserved and pagan festivities of games and banquets permitted.[4] After Stilicho's death the intolerant party in the state got control and the laws against pagan-

[1] Rauschen, *op. cit.*, p. 445.

[2] *Cf.* E. F. Humphrey, *Politics and Religion in the Days of Augustine*, p. 47 *et passim*.

[3] *C. Th.*, xvi, 10, 15, the opening words, *vide infra*, p. 227; xvi, 10, 17, the opening words, *vide infra*, p. 228; xvi, 10, 18, "the temples cleared of forbidden things, and "if any one is caught making a sacrifice, etc.," *vide infra*, p. 228.

[4] *Ibid.*

ism were more vigorously enforced;[1] and new ones enacted. In some places even the ancient banquets were forbidden and the statues removed from public places and baths.

Arcadius died in 408 and as his son, Theodosius, was only eight years old, Anthemius acted as ruler for the prince for six years, when the regency was assumed by Pulcheria, the sister of Theodosius, with the title of Augusta. Theodosius II's reign came to an end in 450. Valentinian III, whose name appears on later laws of this period, was the son of Placidia, daughter of Theodosius the Great and Constantius. He succeeded to the rule over the West in 425. Thirty years later he was assassinated.

In looking at the religious legislation of both East and West during the generation following Theodosius' death, we find certain general differences. In the East the government seemed less eager to extend the privileges of bishops and the clergy in general, than the government in the West which confirmed and augmented ecclesiastical immunities.[2] In the East paganism was weakened and through political reasons a vigorous policy was pursued against it.[3] In the West, in spite of the check, that paganism had suffered in the defeat of Eugenius' party, it had the steady support of members of the upper classes and Stilicho's tolerant attitude delayed extreme measures against it. Although the paramount interest of the fifth century was the movement of the Germans, particularly the Goths, there was taken altogether a large body of enactments affecting pagans. Let us examine this legislation.

Two laws against magic both given in the West have been preserved.[4] In the East as well as the West decrees

[1] *Vide infra*, for texts, *passim*.

[2] *C. Th.*, xvi, 11, 1; xvi, 2, 29 *et seq.*

[3] See E. F. Humphrey, *Religion and Politics in the Days of Augustine*, pp. 20-21.

[4] For texts, *vide infra*, p. 223.

were published against apostasy.[1] Pagan festivals were no longer to be counted among the holidays,[2] while Sunday games were prohibited.[3] Only Catholic Christians were allowed to serve as soldiers in the palace.[4] This enactment of course cut two ways, for by it heretics as well as pagans were affected. As for the mass of legislation prescribing paganism it speaks clearly for itself in the appended laws.[5] A decree of 395 [6] assures, in their possession, those who have acquired temple property; another law [7] two years later provides evidence that temples were being destroyed.

The laws of Theodosius against sacrifices and idols were renewed in 395.[8]

The exemptions remaining to pagan priests were suppressed.[9] Rural temples were to be destroyed but without disorder or riot.[10] While sacrifices were prohibited the ornaments of public buildings were to be protected,[11] and ancient festivities permitted,[12] and the purified temples kept open.[13] Temple buildings were to be appropriated by the

[1] For text, *vide infra*, pp. 224, 225.

[2] *C. Th.*, ii, 8, 22, *vide infra*, p. 225, for text.

[3] *C. Th.*, ii, 8, 23, 399; ii, 8, 25, 409.

[4] *C. Th.*, xvi, 5, 42, *vide infra*, pp. 232, 233, for text.

[5] *Vide infra*, pp. 225 *et seq.*

[6] *C. J.*, xi, 69, 4.

[7] *C. Th.*, xv, 1 ,36. 397 Nov. 1. Idem AA. Asterio Comiti Orientis. Quoniam vias, pontes per quos itinera celebrantur, adque aquaeductus, muros quin etiam juvari provisis sumptibus oportere signasti, cunctam materiam, quae ordinata dicitur ex demolitione templorum, memoratis necessitatibus deputari censemus, quo ad perfectionem cuncta perveniant. Dat. Kal. Nov. Caesario et Attico Conss.

[8] *C. Th.*, xvi, 10, 13, *vide infra*, for text, pp. 225, 226.

[9] *C. Th.*, xvi, 10, 14, *vide infra*, for text, p. 226.

[10] *C. Th.*, xvi, 10, 16, *vide infra*, for text, p. 227.

[11] *C. Th.*, xvi, 10, 15, *vide infra*, for text, p. 227.

[12] *C. Th.*, xvi, 10, 17, *vide infra*, for text, p. 228.

[13] *C. Th.*, xvi, 10, 18, *vide infra*, for text, p. 228.

government or the churches.[1] In the year following this law judges were warned that they must carefully enforce laws against pagans and heretics.[2] Zosimus says that in spite of the laws, Honorius gave full religious liberty. However a new law of 415[3] seems to show that if Zosimus were correct, the religious liberty could not have lasted long.

In 396 the popular festival of the Majuma was re-established,[4] but three years later was abolished for the reason that it was only another name for licentiousness.[5] Later laws[6] reiterated provisions in these enactments against the pagans. The last in this group is that of November, 451,[7] which prohibited sacrifices and ordered temples and shrines to be kept closed and forbade all pagan ritual.

Although paganism was outlawed and its subsidies suppressed and its fabric confiscated in these foregoing enactments, pagans themselves were left undisturbed. The government made no attempt to force men to become Christians and a law of 423[8] distinctly forbade any one from disturbing a pagan who was living peaceably.

