

Université de Neuchâtel
Recueil de travaux publiés par la Faculté des Lettres et Sciences Humaines
Cinquante-cinquième fascicule

Droit, religion et société
dans le
Code Théodosien

Troisièmes Journées d'Etude sur le *Code Théodosien*
Neuchâtel, 15-17 février 2007

sous la direction de

JEAN-JACQUES AUBERT

et

PHILIPPE BLANCHARD

Université de Neuchâtel
Faculté des Lettres et Sciences Humaines
Librairie Droz S.A.
Genève 2009

ISBN 978-2-8399-0565-7
ISSN 1660-0460

Tous droits de reproduction,
même partielle, et de traduction réservés pour tous les pays
Copyright by Université de Neuchâtel © 2009

Sommaire

Remerciements	ix
Auteurs des contributions	xi-xii
Abréviations	xiii-xv
Préface.....	xvii-xviii

I. Introduction

Paul J. du Plessis

The Structure of the <i>Theodosian Code</i>	3-17
---	------

II. Christianisme et judaïsme

Lellia Cracco Ruggini

Il <i>Codice Teodosiano</i> e le eresie	21-37
---	-------

María Victoria Escribano Paño

The Social Exclusion of Heretics in <i>Codex Theodosianus</i> XVI.....	39-66
--	-------

Iole Fagnoli

La duplice conservazione di un testo normativo in tema di eresia: <i>summus error</i> o scelta consapevole dei compilatori?	67-85
--	-------

Philippe Blaudeau

Puissance ecclésiastique, puissance sociale: le siège alexandrin au prisme du <i>Code Théodosien</i> et des <i>Constitutions Sirmondiennes</i>	87-110
---	--------

Giovanni de Bonfils

Brevi cenni sul Patriarca degli ebrei.....	111-128
--	---------

José Luis Cañizar Palacios

La utilidad política y social del vocabulario religioso en la legislación del <i>Teodosiano</i>	129-146
--	---------

III. *La famille*

Paola Ombretta Cuneo

Le mariage dans le *Code Théodosien* et dans la société de l'Antiquité tardive.....149-158

Patrick Laurence

Les mésalliances dans le *Code Théodosien*.....159-176

IV. *Catégories et relations sociales*

Filippo Carlà

Tassazione sociale ed aristocrazia senatoria: la *gleba senatus*.....179-211

Lucietta Di Paola

I *curiales* nella legislazione di Valentiniano e Valente213-227

Sylvie Crogiez-Pétrequin – Pierre Jaillette

Images de la désertion et des déserteurs dans le *Code Théodosien*229-243

Aude Laquerrière-Lacroix

La *vicinitas* à l'épreuve du droit: la mutation des *iura vicinitatis* dans l'Antiquité tardive245-257

V. *Le monde du travail*

Aleksandr Koptev

The Colonate in the *Theodosian Code* and its Interpretation in the *Breviary of Alaric*.....261-285

Pasquale Rosafio

Il peculio dei coloni nella tarda antichità287-302

Christel Freu

Dockers et portefaix du monde romain: réflexions à partir du *Code Théodosien* 14.22.1 concernant le *corpus* des *saccarii* du Portus Romanus303-326

Chantal Vogler

Les médecins dans le *Code Théodosien* 13.3 et la *Relatio* 27
de Symmaque.....327-373

*VI. Entre deux mondes***Soazick Kerneis**

Francus ciuis, miles Romanus: les barbares de l'Empire
dans le *Code Théodosien*377-399

Andrea Lovato

Les actes juridiques privés, entre légitimité et usurpation401-408

*VII. Conclusions***Giuliano Crifò**

Codex Theodosianus e storia sociale in dissertazioni di storia
del diritto romano e nei lavori dell'Accademia Romanistica
Costantiniana411-426

Francesco Amarelli

Codex Theodosianus e *scientia iuris*427-432

Index

- des sources.....433-437
- général439-445

The Social Exclusion of Heretics in *Codex Theodosianus XVI**

MARÍA VICTORIA ESCRIBANO PAÑO

Book XVI of the *Theodosian Code*, as well as being a compendium of religious rules from Constantine to Theodosius II, can also be read as testimony to the process of organisation of the church within the *res publica* and of identification between Christianity and society.¹ Title 5 (*de haereticis*) reveals that the social exclusion of dissidents from the Nicene creed played a decisive role in the creation of Christian identity.²

Roman society barred, above all, tyrants, both as bad princes and usurpers,³ and barbarians,⁴ who were seen by traditional historiography in the fourth century as internal and external enemies respectively of the *res publica*.⁵ A comparative analysis of the legal status of *hostis publicus*⁶ and of the heretical groups in the laws compiled in the *Codex Theodosianus* shows a transfer from the ideology justifying the segregation of the *hostis publicus* to that underlying the social exclusion of the *haereticus*. This influence can be seen in the twin rhetorical and regulatory nature of the laws. Not only words referring to conspiracy and treason (*conspiratio, seditio, turba*)⁷ were used in the legislation, but the penal repression of heretics also incorporated some of the punitive actions used against public enemies. *CTh.* 9.40.17, issued in Constantinople in 399, enforced the *damnatio* of Arcadius's powerful *praepositus sacri cubiculi*, the eunuch Eutropius. *Labes, pollutio morum, contagio, prodigium, saevitia*, which were topical pieces of political invective and which give evidence of the continuity of the intrinsic unity between politics and religion in Roman mentality since its origin, are ascribed to

* This work is part of the Research Project HUM2005-00209, funded by the DGICYT of the Ministerio de Educación y Ciencia.

¹ Hunt 1998.

² Iricinschi – Zellentin 2008, *passim*.

³ Neri 1997; Escribano 1997.

⁴ Dauge 1981, 307-78; Lhereux-Godbille 2003.

⁵ Wardman 1984; Scardigli 1985.

⁶ The definition of *hostis* given by Festus, *De uerborum significatione, s.v. hostis*, is as follows: “Hostis apud antiquos peregrinus dicebatur, et qui nunc hostis, perduellio.” See Vittinghoff 1936, 10.

⁷ *CTh.* 16.5.3 (AD 372); 16.5.6 (381); 16.5.9 (382); 16.5.10 (383); 16.5.12 (383); 16.5.16 (388); 16.5.38 (405); 16.5.65 (428).

Eutropius, who is the victim of punitive actions such as the confiscation of his possessions, loss of his position and dignities, cancellation of his *acta*, *damnatio memoriae* and exile in the form of *relegatio in insulam*. Both the terminology and the penalties against Eutropius, except for the *rescissio actorum*, are part of the regulations against heretics.

“In aliis locis vivant ac penitus a bonorum congressibus separentur,”⁸ “nihil ad summum habeant commune cum reliquis,”⁹ and “haereticorum polluta contagia pelli urbibus, uicis proturbari iubemus”¹⁰ are expressions that illustrate the ideology of exclusion and segregation that pervades the majority of the sixty-six laws that constitute Title 5 of Book XVI of the *Codex Theodosianus*.