[1] *C. Th.*, xvi, 10, 19, *vide infra*, for text, p. 229. *Cf. C. Th.*, xvi, 5, 43, *vide infra*, for text, p. 230, and *C. S.*, 12, *vide infra*, for text, pp. 230 *et seq.*

[2] *C. Th.*, xvi, 5, 46, *vide infra*, p. 233, for text.

[3] *C. Th.*, xvi, 10, 20, *vide infra*, p. 234, for text.

[4] *C. Th.*, xv, 6, 1, *vide infra*, p. 238, for text.

[5] *C. Th.*, xv, 6, 2, *vide infra*, p. 238, for text.

[6] *C. Th.*, xvi, 10, 21, 22; xvi, 8, 26; xvi, 10, 23; xvi, 5, 63. *C. S.*, 6; *C. Th.*, xvi, 10, 24.

[7] *C. J.*, i, 11, 7, *vide infra*, for text.

[8] *C. Th.*, xvi, 10, 24, *vide infra*, p. 239, for text.

A. CONCERNING MAGIC AND DIVINATION

1. Obstinant Astrologers to be banished from Rome

C. Th., ix, 16, 12. Feb. 1, 409.

The Emperors Honorius and Theodosius Augusti to Caecilianus, pretorian prefect.

Unless the astrologers are prepared to burn their false books before the eyes of the bishops and to transfer their faith to that of the Catholic religion and never return to their errors, we ordain that they are to be expelled not only from the city of Rome but also from all cities. But if they do not do this, and contrary to the wholesome decree of our clemency, are discovered in the cities or if they publish the mysteries of their error and profession, they shall suffer the penalty of deportation.

Given at Ravenna the first of February in the eighth consulship of Honorius and the third of Theodosius, the Augusti.[1]

2. Astrologers to be driven out of Rome

C. Th., xvi, 5, 62. July 17 (Aug. 6), 425.

The Emperor and Augustus Theodosius and the Caesar Valentinian to Faustus, prefect of the city.

We command that Manichaeans, heretics, schismatics or astrologers and every sect inimical to the catholics be driven out of the city of Rome, so that it may not be defiled by contagion from the presence of criminals, . . . etc.

Given the seventeenth of July at Aquileia in the eleventh consulship of Theodosius the Augustus when the Caesar Valentinian was also consul.[2]

[1] *Cf. C. J.*, i, 4, 10.

[2] *Cf. C. S.*, no. 6.

B. APOSTASY

1. Christian apostates to lose the power of testating

C. Th., xvi, 7, 6. March 23, 396.

The Emperors Arcadius and Honorius Augusti to Caesarius, pretorian prefect.

Christians who have spotted themselves with the impious superstition of idols are liable to this penalty: they shall have no right of making a will in favor of others but certain members of their family shall inherit, to wit: father and mother, brother and sister, son and daughter, grandson and granddaughter. Neither may anyone claim any power to arrange it differently.

Given the twenty-third of March at Constantinople in the fourth consulship of Arcadius and in the third of Honorius, the Augusti.

2. Apostates to lose the right of testating

C. Th., xvi, 7, 7. April 7, 426.

The Emperors Theodosius and Valentinian Augusti to Bassus, the pretorian prefect.

(After other provisions.) The voice of continual accusation shall pursue the sacrilegious name of every apostate and the thorough investigation of this sort of crime shall never cease.

Although for them former edicts should suffice, nevertheless we reiterate this: that after they have wandered from the faith they shall not have any right of making a will or bequeathing anything. Neither shall they be permitted by a semblance of sale to perpetrate a fraud on the law; and all they possess shall be given instead, without a will, to their relatives who are Christians.

So intensely do we desire that this crime shall be subject to perpetual indictment that we permit any appropriate claim to be made without question against the intestate's

property even after the offender's death. Neither shall we suffer it to stand in the way that no testimony was brought during the lifetime of the impious person.

In order that there may be no ignorant uncertainty in the interpretation of this crime, in these present rescripts we censure those who although they have clothed themselves with the name of Christianity have made or caused to have made, sacrifices and they are to be punished in this way for their proven crime even if it is established only after their death: their gifts and wills shall be abrogated and those to whom the legitimate succession gives the right, may enter upon the inheritance of these persons.

Given the seventh of April at Ravenna in the twelfth consulship of Theodosius and the second of Valentinian the Augusti.[1]

C. ANTI-PAGAN

1. Pagan holidays abolished

C. Th., ii, 8, 22. July 3, 395.

The Emperors Arcadius and Honorius to Heraclianus, the governor in Paphagonia.

We call attention to the fact that we have already declared by statute that the solemn days of the pagans' superstition were not to be included in the number of holidays.

Given the third of July at Constantinople while Olybrius and Probinus were consuls.

2. Sacrificing and Visiting Temples or Shrines Prohibited

C. Th., xvi, 10, 13. Aug. 7, 395.

The Emperors Arcadius and Honorius to Rufinus, the pretorian prefect.

We decree that no one shall have the privilege of going to

[1] *Cf. C. J.*, i, 7, 4.

a sanctuary or to any kind of temple or of celebrating detestable sacrifices at any time or place. Wherefore, let all who are trying to stray from the dogma of the catholic faith hasten to guard all that we lately decreed; and let them not presume to disregard what has been ordained touching heretics or pagans, knowing that the punishment or the fine determined for them in the laws of our divine progenitor shall be enforced with greater severity.

Moreover, let the governors of our provinces and the households belonging to them, likewise the nobles of the cities, the defensors and the curials, the stewards of our estate among whom we have discovered that illegal heretical assemblies occur without fear of the fine on the ground that they cannot be taxed (inasmuch as they share in the control of the fisc) know that if anyone attempts to break our law and is not tried and immediately punished, they shall suffer all the losses and penalties which are set down in our earlier laws.

But in particular we ordain and decree in this law severer action against the governors. For if these provisions are not guarded with all care and precaution, not only shall the legal fine which is appointed for them be imposed upon them, but also what is prescribed for the authors of the crime. Nevertheless, the penalty shall not be remitted to these criminals on whom it is rightly inflicted on account of their obstinate disobedience. Furthermore, we judge that officials who neglect the laws ought to suffer death.

Given the seventh of August at Constantinople in the consulship of Olybrius and Probinus.

3. Privileges of Pagan Priests Abolished

C. Th., xvi, 10, 14. Dec. 7, 396.

The same Augusti to Caesarius, the pretorian prefect.

Any privilege of whatsoever kind granted by ancient law

to priests, clergymen, prefects, hierophants of sacred rites or by whatever other name they may be called, are hereby revoked and these men are not to fancy themselves protected by privilege insomuch as their profession is known to be forbidden by law.

Given the seventh of December at Constantinople in the fourth consulship of Arcadius and in the third of Honorius, the two Augusti.

4. Sacrifices Forbidden but Ornaments of Public Buildings Protected

C. Th., xvi, 10, 15. Jan. 29, 399.

The same Augusti to Macrobius, the vicar of Spain and Proclianus, the vicar of the five provinces.

Just as we forbid sacrifices, so we desire that the ornaments of public buildings shall be protected. And those who attempt to destroy these things are not to delude themselves by any kind of authority whether any rescript or any law, perchance, be cited. Documents of this sort should be taken from them and should be referred to our attention; if it can be proved that they have made out illegal permits to travel by the public post [1] either in their own or another's name, we order the permits to be sent to us when they are presented. Whoever furnishes such persons with means of transportation is to be fined two pounds of gold.

Given the twenty-ninth of January at Ravenna in the fifth consulship of Theodorus.[1]

5. Rural Temples to be Destroyed

C. Th., xvi, 10, 16. July 10, 399.

The same Augusti to Eutychianus, pretorian prefect.

[1] *Cf. C. J.*, i, 11, 3. Following Mommsen's suggestion "si inlicitis evectiones aut suo aut alieno nomine potuerint demonstrare" is made to read: "si qui fecisse inlicitas evectiones aut suo alieno nomine potuerint demonstrari." For the connotation of *evectio*. *Cf. C. Th.*, viii, 5, 57.

Temples standing in the country shall be destroyed without disorder or riot. For when these are torn down and removed, the instrument itself for superstition will be destroyed.

Set forth at Damascus the tenth of July in the fifth consulship of Theodorus.

6. Ancient Shows Allowed but Pagan Rites Forbidden

C. Th., xvi, 10, 17. Aug. 20, 399.

The same Augusti to Apollodorus, proconsul of Africa.

Although we have cleared away by a salutary law the profane rites, yet we are unwilling that the citizens should be disturbed in their festive gatherings and amusement. Wherefore, we decree, that shows following the old custom shall be given for the people, but without the accompaniment of any sacrifice or other forbidden superstition; and if the public wishes it, even festal banquets are to be arranged.

Given the twentieth of August at Patavium in the fifth consulship of Theodorus.[1]

7. Purified Temples to be Kept in Good Repair

C. Th., xvi, 10, 18. Aug. 20, 399.

The same Augusti to Apollodorus, the proconsul of Africa.

Let no one attempt to destroy the temples[2] cleared of forbidden things by our decrees.

Furthermore, we decree that the buildings should also be kept in good condition. But if anyone is caught making a sacrifice, he shall be punished acording to the law when decision is rendered, the idols having been deposited in the magistrate's office; for even now it is clear that vain and superstitions veneration is given to them.

[1] *Cf. C. J.*, i, 11, 4.

[2] *Aedes.*

Given at Patavium on the twentieth of August in the fifth consulship of Theodorus.

8. Temple Buildings and their Income to be Appropriated by the Government. Idols and Altars to be Removed

C. Th., xvi, 10, 19. Nov. 15, 408 (407).

The Emperors Arcadius, Honorius, and Theodosius the Augusti to Curtius, the pretorian prefect.

(After other provisions.) The yearly income of the temples shall be cut off and shall be applied to help out the expenses of our most devoted soldiery.

Any images wherever still standing in temples and fanes, which have received or are receiving religious rites of the pagans shall be torn from their temples since we know this has been decreed by laws frequently repeated.

The temples buildings themselves whether situated in cities or towns or without the walls, shall be appropriated for public purposes. Altars shall be destroyed in every place, and all temples shall be given over into our possession to be used for suitable purposes; the proprietors shall be forced to tear them down.

In the more polluted places it shall not be permitted to hold a banquet or to celebrate any solemn service in honor of any sacrilegious rite whatsoever.

Furthermore, we give the ecclesiastical power to the bishops of these places to prevent these very things.

Moreover, we inflict a penalty of 20 pounds of gold upon judges and a like fine on their officials, if these orders are neglected through their carelessness.

Given at Rome the fifteenth of November in the consulship of Bassus and Philippus.[1]

[1] Mommsen believes this is part of the law given in full in *C. S.*, 12, and that its date is 407. *Vide infra*, pp. 230 *et seq*, for *C. S.*, 12.

9. Temples to be Appropriated by the Churches

C. Th., xvi, 5, 43. Nov. 15, 408 (407).

The same Augusti to Curtius, the pretorian prefect.

All that has been decreed by us through the authority of general laws against the Donatists who are also called Montensians, the Manichaeans or Priscillianists or against the pagans, we decree shall not only endure but shall be put into thoroughgoing force and effect, so that the buildings belonging to them or to the Caelicolians [1] who have associations following some new doctrine, shall be appropriated by the churches.