The statement that heretics must be removed from the community and expelled from the cities is recurrent in anti-heretic laws, particularly since 380. The reiteration of verbs such as *pellere*, *propellere*, *expellere*,¹¹ *segregare*¹² is an indication of the determination of Theodosius and his successors to put an end to religious discord in the towns and cities and of their use of legislation to reconstruct unity around Nicenism.¹³

Taking all this into consideration, it is my purpose to examine the development of the discourse on the exclusion of heretics in the laws of Book XVI of the *Codex Theodosianus*, looking into some of the laws against heretics issued by Theodosius I, whose chancery was the *fabrica* of marginalisation of dissidents.¹⁴ From this analysis it will be construed that, although his policy on religion did not follow a definite plan¹⁵ and was dictated by suitability, opportunism, balance of pressure exerted by bishops, and empiricism, with frequent rectifications, the threat of excluding those who did not accept Nicenism was constant throughout Theodosian legislation from the very beginning. The laws, which had traditionally been an instrument of integration into the Roman world,¹⁶ were used by Theodosius as a means of exclusion.

A different question was the enforcement of the laws.¹⁷ On the one hand, rectifications were persistent in Theodosius’s policy on religion;¹⁸ on the other

⁸ *CTh.* 5.34 (398); 16.5.13 (384).

⁹ *CTh.* 16.5.18 (389).

¹⁰ *CTh.* 16.5.20 (391).

¹¹ *CTh.* 16.1.3 (381); 16.5.6 (381); 16.5.10 (383); 16.5.11 (383); 16.5.12 (383); 16.5.13 (384); 16.5.18 (389); 16.5.19 (389); 16.5.20 (391); 16.5.30 (396[402]); 16.5.31 (396); 16.5.32 (396).

¹² *CTh.* 16.5.4 (372); 16.5.32 (396); 16.5.53 (414).

¹³ Errington 2006, 213-65.

¹⁴ See Lizzi Testa 1996; Errington 1997a; Errington 1997b; Leppin 2003, 35-86; Fagnoli 2005.

¹⁵ Lizzi Testa 1996; McLlynn 2005; Barnes 1990, 157-60.

¹⁶ Noetlich 2006, 115.

¹⁷ Soz. 7.12 notes that, although Theodosius prescribed severe penalties in the laws against heretics, he did not order their enforcement and, as an explanation, he points out that, in fact, Theodosius did not intend to punish his subjects but to intimidate them in order to prompt their spontaneous conversion.

¹⁸ *CTh.* 16.2.27 (390); 16.2.28 (390). See Ambros., *Ep.* 74.6 and 27; *Ep. extra coll.* 1.28; 11.6; *Ep.* 51.5 and 13; *De obitu Theodosii* 28 and 34; Rufinus, *HE* 11.18; Paulin., *V. Amb.* 24; August., *De civ. D.* 5.26; Soz.

hand, the efficacy of the laws did not depend solely on the imperial decision, but it required the collaboration of the administrative personnel, in particular, of the provincial governors and of the *principales* of the cities, who did not always demonstrate the required diligence.

Nonetheless, the exclusion of heretics was not a Theodosian creation. Constantine introduced the category of *haereticus* in legal terminology¹⁹ and was the first to make a clear difference in the laws between heretics and those who followed the *lex catholica*, by excluding the former, in 326, from the privileges granted to the clergy since 313.²⁰ This law, enacted in the East once Licinius had been eliminated (324),²¹ provided for the exemption from municipal duties that had previously been granted to clergymen in the West. Given the date, it was probably a clarifying response to the query addressed to Constantine by Dracilianus,²² *agens vice praefectorum praetorio*, after the Council of Nicaea (325), regarding the situation arising from the condemnation of Arianism. The compilers of the *Codex Theodosianus* opened the title *de haereticis* of Book XVI with Constantine's *constitutio* of 326, thus clearly demonstrating that heretics and exclusion were inseparable notions in legal definitions from the beginning. The word *alieni* can be read here to refer to heretics and schismatics regarding *privilegia*, which indicates that the discriminating rule affected the Church hierarchy rather than commoners, especially bishops, and that these *privilegia* were a subject of dispute amongst the *observatores catholicae legis* and the *haeretici*.

Since Constantine, religious coercion against dissidents was episcopally inspired.²³ The classification as orthodox or heretical was a changing question and, as Sozomen states,²⁴ depended on the power and predominance of some influential bishops surrounding the prince, and their criterion was decisive in determining who was or was not to be considered a heretic.

Both Constance II and Valens used exile against dissidents of Homoianism as a common practice,²⁵ seeking theological consensus as the foundation for social peace.

Besides Athanasius, undoubtedly the champion of expatriates – he spent thirteen of his forty-five years as bishop in exile – many others were banished from their communities for resisting the Emperor's will, such as Paulinus of Trier, Lucifer of Cagliari, Eusebius of Vercelli, Dionysius of Milan, Liberius of

7.25; Theodoret., *HE* 5.17-18. See Biondi 1940; Lassandro 1998; Sargenti – Bruno Siola 1991, *passim*; McLynn 1994, 291-360.

¹⁹ Humfress 2000, 125-47.

²⁰ *CTb.* 16.5.1 (326).

²¹ *CTb.* 16.2.1 (313).

²² Euseb., *Vit. Const.* 3.31; Theodoret., *HE* 1.17.6. See *PLRE* 1971, *s.v.* "Dracilianus", 271; and *CTb.* 2.33.1 (325).

²³ Noetlich 2006.

²⁴ Soz. 1.1.15.

²⁵ Barnes 1994, 47-61; Lenski 2002, 211-63.

Rome, Hosius of Cordoba, Hilary of Poitiers, Meletius of Antioch, Aëtius, Eunomius of Cyzicus, Pelagius of Laodicea, Eusebius of Samosata, Vetranius, Gregory of Nyssa and Eulogius of Edessa, amongst others.²⁶

At the same time the status of the church and its ministers continued to be gradually defined and improved in accordance with the consideration as *religio* granted to the Christian faith and cult by the Milan agreements (312/313).²⁷

Theodosius had hardly any intervention in this matter,²⁸ but he endorsed nineteen of the sixty-six laws that make up Title 5 of Book XVI of the *Codex Theodosianus*. And since the promulgation of *Cunctos populos*, he threatened with social exclusion those who did not accept to confess the Nicene faith.²⁹

In this law, probably drafted following the suggestions of bishop Acholius of Thessalonica,³⁰ the Nicene restoration program based on the theology of the West was announced and a new legal definition of *religio* was offered,³¹ although using cautious and somewhat elusive terms. In the first part, the use of an imperative verb was avoided and a wish (*volumus*) was expressed that the subjects live in accordance with the religion that the apostle Peter had transmitted to Romans and which at the time was adhered to by the bishop of Rome, Damasus, and Peter of Alexandria, who were considered as references of orthodoxy. Then the *religio* itself was explained by means of a trinitarian formula which was supported by the fact that it had been taught by the apostles and the evangelical doctrine. It avoided the use of the expression *fides Nicaena* and the polemical term *homooúsios*. Yet, for the first time, faith became the subject of legislation and bishops, identified by name, were thus incorporated into the lawmaking process. Neither Constance nor Valens, both of them Homoians, would have dared to legislate in order to impose a creed upon their subjects.³² Gratian had not done so either, despite openly claiming that he ruled *pro religione catholicae sanctitatis*³³ and invoking the *fides* and the *traditio* of the Gospels and the apostles to ban Donatist practices regarding baptism.³⁴

However, the enacting terms of the law are set out in the second part. Using a verb of power (“iubemus”), an excluding dichotomy was established between

²⁶ Escribano 2004a, with bibliography; Van Nuffelen 2008.