The penalty fixed by law must visit as convicted those who have confessed themselves Donatists or who have refused the communion of Catholic priests under the pretext of a base religion even though they pretend to be Christians.

Given the fifteenth of November at Rome during the consulship of Bassus and Philippus.[2]

10. Temples to be Appropriated by the Churches. Temple Buildings and their Revenues to be Confiscated and Idols and Shrines to be Destroyed

Constitutiones Sirmondianae. Number 12. Nov. 25, 407.

Cf. C. Th., xvi, 5, 43; xvi, 10, 19.

The Emperors Honorius and Theodosius Augusti to Curtius, the pretorian prefect.

Without doubt the anxiety and careful warning and authoritative instruction of religious men, God's priests, should have been sufficient to improve the minds of profane heretics and the superstition of the gentiles. Nevertheless, we have not ceased to pass laws which have called back the

[1] A sect of the Jews who prayed to heaven, sun and moon.

[2] *Cf. C. J.*, i, 9, 12 and *C. S.*, no. 12. Mommsen believes this law was given in 407 and that it is part only of the law given in full in *C. S.*, no. 12, *q. v. infra.*

erring ones from their evil intent through fear of punishment and directed the ignorant in divine rites.

But truly, the human and the supernatural powers for evil are so intermingled with each other that they deceive and impel many through evil counsel to present and future destruction, and ruin the lives of the wretches before God and before us, and make them here victims of the laws and in the world to come force them to undergo judgment.

Forced therefore by the pertinacity of the Donatists and the madness of the gentiles, that have been encouraged by the evil inactivity of judges and the connivance of officials and the careless contempt of city councils we have thought it needful to reiterate what we have decreed.

Wherefore, all that we have decreed by the authority of general laws against the Donatists who are also called "Montensians," the Manichaeans, the Priscillianists or the gentiles, we declare not only shall continue to hold but shall be put into fullest effect and force, so that the buildings belonging to them or to the Caelicolians who have associations following some new doctrine, shall be appropriated to the churches. The penalty fixed by law must visit as convicted those who have confessed themselves Donatists or who have refused the communion of Catholic priests under the pretext of a base religion, even though they pretend to be Christians.

The revenues of the temples shall be cut off and in future shall be applied to the revenue of the state and be used for the expenses of our devoted soldiery.

Whatever images still exist in temples or shrines to which pagan rites have been or are being paid, we order torn town, although we know that this decree has frequently been issued under reiterated penalty. The temple buildings themselves which are situated in cities, towns or outside the walls shall be given over to public use. Altars are to be de-

stroyed everywhere and all temples in our territories are to be converted to convenient uses; the owners shall be forced to destroy them. Nor is it at all allowable to hold banquets in honor of sacrilegious rites nor to perform any religious services in baneful places.

Furthermore, we give to the bishops of the districts the ecclesiastical power of prohibiting these things. For we have granted the power of execution to Maximus, Julianus and Eutychus,[1] in order that the decrees contained in the general laws against the Donatists, Manichaeans and heretics or gentiles of this sort might be enforced. Nevertheless, they must remember that in all ways the procedure prescribed by the statutes is to be followed. So that any act which might seem to have been committed contrary to a prohibition, they might later report to the judges to be approved according to law. A fine fixed long ago, of 20 pounds of gold and an equal fine determined for their officials and city council will fall upon them, O Curtius, dearest and most devoted kinsman, if these decrees are neglected by their dissimulation.

This decree for improving the character of mankind and guarding religion, your sublime magnificence will have sent to the governors of the provinces and will assist in its enforcement everywhere by appropriate energy.

Given the twenty-fifth of November at Rome. Set forth at Carthage in the forum in the proclamation of the proconsul Porphyrius the fifth of June in the fifth consulship of Bassus and Filippus.

11. Only Catholics to Serve as Palace Guards

C. Th., xvi, 5, 42. Nov. 14, 408.

The Emperors Honorius and Theodosius Augusti to

[1] *Agentum in rebus executionem Mamivi, etc., indulsimus. Cf. C. Th.*, xvi, 10, 19; xvi, 5, 43, *supra*, p. 229.

Olympius, the chief of the officials and Valens, count of the household.

We prohibit those who are enemies to the Catholic faith from serving as soldiers in the palace, for we are unwilling to have near us in any capacity, anyone who is out of harmony with us in faith and religion.

Given at Ravenna the fourteenth of November in the consulship of Bassus and Philippus.

12. Laws Against Pagans to be Enforced

C. Th., xvi, 5, 46. Jan. 15, 409.

The same Augusti to Theodore, pretorian prefect for the second time.

The Donatists and other vain heretics and those others who cannot be converted to the worship of the Catholic communion, Jews and Gentiles who are vulgarly known as pagans may not think that the provisions of the laws previously passed against them have grown lax. Let all judges understand that they must heed these articles with faithful loyalty; and especially among their cares let them not fail to carry out all decrees against these persons.

If any judge through the sin of connivance fail to execute an existing law let him realize that he shall lose his rank and suffer severer action from our clemency, and his officials who disregarded instructions and failed to provide for their own safety shall be fined 20 pounds of gold; the three chief men shall be punished.

Furthermore, if men of rank keep silent over any such deed committed in their own cities or districts, for favor to wicked men, let them know that they shall undergo the penalty of deportation and lose their own possessions.

Given the fifteenth of January at Ravenna in the eighth consulate of Honorius and the third of Theodosius, the Augusti.[1]

[1] *Cf. C. S.*, no. 14.

13. Temples Appropriated by the Government. Objects consecrated for Sacrifices to be Removed from Public Places

C. Th., xvi, 10, 20. Aug. 30, 415.

The Emperors Honorius and Theodosius, the Augusti.

By our orders, priests of the pagan superstition are liable to legal penalty unless by November first they depart from Carthage and return to their native cities, so that the guilty priests may be held throughout the whole of Africa under similar sentence unless they leave the metropolitan cities and go to their own cities.

All the places that the error of our forefathers set apart for sacred rites, we, in accordance with the decrees of the divine Gratian, order to be appropriated to us so that from the time since it was forbidden to spend the public money on this wretched superstition, the income shall be collected from the illegal possessors. But that which in accordance with that law either the liberality of former princes or our own majesty has bestowed upon individuals anywhere shall be secure forever among their private possessions.

We decree that this shall be observed, not only in Africa, but throughout all the regions of our world. All that property which by numerous decrees we have allotted to the venerable Church, the Christian religion will now justly appropriate to itself, so that all money once expended on the superstition of that time which has been rightly condemned, and all the lands which the *frediani*,[1] which the *dendrophori*,[2] which each and every title and profession of the

[1] Godefroy says there is no reference elsewhere to *frediani* in the Code. They seem to be mentioned in Bacchic processions.

[2] *Dendrophori*, the "bearers of the tree" or the "corporation of the cut-down pine tree." The "tree" was the pine beneath which Attis offered the sacrifice of his manhood. The Attis-tree, decorated with violets, its trunk bound with woolen fillets like the winding sheet of the dead was carried in procession through the city to the temple of Magna Mater on the Palatine. The dendrophori were also a gild

pagans have held set apart for banquets and sumptuous feasts, now that this error is destroyed, may increase the revenue of our house.

Further, if objects formerly consecrated for sacrifices contributed to the deceiving of mankind, they should be removed from baths and public sight lest they offer allurement to the erring. We have decreed, moreover, that *Chiliarchae* [1] and *Centonarii* or any who are said to control the distribution of the people shall be removed; and that he shall not escape capital punishment who either voluntarily has accepted this title or has suffered himself against his will to be associated with this audacity and odium.

Given at Ravenna the thirtieth of August, in the tenth consulship of Honorius and the sixth of Theodosius, the Augusti.[2]

14. Pagans Barred from Military and Civil Offices.

C. Th., xvi, 10, 21. Dec. 7, 416.

The same Augusti to Aurelianus, the pretorian prefect.

(After other provisions.) Those who are defiled by the unholy error of the pagan rite, that is to say the pagans, shall not be admitted to the militia, nor shall they be honored by administrative or judicial dignity.

Given the seventh of December, in the seventh consulship of our lord Theodosius the Augustus, when Palladius was also consul.

15. Existing Laws against Pagans to be Enforced.

C. Th., xvi, 10, 22. April 9, 423.

The same Augusti to Asclepiodotus, pretorian prefect.

of timber merchants who, together with the members of the building trades formed the fire-brigade in the municipalities of the West. *Cf.* G. F. Moore, *History of Religions*, vol. i, pp. 581 *et seq.* and H. S. Jones, *Companion to Roman History*, pp. 295-6.

[1] Commanders of 1,000.

[2] *Cf. C. J.*, i, 11, 5.

(After other provisions.) If there still be any pagans, although we do not believe there are any such, the precepts of the old laws shall hold them in check, etc.

Given the ninth of April at Constantinople when Asclepiodotus and Marinianus were consuls.

16. Laws against the Pagans are well known

C. Th., xvi, 8, 26. April 9, 423.

The same Augusti to Asclepiodotus, the pretorian prefect.

Our own decrees and those of our ancestors are known and published among the people, in which we have checked the arrogance and audacity of the abominable pagans, Jews and even heretics.[1]

17. Pagans Who Sacrifice Shall Lose their Property and be Exiled

C. Th., xvi, 10, 23. June 8, 423.

The same Augusti to Asclepiodotus, the pretorian prefect.

(After other clauses.) If the pagans who remain are at any time caught making abominable sacrifices to demons, they shall be punished by proscription of goods and exile, although they ought to suffer capital punishment.

Given the eighth of June at Constantinople in the consulship of Asclepiodotus and Marinianus.

18. Pagan Superstition to be Rooted out

C. Th., xvi, 5, 63. July 6 or Aug. 4, 425.

The same Augusti and the same Caesar to Georgius, the proconsul of Africa.

We are extirpating all heresies and all falsehoods, all schisms and all superstitions of the pagans and all errors that are inimicable to the catholic religion.

But if these . . . penalty shall be attached to these statutes of our clemency and the authors of the sacrilegious superstition shall learn that their accomplices will be punished by proscription; so that if they refuse to be brought

[1] *Cf. C. J.*, i, 9, 16.

back from their perfidious error by reason, at least they will be restored by fear. And since all attempt at supplication is denied forever, they will be punished with the severity befitting crimes, . . . etc.

Given at Aquileia on the fourth of August in the eleventh consulship of our lord Theodosius the Augustus and in the first of the Caesar Valentinian.

19. Astrologers to be Exiled. Pagans Barred from Pleading a Case or Serving as Soldiers

Constitutiones Sirmondianae. No. 6. July 9 (Aug. 6), 425.

Emperors Theodosius Augustus and Valentinian Caesar to Amatius V. I., pretorian prefect of the Gauls.

. . . . . (the end of the decree.)

Since it is seemly that devout persons should not be perverted by superstitions, we give orders that Manichaeans and all heretics or schismatics or astrologers and every sect unfriendly with the catholics should be driven out of all cities in order that they may not be sullied by the contagious presence of criminals.