²⁷ Noetlichs 1972; Gemmiti 1991; Drake 2006; Edwards 2006.

²⁸ *CTh.* 16.2.25 (380); 16.2.26 (381); 16.2.27 (390); and 16.2.28 (390), which cancels the former.

²⁹ *CTh.* 16.1.2 (380). See Barceló – Gottlieb 1993; Noetlichs 2006.

³⁰ *Soz.* 7.4. Lizzi Testa 1996, 346-47.

³¹ Between the first and the third centuries, the Senate lost its traditional prerogative of deciding on the legality of a cult or sect. This prerogative was taken over by the emperors. Before Theodosius, Diocletian, Galerius and Constantine had included in their laws definitions of *religio* and *superstitio*. See Falchi 1986. In Gratian’s law against the Donatists (*CTh.* 16.6.2 [377]), there was already an invocation to the *fides* of the Gospels and the apostles.

³² McLynn 2005, 80.

³³ *CTh.* 16.5.4 (376).

³⁴ *CTh.* 16.6.2 (377).

the followers of this law, for whom the *nomen* Catholic Christians was reserved, and the *haeretici*, who were threatened with civil discrimination and legal incapacities resulting from *infamia*³⁵ and with the loss of their churches. This was a real problem in Constantinople, as the occupation of all churches by the Arians had become a monopoly which Gregory of Nazianzus had not been able to end one year after his arrival.³⁶ As justification for this ruling, the *haeretici* were described as “dementes” and “vesani,” and their meetings were classified as “conciliabula.” The punitive clause, vague and yet forceful, was included at the end: along with divine punishment, the Emperor maintained the right to punish those who were deemed *haeretici*. The original text included a paragraph whereby whoever neglected divine law out of ignorance or transgressed it consciously was considered a *sacrilegium*. It thus matched heresy with *sacrilegium*, a legal concept that was in many aspects akin to *crimen maiestatis*.³⁷ The compilers of the *Theodosian Code* inserted this part of *Cunctos populos* under the rubric they considered appropriate, that is, Title 2 of Book XVI,³⁸ which dealt with the status of the clergy.

According to Sozomen, Theodosius’s intention with this law was to prepare for his arrival in Constantinople from his residence in Thessalonica,³⁹ after having learned through Acholius about the situation of the churches in the East, with Constantinople being divided into various heresies. His aim was to convince the population rather than to impose his own creed upon them by force.⁴⁰ However, once in Constantinople, where he arrived on November 24th, 380,⁴¹ he offered the Arian bishop Demophilus the choice to unite the people around the Nicene creed or to abandon the churches altogether. The Homoian bishop, according to Socrates and Sozomen, refused to cooperate and, in compliance with the law, gave up the churches.⁴² After failing in his attempt to persuade rather than to impose,⁴³ on November 27th, Theodosius, with the assistance of the soldiers and amidst protests from the crowds, installed Gregory as bishop in Constantinople in the church of the Saint Apostles,⁴⁴ in an act that symbolised both the transfer of powers – in the form of the churches – from Arians to Nicaeans and the effective expulsion of the Homoian bishop, although

³⁵ Kaser 1956; Humfress 2008a.

³⁶ Gómez Villegas 2000, 79 ss.

³⁷ Ulpian (7 *de officio proconsulis*) *Dig.* 48.4.1 *pr.*: “proximum sacrilegio crimen est, quod maiestatis dicitur.” See Crifò 2005.

³⁸ *CTh.* 16.2.25 (380).

³⁹ Errington 1997a, 36-41.

⁴⁰ Soz. 7.4. On the topic of persuasion by Theodosius, see Van Nuffelen 2004, 387.

⁴¹ Socr., *HE* 5.6-7 and Soz. 7.5.5-7. See Dagron 1974, 450.

⁴² Socr., *HE* 5.7; Soz. 7.5.

⁴³ Leppin 2003, 68-76 highlights the experimental nature of Theodosius’s first laws.

⁴⁴ Greg. Naz., *Carm.* 2.1.11, 1342-1391. See Gómez Villegas 2000, 130. He only became the bishop of Constantinople after the council of May 381.

the Arians were allowed to continue to celebrate their cult beyond the city walls.⁴⁵ Nevertheless, both the presence of the Emperor and the coercion of his soldiers were needed in order to enforce the law.

The excluding effects of the law and its enforcement in other towns are emphasized by the neo-Arian Philostorgius,⁴⁶ according to whom Demophilus returned to his town, Berea; Hypatius, who was banished from Nicaea, returned to his birthplace in Kyros, Syria; and Dorotheus, cast out of Antioch, returned to Thrace, where he came from. The rest of the bishops were dispersed to various other places.

Despite the enacting of *Cunctos populos*, Constantinople continued to be mainly Arian, not so much because of fervour but because of fidelity to their former leader. Meanwhile, the Arian clergy had not renounced having Theodosius join their cause through certain individuals who had access to the imperial court. In these circumstances, the Emperor, in a gesture which denoted his disposition to dialogue with the dissidents as a means of gaining religious unity,⁴⁷ declared his wish to meet Eunomius, leader of the neo-Arians and settled in Bithynia at the time, whose reputation as a master in the art of debate had become known to the Emperor. The proposal showed a sense of opportunism and pragmatism and a wish to gather information. But the intervention of Empress Flacilla, who feared Eunomius's sophistic skills more than she trusted her husband's art of persuasion, prevented the meeting from taking place.⁴⁸

The first law issued by Theodosius that may be read as an effective declaration of social exclusion is *CTb.* 16.5.6 of January 381.⁴⁹ It is addressed to Eutropius, prefect of Illyricum at the time,⁵⁰ and is a good example of the consideration of the heretic as a harmful and crippled individual to justify his social and religious exclusion. Through this law Theodosius tried to amend from a doctrinal point of view Gratian's so-called edict of tolerance (378), which had omitted a reference to the Arians amongst those excluded from the freedom of cult,⁵¹ and to extend to Illyricum his idea of Nicene orthodoxy. With this purpose, the civil authorities of the prefecture were ordered to return the churches to the Nicaeans.⁵² This decree was probably a response to a previous query from the prefect regarding the right of possession of the churches by the

⁴⁵ Socr., *HE* 5.7 and 9.

⁴⁶ Philostorg., *HE* 9.19.

⁴⁷ Gregory of Nazianzus himself, when referring to the first religious measures taken by Theodosius once he was in Constantinople, praises his prudence and his inclination towards persuasion rather than fear as a means of conciliation; cf. Greg. Naz., *Carm.* 2.1.11, 1291-1295 and 1304.