We deny to Jews or pagans the right of pleading a case in court or of serving as soldiers. We are unwilling that followers of the Christian law should be subject to them, lest they take advantage of their authority, and change the faith that should be venerated. Wherefore we order that all persons touched with this unfortunate error be excluded unless a timely amendment cure them.

Given the ninth of July at Aquileia in the eleventh consulship of our lord Theodosius Augustus when Valentinian also was consul.

20. Sacrifices Prohibited. Temples and Shrines to be Destroyed

C. Th., xvi, 10, 25. Nov. 14, 435.

The Emperors Theodosius and Valentinian, the Augusti to Isidorus, the pretorian prefect.

We forbid all abominable and censurable offering of victims for polluted pagan purposes and other sacrifices prohibited at the command of ancient ordinances. And all pagan shrines, temples and sanctuaries which still exist, we order to be destroyed at the command of the magistrates and to be atoned for by the erection of the sign of the adorable Christian religion. Be it known to all, if it happen that any is declared by a competent judge after proper trial, to have violated this law he shall be punished with death.

Given at Constantinople the fourteenth of November in the fifteenth consulship of Theodosius and in the fourth of Valentinian, the Augusti.

21. The Festival of the Majuma [1] Abolished.

C. Th., xv, 6, 2. 399 Oct. 2.

The same Augusti to Aurelianus, pretorian prefect.

(After other provisions.) We allow the public games to be celebrated lest a spirit of gloom be engendered by excessive restriction upon such things. But we refuse to allow that detestable and unseemly spectacle, the majuma,[2] because shameless license is covered by that name.

Given the second of October at Constantinople when Theodorus was consul.[2]

22. Paganism Condemned and Sacrifice Forbidden

Corpus Legum Novellarum Theodosii II, iii, 438, Jan. 31.

The Emperors Theodosius and Valentinian, Augusti to Florentius, the pretorian prefect.

(After a long disquisition on the need of maintaining the

[1] This popular festival which took the form of a mock sea fight at at the mouth of the Tiber occurred in May.

[2] An Eng. translation of this law is found in Humphrey, *Politics and Religion in the Days of Augustus*, p. 73.

true religion): Hence our clemency perceives the need of keeping watch over the pagans and inhuman gentiles who, by natural depravity and stubborn lawlessness, forsake the path of true religion and perform the nefarious rites of sacrifices and the errors of baleful superstition by some means or other in the hidden solitudes when they do not make a sort of public profession of their crimes to insult divine majesty and to show scorn of our age. Not the thousand terrors of laws already promulgated nor the penalty of exile pronounced upon them deter these men, nor though they cannot reform can they learn restraint at least from the weight of their crimes and the multitude of their victims. But that insane audacity transgresses continually; our patience is exhausted by their wicked behavior so that if we desired to forget we could not disregard it. Therefore although the love of religion can never be tranquil, although the pagan madness demands the severity of every punishment, nevertheless mindful of our innate clemency, we decree by unswerving command that whoever shall be found in any spot with polluted and contaminated mind offering sacrifices shall suffer our wrath against his life and property. For we ought to offer this better victim, preserving unsullied the altar of Christianity. Or shall we endure longer the changing of the seasons under the angry mood of heaven, which exasperated by pagan perfidy preserves no longer the equanimity of nature? For why has Spring lost its wonted graciousness? Why has Summer with scanty crops robbed the industrious husbandman of his hope of harvest? Why has the fierce inclement Winter blasted the fruitful earth with piercing cold and the bane of sterility, unless nature has passed a decree of its own to avenge impiety? In order that we may not be compelled to endure these conditions longer the holy majesty of heavenly power must be propitiated as we have said by pacificatory vengeance.

In addition the laws which were passed with innumerable provisions against the Manichaeans, etc. . . .

(Then follows a list of heretic sects that are put under condemnation.)

Given the thirty-first of January at Constantinople when our lord Theodosius the Augustus was Consul for the sixteenth time with him who was afterwards proclaimed.

23. Temples to Remain Closed. Sacrifice and all Pagans Rites Forbiden

C. J., i, 11, 7, Nov. 12, 451.

The Emperors Valentinian and Marcian, Augusti, to Palladius, the pretorian prefect.

No one shall again open for purposes of veneration and worship, the temples which were closed some time since. Far be it from our age to render the ancient honors to shameful and abominable idols; to deck the unholy temple doors with wreaths; to kindle fires on the impious altars; to burn incense on them; to slay sacrificial animals; to pour wine from sacrificial bowls and to consider as God's service what is only blasphemy.

Whoever, contrary to this order of our serenity and the commands of the most hallowed ancient decrees, seeks to make such sacrifices, shall be charged by due course of law with his shameful crime in open court, and upon conviction shall undergo the confiscation of all his property and the penalty of death.

Likewise his accomplices and those who assisted in the sacrifice shall suffer the same penalty that threatens himself; so that every man in dread of the severity of our law and in fear of the penalty may forbear to celebrate the forbidden sacrificial rites.

However, if after a regular complaint and examination into the case followed by the conviction of the offender, the

honorable governor of the province neglects to punish so serious a crime, then the judge himself must pay to our fisc, 50 pounds of gold, likewise the officials under him must pay 50 pounds.

Given the twelfth of November in the consulship of Martian, the Augustus.

D. PRO-PAGAN

1. The Festival of the Majuma Reestablished [1]

C. Th., xv, 6, 1. 396 Apr. 25.

The Emperors Arcadius and Honorius, Augusti to Caesarius, pretorian prefect.

It has pleased our clemency that the festivity of the majuma should be re-established in the provinces. Nevertheless in such a way that virtue may be preserved and modesty be maintained by chaste manners.

Given the twenty-fifth of April at Constantinople in the fourth consulship of Arcadius the Augustus, when Honorius the Augustus was consul for the third time.

2. Law-abiding Pagans not to be Disturbed

C. Th., xvi, 10, 24. June 8, 423.

The same Augusti to Asclepiodotus, pretorian prefect.

(Following other enactments.) Manichaeans and those they call Pepuzitae [2] and also those who are worse than all other heretics in this one opinion, because they are out of harmony with all on the holy day of Easter, if they persist in their madness, we punish with the same penalty, proscription of goods and exile.

[1] *Cf. C. J.*, xi, 46, 1. For the prohibition of this festival three years later *vide supra*, p. 238.

[2] The Pepuzitae, also called Montanists, took their name from the Phrygian town of Pepuza.

But we particularly demand of Christians, whether they are really such or are called so, that they shall not dare, abusing the authority of religion, to lay hands on the Jews and pagans who live peaceably and attempt nothing turbulent or contrary to the law. For if they have been violent against the quiet or have disturbed or plundered their property, summoned before a tribunal they shall be compelled to restore, not alone those things which they carried off, but three and four fold.

Furthermore, let the rector of the provinces, the officials, also the provincials know that if they have permitted this to be done, they shall be punished as well as those who did it.

Given at Constantinople the eighth of June in the consulships of Asclepiodotus and Marinianus.[1]

[1] *Cf. C. J.*, i, 11, 6.

CHAPTER VIII

Laws after Theodosius II and Valentinian III

The following group of 4 laws constitute the legislation affecting paganism given from 472 to 527. They are all found in the *Codex Justiniani.* Every one of these laws is directed against the pagans. One of the most interesting, *C. J.,* i, 11, 10, unfortunately bears no date but was presumably drawn up after 472, since *C. J.,* i, 11, 8 bears that date. Towards apostasy it displays the spirit we have already encountered but the penalty for the offense has increased in harshness. We are reminded of Julian's action towards Christian teachers and students of the classics, when we read here that no pagan is to be permitted to teach. Perhaps the most striking feature of the law is the evidence of the abandonment of the old *laissez-faire* attitude in regard to pagans themselves and the adoption of a policy of coercive conversion of pagans. It had long been illegal to practise pagan rites but no attempt hitherto seems to have been made by the government to force pagans to adopt Christianity. By this law, however, it becomes a penal offense to *be* a pagan as well as to observe the forms of any pagan cult. A scheme for transforming pagans into Christians is set forth in this decree, and care is taken to insist upon the early baptism of children.

The last law of this section is one of Justinian's given in 527 and shows how persistent was paganism even at this date. Naturally from the last quarter of the fourth century on the inroads of Germanic tribes contributed to swell

the declining numbers of the pagans still within the Roman State.

Our sources for secular laws against the pagans end with Justinian's reign and with them the limit of our field of investigation is reached. Had we time we might examine how the Church, aided by the secular arm, continued to wage the war begun by the government, and to read in the canons of Church councils and in the prohibition of penitentials [1] how long drawn out was the conflict.

But here we must leave the pagans. We have followed for two centuries the legislation affecting them. We have witnessed the inroads of Christianity upon pagan cults and have seen how, becoming in 311 one of the many legalized religions in the Roman State, Christianity, supplanted the old state religion and finally became the only legal religion within the empire. We have observed the growth of legislation proscribing public and private observance of heathen cults. Finally we have seen how the pagans lost the tacit right to remain outside Christianity and were ordered to adopt the faith of the triumphant Church.

ANTI-PAGAN

1. Pagan Practices Prohibited

C. J., i, 11, 8. a. 472(?).

The Emperors Leo and Anthemius, Augusti to Dioscorus, the pretorian prefect.

Let no one dare attempt what has frequently been forbidden the followers of pagan superstition, knowing that he commits a public crime who ventures to perpetrate such an offense.

And we so desire to check such crimes that when anything of the sort is done even upon the estate or under the

[1] See H. J. Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche*, Mainz, 1883, *passim;* also Wasserschleben.

roof of another man, if it be with his consent, that estate or building shall be confiscated to the might of the most sacred treasury. Moreover, the owners, for this cause alone, that they wittingly consented to the contamination of their property by such abominations, shall, if they are distinguished by position or any office, lose that position or office and suffer the confiscation of their goods. If they are private citizens or of humble rank, they shall receive corporal punishment and then be sent to the mines into perpetual banishment.

2. Pagan Rites Forbidden and Bequests for Pagan Cults Prohibited

C. J., i, 11, 9.[1] No date is given but it follows a law presumably of 472.

.....We order that our magistrates both in this royal city and in the provinces shall take the greatest care to become informed of the case both by themselves and by the most religious bishops and to institute legal inquiry into all the impieties of pagan superstition, that these offenses may not be committed, and if committed, may be punished. But if the right of punishing (*coercitio*) these offenses exceeds the provincial power, they shall be referred to us, lest responsibility for, and incentive to, the crimes fall upon the judges themselves.

But no one is permitted either by will or by gift to leave anything to a community or to individuals for the purpose of maintaining the impiety of the pagans. Although this will or testament or gift may not be specifically set forth in words, but in another fashion, its author may assuredly be brought before the judges.

But that property which is so bequeathed or bestowed, whether granted or bequeathed to those individuals or those communities shall be taken away and shall be appropriate

[1] This law is given in Greek.

for the cities in which those persons lived or in which such communities are situated that it may be expended like public revenues.