⁴⁸ Soz. 7.6; Greg. Nys., *Oratio funebris in Flaccillam Imperatricem* (PG 46.892C).

⁴⁹ *CTb.* 16.5.6 (381).

⁵⁰ Bonamente 1977. See *PLRE* 1971, *s.v.* "Eutropius" 2, 317.

⁵¹ Socr., *HE* 5.2; Soz. 7.1. See Snee 1985.

⁵² Escribano 2004b and Forthcoming.

Arians in the dioceses of Illyricum, who had learned of the expulsion of the Nicaeans from the churches of Constantinople.

Furthermore, *CTh.* 16.5.6 had an additional, non-legal purpose: to produce an irrational, immoral and pathological image of heretics and to provoke their annulment as well as social aversion.

Indeed, through the use of a vocabulary of denigration and alluding to a medical metaphor,⁵³ Theodosius's chancery produced an intellectual, moral and religious profile of heretics using terms which were to be repeated in his enactments and in those of his successors. Making use of the law, he developed a discourse of exclusion and built a stereotype of intimidation aimed at heretics and exciting fear amongst those who might be connected with them.⁵⁴

As opposed to the vagueness of Gratian's edict of 378 regarding Arians, and contrary to the fairly elusive wording of *Cunctos populos*, *CTh.* 16.5.6 gave an exact account of who were heretics: the law states categorically that Photinians, Arians and Eunomians – for the first time Eunomius's followers were referred to by this term – must be considered heretics; in this manner, by calling them by their names a legal basis was established to enable their prosecution.⁵⁵ Besides, orthodoxy was defined and the return of the churches to the followers of the Nicene faith was ordered. Consequently, the legal foundations were laid for the exclusion of those who up to that moment had controlled the churches and their funds and were considered as local leaders by the population who benefited from charities.⁵⁶

Yet, just as important as the contents is the way they are expounded. This law signified a profound change in comparison to the previous situation and demanded clear elucidation and forceful language in order to dissuade the Arians from Illyricum and to change the population's adhesions and personal loyalties.⁵⁷

The specific purpose of the law is set forth in the heading: to ensure that no heretic had either a place or occasion to implement his madness.

With this aim, the rescripts that Gratian had subscribed expressly authorising the continuation of the Arian cult were annulled, heretics' meetings were made illegal and the compulsory observance of the *fides Nicaena* was set forth by means of the expression "haec ueneranda sunt." In the last part, after defining the activities of heretics as "crimina,"⁵⁸ the enacting terms of the law are included:

⁵³ Charrow – Crandall – Charrow 1982.

⁵⁴ See the critical approach in Escribano 2006a.

⁵⁵ Manicheans from Illyricum, whose dissidence had nothing to do with Arian controversy, were the subject of a complementary and specific law four months later (*CTh.* 16.5.7 [May 8th, 381]), also addressed to Eutropius. See Kaden 1953; and Beskow 1988.

⁵⁶ On the remuneration of bishops, see Lizzi Testa 2000.

⁵⁷ Errington 1997a, 47 believes that it was a preparatory law for the Council of Aquileia and at the same time a programmatic law for Illyricum similar to what *Cunctos populos* had meant for Constantinople.

⁵⁸ Barnard 1995.

prohibition of heretic meetings within the city walls (“vetemus”), order of expulsion from churches and even from the towns if they persisted in their intention of having meetings (“iubeamus”) and return of the Catholic churches worldwide (“toto orbe”) to all (“cunctis”) orthodox bishops “qui Nicaenam fidem tenent.” This was the real purpose of the law: to evict Arians from all churches, without exception, to the benefit of the Nicaeans.

In the middle section, following an antithetic layout widely used in rhetoric, heresy is set against orthodoxy and the law is used as a means to determine religious identities, *orthodoxus* is defined, and *haereticus* is described using profoundly derisive language,⁵⁹ barely outlined in *Cunctos populos*.

Gratian’s lukewarm attitude to Arians, the verification of the small effect that *Cunctos populos* had had before Theodosius ordered its compulsory enforcement in Constantinople, the will to intimidate heretics and incite social repulsion against them and the wish to satisfy the demands of the Nicaeans for an inclusion in the law of a vituperation of their theological opponents explain the aggressiveness of the language used.

This language reflects the traditional concept of religious crime⁶⁰ and the representation of heretics as carriers of a contagious disease of diabolical nature depicted in heresiological literature since the second century – studied in depth by Opelt and Le Boulluec⁶¹ – and taken over by Nicaeans in the fourth century, especially by Epiphanius of Salamis⁶² and Gregory of Nazianzus.⁶³

But Theodosius’s chancery had also legal precedents. Before him, Diocletian’s rescript against the Manicheans in 302,⁶⁴ Constantine’s laws against the Donatists (313-315),⁶⁵ and especially his epistle to heretics in 326,⁶⁶ had already used derogatory language. Diocletian had defined the doctrine of the Manicheans – whom he considered to be conniving with the Persian enemy – as the product of deformed minds (“pravae mentes”), and compared the spread of their “execrandae consuetudines” with the propagation of a “venenum malevolum” with which they tried to poison (“inficere”) the modest and peaceful “gens Romana” and the entire Roman universe. In the final exhortation

⁵⁹ It is not until 395 that a legal definition of *haereticus* can be found: *CTh.* 16.5.28. See Berger 1955; Maceratini 1994, 51-108; Humfress 2008b, 217-42. Cf. Puglisi 1990.

⁶⁰ See the continuity between pagan and Christian legislations regarding repression of religious crimes in Zuccotti 1992, 233-83.

⁶¹ Opelt 1980; Le Boulluec 1985.

⁶² Pourkier 1992.

⁶³ See Trisoglio 1985; Pietri 1985; Di Berardino 1993 on the use of animal symbols to depict heretics.

⁶⁴ Corcoran 1996, 135.

⁶⁵ Euseb., *HE* 10.5-7; Opt. Mil., *Ap.* 3; 5-7; and 9. August., *Ep.* 88.4; *Id.*, *Contra Cresconium* 3.70. See Maier, 1987.

⁶⁶ Euseb., *Vit. Const.* 3.64-65; Soz. 2.32.2; 4; and 5. See Silli 1987, 111-14. And it is the same vocabulary previously used to disqualify and persecute the Christian *superstitio*. See Janssen 1979-1980; Barnes 1968.

addressed to the proconsul of Africa regarding the enforcement of the law, Diocletian likened Manicheism to a contagious pestilence (“*lues nequitiae*”) that ought to be severed at its roots (“*stirpitus amputare*”). The severe penal repression stipulated against Manicheans, which included death by burning and the *damnatio ad metallum* – the harshest form of deportation – fulfill precisely this surgical function.⁶⁷

On the other hand, before the Council of Nicaea, in an epistle to the Catholic church of Alexandria in June 325, Constantine discredited the doctrine of the Arians and described it as *uenena mortifera (thanásima phármakea)*,⁶⁸ whilst in his epistle to the church of Nicomedia in November-December of the same year 325, he called them a pestilence.⁶⁹ But, undoubtedly, Constantine’s most eloquent text to illustrate his use of medical analogy is his epistle to heretics in the first half of the year 326, whereby he disqualifies their doctrines as most pernicious venoms and lethal plagues that corrupt consciences. The deadly infection caused by them requires amputation, and that is why Constantine decided to ban heretical assemblies and confiscate the buildings where they had taken place. The same law prescribed the confiscation of heretical books and the punishment of those who resorted to maleficent practices.⁷⁰