All the penalties which were instituted by preceding emperors against the error of the pagans or in favor of the orthodox faith shall be valid and unchanged in perpetuity and maintained by this present pious legislation.[1]

3. Baptized Persons who follow Pagan Practices to Suffer Death. Provisions for the conversion of the unbaptized. Pagans Forbidden to give Instruction

C. J., i, 11, 10.[2] No date given.

.....Since some persons have been discovered, who, imbued with the error of the impious and criminal pagans, do those things which move a clement God to just wrath, we do not suffer those matters relating to them which have not been hitherto regulated to go longer unnoticed, but knowing that after abandoning the worship of the true and only God, in insane error they have made sacrifices to idols and have celebrated the rites that are replete with every impiety. Those in particular who have committed these crimes after they have been considered worthy of holy baptism, we subject to punishment worthy of the offense of which they are convicted and this we do in all mercy; and in future through this present law we decree for all, that they who have been made Christians and who have been deemed worthy of holy and saving baptism at whatever time soever, if thereafter it appears they have lingered in the error of the pagans, they shall suffer death. But those who were not considered worthy of holy baptism ought to show themselves whether they are staying in this royal city or in the provinces and go to the blessed churches with their

[1] *Cf. C. J.*, i, 5, 15, a decree of the same year in which it is forbidden that any but Catholic Christians be appointed as judges.

[2] This law is found in Greek.

wives and children and all the household dependent upon them to be taught the true faith of the Christians, and being taught they should abjure their former error and receive saving baptism or else understand if they despise it, that they shall have no part in our State and shall be forbidden to own real or personal property but shall be deprived of every thing and left in poverty in addition to the legal penalties to which they shall be liable.

Furthermore, we forbid any teaching on the part of those who labor under the delusion of the pagans lest with their reasonings they pretend to instruct those who unfortunately listen to them while in fact they corrupt the souls of their pupils. Nor shall they receive any income from the fisc since they may not derive such income even from the preparation of sacred letters or of pragmatic rescripts.

And if any man either here or in the provinces is proved to offend in these ways and does not speedily visit our holy churches with his wife and children as we have ordered he shall be subjected to the above-mentioned punishments and his goods shall be confiscated to the fisc and he himself shall be sent into exile. Moreover, if anyone in our State is found secretly offering sacrifices and worship to images he shall suffer the destruction which Manichaeans and Borboritae, who are the same, justly undergo: for we deem the one class to be the same as the other. This also we decree, that their children of tender age at once and without delay shall receive saving baptism, and those who have passed the age of childhood shall attend the blessed churches and be instructed in the holy scriptures and so yield themselves to sincere penitence and reject their former error to receive holy baptism; for by this means they will attain surely the true and orthodox faith and will not again lapse into their former error. But those who have themselves insincerely received or shall receive saving baptism for the sake of re-

taining military rank or their own possessions and who leave their wives and children or other members of their households in pagan error shall be deprived of their goods and of any share in our state and shall be subject to the penalties which they deserve when it is proved that they received holy baptism in bad faith. These provisions we put in effect against the wicked pagans and the Manichaeans and the Barboritae who are evidently a party of the Manichaeans.

4. Pagans Barred from Office and their Real Property to be Confiscated

C. J., i, 5, 12. a. 527.[1]

The Emperors Justin and Justinian, the Augusti. (After various provisions touching the heretics, particularly the Manichaeans). It is our intention to restore the existing laws which affect the rest of the heretics of whatever errors or name they are, (and we label as heretic whoever is not a member of the Catholic Church and of our orthodox and holy faith). likewise the pagans who attempt to introduce the worship of many gods, and the Jews and the Samaritans, and to render them more effective by this enactment and, in addition, to issue more provisions by which there may be greater security, honor and esteem to the participators of our holy religion. All are able to perceive, as we have decreed, that those who do not rightly venerate God shall lose their real property. We forbid any of the above-mentioned persons to aspire to any dignity or to acquire civil or military office or to attain any rank, with the exception of the men who are called the imperial body guard (cohortalis).

For we wish them to be held subject to this restriction from the beginning and not to have the excuse of their false religion, so that while they remain in that state, they shall fulfil all duties, shall perform every military burden, and be

[1] This law is found in Greek.

prohibited both from promotion and from indicting orthodox Christians for private or public debts; the children of these persons shall suffer the same lot and if they succeed in escaping it for a while, they shall be brought back to it. . . . But if any heretics, or more especially any pagans or Jews or Samaritans and those who are like them hold any of those positions which we have mentioned and have been able to acquire any dignity or have been registered as advocates or have been endowed with military or other office, we order that they shall forthwith be deprived of them. For we desire to purify the above-mentioned positions from contact with such persons, now and forever, not only in this glorious city but in all the provinces and in all the earth.

There is nothing new in this, for in the sacred rules which govern the military offices, it is stated that whoever holds these positions ought to be orthodox. Nevertheless this law seems to be particularly ours because it is confirmed by us and it is not to be disregarded as hitherto when it was neglected by some and preserved only in documents. For a thing does not belong so much to them who first discover it as to those who employ it best after discovery. If there is any infringement of this our statute, we declare not only that the election of a man to a forbidden office was invalid and forbid it to be longer held, but we fine him 30 pounds of gold. We impose a fine of 8 pounds of gold on those whose duty it will be to keep public registers of such men, if cognizant of the fact of his perverted religion, they nevertheless admit him and do not oppose nor reject him. Not even do we regard the magistrates as guiltless if they have admitted to their offices those whom they know to be debarred by us (the soldiery [1] of the imperial clearly being excepted), but from these also we exact a fine of 50 pounds of gold.[2] . . . . .

[1] *Militia cohortalium.*

[2] *Cf. C. J.*, i, 5, 21, *anno* 531.

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