Given these precedents, Theodosius’s chancery gave shape to the law against Photinians, Arians and Eunomians by incorporating into the text expressions such as *dementia*, *labis contaminatio*, *sacrilegii uenenum*, *perfidiae crimen*, *nefandum prodigium*, *nomen monstruosum*, *eruptio factiosa*, *furor*. These terms are part of the lexicon of denigration and vituperation that had traditionally been used to disqualify from a moral and religious point of view those who contravened the public interest in religious matters.⁷¹ In addition, they had also served to vex the enemy in political invective. This demeaning and stigmatising repertoire is the same as that used by Christians, since the second-century apologists, to revile heretics. It is echoed by Gregory of Nazianzus,⁷² who was the bishop of the court when this law was being drafted.

The *dementia* and *furor* of heretics⁷³ is duplicated, at the beginning and the end of the text, which brings about the essential conception of heresy as a mental perturbation. In effect, *dementia* was attributed to those who had lost the ability

⁶⁷ Diocletian had used the antithetic style, contrasting the *uirtus Romana* with the abominable Persian *consuetudines* and the ancient Roman *religio* with the new *superstitio* of Persian origin: *Coll.* 15.3.

⁶⁸ Athanasius, *De decretis Nicaenae synodi* 38; Socr., *HE* 1.9; Gelas., *HE* 2.37.1-9.

⁶⁹ Athanasius, *De decretis Nicaenae synodi* 41; Gelas., *HE* 1.11.22-31.

⁷⁰ Euseb., *Vit. Const.* 3.64-65.

⁷¹ It is the degrading lexicon of the *crimen publicum*. See Thome 1992 and Escribano 2004a.

⁷² See Trisoglio 1985, depicting heretics as irrational beasts who insinuate with malice and deceit, and act with treachery and violence. The cause of their conduct is febrile furor. Heretics are a projection of the devil for whom they work as his emissaries. He likens heretics to a purulent plague that suppurates and infects.

⁷³ As well as the aforementioned work by Zuccotti 1992, see Diliberto 1996.

of reasoning, whereas *furor* was the worst form of madness, agitated and severe insanity,⁷⁴ which turns delirium into the natural condition of the *furiosus*, the person who becomes lost when deviating from the straight path of reason, in this case the heretic. *Furiosus* is a frequent adjective to accuse evil citizens who inflame the mob with their words and set fire to the city. In the language of political discourse and historiography, *furor* is used to designate the disorder that precedes wars and becomes a synonym of *bellum civile*. It is a powerful word, which was used about barbarians⁷⁵ and was one of the main characteristics of archetypical tyrants.⁷⁶ Jacques studied the depiction of schismatics as furious tyrants in Cyprian.⁷⁷ Their rejection of legitimate authority, the breach of concord within the community and the conflict created thereby have mental disease as their source.⁷⁸

Likewise, through the use of the expression “sacrilegii uenenum,” the madness of heretics is categorised as a demonic possession of a malign etiology. The use of the term *uenenum* is not a mere rhetorical artifice.⁷⁹ The lethal effect of the venom inoculated by the serpent was well known and in Christian mentality the serpent was the image of the devil.⁸⁰ Gregory of Nazianzus, who sees Arians as the eponym of madness and frequently attributes *alogia* to his theological contenders, makes an explicit allusion to his determination to recover his congregation, which had been contaminated by the venom of heresy.⁸¹

On the other hand, Epiphanius of Salamis in his *Panarion*, written between 375 and 378, compared each of the heresies with a different serpent. By systematically doing so he evoked their demonic origin, since the equation of snakes with the devil-Satan is already included in Genesis, in the Book of Wisdom and in the Apocalypse, and he resumed a recurrent topic in the ancient literature on heresies since Justin.⁸² Besides, Epiphanius, who had direct knowledge of the emergence and development of the Arian controversy and

⁷⁴ Gourevitch1991.

⁷⁵ See Dauge 1981, 453-54; 576-78; and 749.

⁷⁶ Escribano1993.

⁷⁷ Jacques 1982.

⁷⁸ Dunkle 1967 and 1971.

⁷⁹ It is the only mention of *uenenum* in Book XVI. It was also linked to magical practices resorting to *uenena*: *CTb.* 4.6.3 (336). Before becoming specialized terms, *medicamentum* and *venenum* were synonyms. The first comparison of *mala medicamenta* with *venena* in a legal text appears in Ulpian (19 *ad ed.*) *Dig.* 10.2.4.1.

⁸⁰ See Le Boulluec 1985, 1:20-39; Inglebert 2001; De Andía 1985; Gramaglia 1985; Mazzucco 1985; Larchet 1992, 53 ss. The contaminating power of the Manicheans' venom is also mentioned in Diocletian's rescript against the Manicheans (*Coll.* 15.3): “uniuersum orbem nostrum ueluti uenenis de suis malivolis inficere.”

⁸¹ Greg. Naz., *Or.* 25A.9-10; *Or.* 20.5; *Or.* 21.12-14; *Ep.* 202.4.

⁸² A. Le Boulluec 1985, 1:64-67.

dedicated eight entries to the various sects, labels Arius's followers as Ariomaniacs, that is, supporters of Arius's madness.⁸³

The link between poisoning and collective madness, with a sequel of factious disorders, was an ancient one: it already appears in Livy's account of the conspiracy of the *matronae* in 331 BC.⁸⁴

The term *venenum* was not only a medical reference, but it also had magical connotations, since *venenum* was part of the panoply of sorcerers.

Indeed, *venenum*, aggravated by its association with *sacrilegium*, referred, if only phonetically, to *veneficium*, a form of maleficent magic severely punished by imperial legislation since Constantine⁸⁵ and involving the illicit use of spells produced with philters and *venena* and the recitation of *dira carmina*, which intensified the intention of physically and mentally harming a person, resulting in possible death or madness.⁸⁶ Since committing *veneficium* was considered as one of the great *crimina* in penal legislation, it entailed the reduction of civil and procedural rights, the right of appeal,⁸⁷ the inapplicability of *indulgentia* and, in the majority of cases, the severest penalties.⁸⁸ In July 381, Theodosius excluded from *indulgentia paschalis* those “qui noxiis quaesita graminibus et diris inmurmurata secretis mentis et corporis uenena composuit.”⁸⁹

The Christianisation of the concept, referring these powers and maleficent practices to the devil, had not deprived it of its traditional connotations. Besides the cautious general legislation,⁹⁰ not only was delation permitted but it was obligatory.⁹¹ And it was usually hard to escape accusation, even if it was false, given the limited options of defence.

On the other hand, Arianism is viewed by the law as *sacrilegium* and, as we have already seen, since Ulpian *sacrilegium* was a legal concept that was very close to *crimen maiestatis*.

The image of heretics as serpents which can inoculate their venom and cause death is amplified by the proximity of the phrase to the expression “*labis contaminatio*.” The effect of the heretics' actions is a pestilent contamination which spreads evil like a stain (“*labis contaminatio*”).

Labes, a synonym of plague,⁹² was part of the lexicon of pestilent diseases and linked to *contaminatio*, evoking the penetration of filth into the bodies which

⁸³ Epiphanius, *Haer.* 69. See Williams 1994, 325 ss; and Pourkier 1992, 110 ss.

⁸⁴ Monaco 1984.

⁸⁵ *CTh.* 11.36.1 (314); 9.38.1 (322).

⁸⁶ On the legal status of *veneficium* since its origin, see Rives 2003; Di Mauro Todini 1988.

⁸⁷ *CTh.* 11.36.1 (314 or 315). See Grodzynski 1974.

⁸⁸ *CTh.* 9.38.4 (368). See Waldstein 1964.

⁸⁹ *CTh.* 9.38.6 (381). See Baldini Moscadi 1976.

⁹⁰ See Rivière 2002.

⁹¹ See Gaudemet 1980; Escribano 2006b.

⁹² See Bodson 1991; Escribano 2007a.

left stains (ulcers) and stench. Photinians, by sullyng and perverting the purity of faith through their heretical error, were depicted as a pestilent epidemic.

The list of descriptions of pestilences and their subsequent social calamities, from that included in the *Iliad* and in Thucydides' paradigmatic account to the so-called Antonine plague, is a long one. And the annalists already allude to a causal nexus between the epidemic and the supernatural, on the one hand and between pestilence and anarchy, disorder and terror, on the other.⁹³

Both implications are considered by the law. Heretics are indeed depicted as a monstrous and impious phenomenon contrary to divine law.⁹⁴ *Monstrum* and *prodigium*, which in traditional religious language were signs of divine will,⁹⁵ now refer to the creators of the sects to indicate their anomaly, their lack of adaptation and their estrangement within their environment and therefore, the social danger they represent. They were crazed creatures, possessed by the devil, whose behaviour was that of monsters. It must be remembered that in Rome mutilated or deformed creatures were seen as malefic signs and were bearers of bad omens. In fact, physical integrity was an essential requirement in order to be a pagan priest; a physical malformation or flaw would prevent the exercise of such a function.⁹⁶

Along with the physical malformation of heretics, clearly depicted by the use of these terms, there is an allusion to the medical metaphor of haemorrhage (“*eruptio factiosa*”) to point out the devastating social consequences derived from the diffusion of heresy.

Eruptio connotes the image of a haemorrhage that may propagate pestilence through physical contact.⁹⁷ In combination with the adjective *factiosa*, derived from the political lexicon – Cicero in *De Republica* called “*factiosa tyrannica*” the *res publica* of the *populares*⁹⁸ – it indicates that it induces those affected by it into rabble and tumults (*turbae, illicitae congregationes*) which alter order and divide society. Fraud (“*per fraudem*”), treachery and malice (“*adfectatis dolis*”) as typical heretical behaviour increased the danger of the spread of the disease. These were manipulative intrigues already reported by Gregory.⁹⁹

Thus, by representing heretical dissidence as a contagious pestilence, both sacrilegious and malign, the product of irrational monsters inoculated by the devil, which threatens contaminating the healthy bodies of those who observe

⁹³ Liv. 10.31.8 and 40.19.3: “*annus pestilentia gravis prodigiis sollicitus; prodigia (...) pestilentia in agris forisque.*” In archaic mentality, plague, famines and prodigies are linked. See André 1980.

⁹⁴ *CTb.* 16.5.6 (381): “*nefanda monstruosis nominibus auctorum prodigia sectarum.*” Cf. Greg. Naz., *Or.* 14.33.

⁹⁵ Cuny-Le Callet 2005, 41 ss.

⁹⁶ Sen., *Contr.* 10.4.8 and 4.2.2.

⁹⁷ Cf. Greg. Naz., *Or.* 2.37 and 43; *Or.* 9.6; *Or.* 20.5; *Or.* 21.12; *Ep.* 202.4; and *Or.* 25.9.

⁹⁸ Cic., *Rep.* 1.45.

⁹⁹ Trisoglio 1985, 815-17.

the Nicene faith, state intervention became mandatory in order to remove heretics both as contaminating and divisive agents in society.¹⁰⁰ Forced expulsion was imposed and heretics were confined beyond the city walls.¹⁰¹ This banishment from the community is presented as a surgical operation, as it is intended to eliminate infection by amputation of the diseased member. The enacting terms act as a prescription of the remedy.

The use of these words had a dual purpose. They create in the collective imagery an abominable representation of heretics aimed at causing social aversion and intimidation and at justifying their expulsion from churches and, should they persist, from the cities. In later laws, the threat of contamination posed by heretics will be claimed as the grounds for the penalty of banishment and deportation. In such cases, the surgery was complete.¹⁰²

On the other hand, there are no indications in the law about publication. If it originally existed, the compilers – following Theodosius's instructions¹⁰³ – eliminated it and only preserved a reference to the *datio*. However, according to the common publication and promulgation procedures described in *constitutiones* of the *Codex Theodosianus*,¹⁰⁴ we can presume that the law ought to be read aloud *apud acta* or posted for public knowledge by means of *propositio* on *tabulae dealbatae* or by means of *incisio*, that is, epigraphic inscription on a hard support, a less common method at the time. Reiteration, emphasis and terminology are persuasive processes that increase the impact produced by the mere physical presence of an imperial document in a public place.¹⁰⁵ The expressions used had well-known meanings to Christians, who were accustomed to medical metaphors in preaching.

Besides, and even though the laws did not specify it, the cooperation of the bishops for the diffusion of the law must be taken into account. The structure of the church provided a prime platform for the communication of the contents of the laws to the faithful. They may have been read during religious services or displayed on durable material – wood – in the porches of churches.

And from the time of Constantine, bishops were the receivers of imperial *epistulae*. They may have received copies of the laws addressed to public servants to widen their diffusion. This procedure is foreseen by the Justinianic *Novellae*.¹⁰⁶

As in writings on heresies, for example those of Epiphanius, the unity of the truth of the *fides Nicaena* is opposed to the plurality of heresies, a symptom of their falseness. The orthodox person is the follower of the Nicene faith – it is

¹⁰⁰ Gratian, in 377, had used the words *furor* and *virus* to refer to Donatists (*CTh.* 16.6.2.).

¹⁰¹ Maier 1995; Baccari 1991.

¹⁰² Escribano 2006a.

¹⁰³ Honoré 1986; Matthews 2000, 10-84.

¹⁰⁴ On the forms of publication of the laws, see Matthews 2000, 185-95.

¹⁰⁵ Matthews 1998.

¹⁰⁶ Lanata 1984, 107; Barone Adesi 1998.

mentioned twice – and, right from the outset, the definition of orthodoxy seems to be an amplification of the contents of *Cunctos populos*, a significant precision in the way of expressing the trinitarian formula can be noted, a change that must be attributed to the influence of Oriental Nicaeans, in particular, to the intervention of Gregory of Nazianzus.¹⁰⁷ On the one hand, in *Oratio* 36, pronounced soon after his acknowledgement as bishop in Constantinople, Gregory had already expressed his disposition to become an inspirer of the Emperor's laws;¹⁰⁸ and in *Oratio* 37, addressed again to the new Emperor and his court just before the promulgation of the law, Gregory requested Theodosius to silence heretics by dictating a law to bring Arian preaching to an end.¹⁰⁹ On the other hand, we can find similarities between the theology of the Holy Ghost by Gregory and the pneumatologic insertion of *CTh.* 16.5.6.¹¹⁰

In Thessalonica, where Acholius had undertaken to make his links with the Occident known, the polemical term *homooúsios* had been avoided. Since the New Rome, under Gregory's inspiration, "the undivided substance of the incorruptible Trinity, rightly called by believers by the Greek word *ousía*" was defended, the Holy Spirit was referred to using acceptable terms to pneumatomachians or Macedonians and any reference to Damasus or Ambrose was omitted.

But Gregory's influence in the text probably went further. As pointed out by Honoré, Theodosius was directly involved in the lawmaking process and, at any rate, according to legislative procedure, he had to endorse all the laws even though the Hispanic Emperor was a soldier and not an expert in theology. He had not even been baptised when he was appointed co-Augustus by Gratian in January 379. However, after settling in Thessalonica and under the influence of its bishop, Acholius, he resolved to become strongly committed to Church matters. Strongly determined to integrate Nicene bishops into the construction of his regime, he was careful not to let them see a better protector in Gratian.¹¹¹ As a result, it was necessary to evict the Arians from Eastern churches. The legislative initiative was his, as had been the promulgation of *Cunctos populos*, but not so much the tenor of the law. According to what is known from the studies of Honoré, Harries and De Bonfils, the final drafter of the text of the laws was the *quaestor sacri palatii*.¹¹² According to Honoré,¹¹³ the *quaestor* in charge of *CTh.* 16.5.6 was a Christian. As such he may have known the rhetorical use of the language of denigration and used it as a deterrent and justification. Besides, he

¹⁰⁷ See Ritter 1965, 35-36.

¹⁰⁸ Greg. Naz., *Or.* 26.10; see Gómez Villegas 1997.

¹⁰⁹ Greg. Naz., *Or.* 37.23.

¹¹⁰ Norris 1985; Moreschini 1983.

¹¹¹ Leppin 2003, 66-74; Escribano 2004b.

¹¹² Harries 1988; Honoré 1998, 33-47.

¹¹³ Honoré 1995.

had access to the archives of the *scrinia*, where he could research legal precedents, in particular Diocletian's rescript against the Manicheans – it is obvious that in 302 they were not considered as heretics – regarded by Humfress as a paradigm of the later casuistic definition of the various heresies as punishable offences.¹¹⁴ Yet, it is hard to believe that the trinitarian formula was the *quaestor's* contribution. As Harries notes, the *quaestor* was, above all, in charge of the style, but the content was determined by the proposers and by those who debated on legislative matters at the consistory.

Bearing in mind the concomitance between the above-mentioned definition of orthodoxy and Gregory's formulations, his presence in the court, his direct communication with the Emperor and his demand for a law against Arians in his *Oratio* 37, it is possible that he might have put forward some suggestions that were later incorporated into the text of the law.

The precision in linking Arians to *venenum* and accusing Eunomius's followers of treachery required direct knowledge of theological controversy. On the other hand, the identification of heretics as a poison and a pestilent epidemic and the attribution of *furor*, *perfidia* and malice appear in Gregory's texts before the promulgation of this law, as Trisoglio points out.¹¹⁵

Based on this ruling, Theodosius treated heretical groups as public enemies, in particular Eunomians,¹¹⁶ whom he wished to present as extremists in order to exemplify his desire to end religious division by means of the social and religious exclusion of heretics.

Eunomius,¹¹⁷ a disciple of Aetius the Syrian¹¹⁸ and bishop of Cyzicus since 360, became the leader of the partisans of the ultrasubordinationist Christology of his master after his disappearance in 366. His theology was amongst the most radical within the context of doctrinal controversies in the fourth century. However neo-Arians' social notoriety did not derive from their Christology but from Eunomius's ability to win adherents.¹¹⁹ In fact, neo-Arians were one of the most dynamic groups in Constantinople before and after Theodosius's arrival, according to Gregory of Nazianzus in his *Theological Discourses*, in particular, in *Oratio* 31.¹²⁰ They were in control of the agora of Constantinople, were organised as a separate church with bishops in the principal cities of the East and developed an intense missionary activity. By 379, Eunomius had already endured exile four times.¹²¹ The historian Socrates categorically states in his

¹¹⁴ Humfress 2000.

¹¹⁵ Trisoglio 1985.

¹¹⁶ See Escribano 2007b.

¹¹⁷ Kopecek 1979; Vaggione 2000.

¹¹⁸ Kopecek 1979, 1:61-298.

¹¹⁹ Socr., *HE* 2.35; *Soz.* 6.26.

¹²⁰ Greg. Naz., *Or.* 31.30. Cf. *Or.* 27. See Norris 1985.

¹²¹ Escribano 2006a.

chapter dedicated to Arians, Novatians, Macedonians and Eunomians, that Theodosius did not persecute any of them, except for Eunomius, who was banished for holding meetings in private houses of Constantinople where he used to read his writings and for causing great harm to the people through his teachings.¹²²

The neo-Arian historian Philostorgius, the voice of heretics according to Argov,¹²³ collated, amongst others, with Socrates and Sozomen, gives a sequential account of the circumstances that led to the promulgation of the laws against them.

Eunomians were not invited to the great council celebrated between May and June 381 in Constantinople, from which Theodosius expected Gregory's ratification as bishop of the city and the episcopal sanction of the new theological and ecclesiastical order recently set forth by means of various laws, but the Eunomians' opposition to giving up the churches must have been considered in the council's sessions.¹²⁴ When the participants required the Prince to enforce their agreements, the Emperor published an edict expressly and exclusively directed against Eunomians, whereby they were deprived of the right to build churches both in cities and in the country and he ordered the confiscation of their buildings, the lands where they were built, the places where their doctrine was taught, and the residences of their ministers.¹²⁵ It was an exemplary punishment that tried to curtail the Eunomians' strategy to continue their mission on the outskirts of the city – which was however permitted to Arians.¹²⁶

After confiscation of their properties, the next step in the punishment of heretics was exile.

Legislation regarding the possession of churches caused great unrest in the cities.¹²⁷ In 383 Theodosius resolved to summon a new council in Constantinople, the third since his arrival in the city, but distinct from all the others, and extraordinary for the reasons laid out by Socrates, our principal source on this matter, who called it the “synod of all heresies.”¹²⁸ The Emperor's intention was to restore religious concord through debate and with this purpose he summoned the leaders of the main sects, Eunomius amongst them, to openly discuss their viewpoints in order to reach theological unanimity.

¹²² Socr., *HE* 5.20.4-5. See Urbainczyk 1997, 13-16.

¹²³ Argov 2001; Leppin 2003, 125-63; Prieur 2005 and 2006.

¹²⁴ As phrased by Kopecek 1979, 2:513-14, Neo-Arianism was the “bête noire” of the meeting.

¹²⁵ *CTh.* 16.5.8 (381).

¹²⁶ Socr., *HE* 5.20.5-6; Ep. apud Theodoret., *HE* 5.9.7.

¹²⁷ Socr., *HE* 5.10.

¹²⁸ Socr., *HE* 5.10.2 describes it in more detail than that of Constantinople in 381. Cf. Soz. 7.12. See Wallraff 1996 and 1997.

The policy of compromise between sects, which was a political strategy in order to serve social peace, collided head on with the intolerance of the Nicaeans, who were not inclined to yield in favour of those who had marginalised them for decades, and with the resistance of the Arians in renouncing their social leadership, all of which caused the meeting to fail in its initial purpose.

In view of the lack of success, Theodosius decided to go from the rhetoric of repression to direct intervention. He turned governors and decurions into agents in the battle against heresy. He urged prosecution *ex officio* and toughened the catalogue of penalties including repatriation of heretics. It was no longer a question of attracting heretics into orthodoxy under the motto of consensus, but a case of segregation.

Between July 383 and March 384, Theodosius subscribed three *constitutiones*: in the first one, he classed them as heretics, along with *arriani*, *macedoniani*, *pneumatomachi* and equated them with Manicheans – who had been severely punished because of the social peril they posed and because of the affinity of their practices with malefices by Diocletian, Valentinian I and himself¹²⁹ – and with other radical sects such as *enkratitae*, *apotactitae*, *saccofori*, *hydroparastatae*, for whom Theodosius himself had prescribed the *summum supplicium*.¹³⁰ Along with this, he banned them from gathering in large numbers, he forbid their assemblies in private houses and threatened with banishment from the community of the righteous those who transgressed the law and its *recta observantia*.¹³¹ Heresy and social life within cities were mutually exclusive concepts.

The second was directly aimed at Eunomians and was intended to evict them from their usual preaching locations, to curb their organisation and to involve public authorities in their prosecution.¹³² With such a purpose, it set forth the prohibition of their meetings in cities, fields and *villae*, as well as the celebration of ceremonies and the ordination of priests. Those who breached the law would face the confiscation of the places where the meetings were held; as well as this, he ordered the praetorian prefect to act *ex officio* in search of information.

Thirdly, he prescribed the repatriation of heretics to their places of origin, but with a restrictive clause that limited their freedom of movement, so that they could not travel from one place to another or enter the cities, that is, it tried to prevent further pilgrimages. Finally, it made the sentence applicable to provincial governors and decurions who did not act diligently in the enforcement of the

¹²⁹ Kaden 1953.

¹³⁰ *CTh.* 16.5.7 (381); and 16.5.9 (382).

¹³¹ *CTh.* 16.5.11 (383): “communi omnium bonorum conspiratione pellantur.”

¹³² *CTh.* 16.5.12 (383).

law, the prevention of meetings and in attending to accusations. In this manner, public authorities became active agents in the war against heresy.

The immediate outcome was that the proscribed went into hiding, and a third law ordered them to be found (*indago*) and cast out unconditionally, without any option of an intervention in their favour (“sine ulla gratiae interventione pellantur”).¹³³ The law was addressed to the praetorian prefect Maternus Cynegius, a zealous Christian and perhaps its inspirer. The legislator sets down banishment from Constantinople for all those who usurp the name of bishops and priests, classifies their *religio* as *criminosa* and establishes that they live in places away from the *congressus* of the *boni*. The final aim of these dictates is segregation.

In 388, Eunomians became a political danger, since they infiltrated amongst the eunuchs of the palace¹³⁴ and they probably took part in the disturbances that occurred in Constantinople on the occasion of Theodosius’s absence when he travelled to Italy to confront Maximus in the West.¹³⁵ Their seditious activities, made worse by their proximity to the Emperor and combined with their flouting of the anti-heretic laws – considered as *sacrilegium* since 380, as mentioned above¹³⁶ – would fall into the category of *crimen maiestatis*.

From Stobi, before the war, Theodosius banned public debates on religion under penalty of *summum supplicium* for those who disobeyed his orders.¹³⁷ After his victory over Maximus, in May 389, Theodosius promulgated in Milan a harsh decree whereby the Eunomian eunuchs were excluded from active and passive *testamenti factio*. They were deprived of the right to own and acquire property and of the ability to appoint an heir, and their property became *caduca fisci*.¹³⁸ The final phrase sums up the meaning of the law: they must have nothing in common with the rest of mankind, which amounted to their total social exclusion and legal incapacity.

The second measure is known from the neo-Arian historian Philostorgius of Borissus: he states that after the expulsion of the eunuchs from the palace, Theodosius ordered the arrest of Eunomius – who was in Calcedonia at the time

¹³³ *CTh.* 16.5.13 (384).

¹³⁴ Philostorg., *HE* 10.6.

¹³⁵ Vera, 1975; Baldus 1984; Leppin 2003, 106-33.

¹³⁶ In *CTh.* 16.2.25 (380). Cf. above n. 38.

¹³⁷ *CTh.* 16.4.2 (June 16, 388). The compilers of the *Theodosian Code* did not include this under the Title *De haereticis* (*CTh.* 16.5), but under *De his qui super religione contendunt* (*CTh.* 16.4). According to Errington 1997b, 418, n. 108 it would have a wider scope rather than a merely religious one. Two days earlier, on June 14th, by means of a law addressed (also from Stobi) to the prefect of the Illyricum, Trifolius, he had banned public and private meetings, and any religious celebrations of all the sects. To such an end, he ordered the prefect to put surveillance into effect in order to arrest offenders, to judge them and to impose upon them the torment demanded by God and the laws (*CTh.* 16.5.15). See Escribano 2005.

¹³⁸ *CTh.* 16.5.17 (389).

– and his deportation to Halmyris, near Tomi, on the Black Sea, in Moesia. However, the capture of the city by barbarians before Eunomius's arrival forced his transfer from Moesia to Capadocia, his province of birth, probably in 390.¹³⁹ The city finally chosen for his exile was Caesarea, the see occupied by one of his fiercest opponents in the recent past, the Nicene bishop Basil, and the place where he would have the most difficulty, not only in proselytising, but also with co-existence. Finally, because of the harassment he was suffering from the inhabitants, Eunomius was allowed to retire to one of his estates in Dakora.¹⁴⁰

After Theodosius's death in January 395, Rufinus, praetorian prefect of the young Arcadius, barred Eunomians from imperial service,¹⁴¹ which was a form of publicising their infamy, and re-established against them the incapacity to make a will that Theodosius had revoked in 394.¹⁴² And four days before he was murdered¹⁴³ in November 395, the prefect reiterated the incompatibility between the observance of heresy and the imperial militia in a *constitutio* directed to the *magister officiorum*. In it, he urged him to investigate within the *scrinia*, amongst the *agentes in rebus* and *palatini* in order to locate the heretics and expel them not only from the palace but also outside the city walls.¹⁴⁴

Given this background and at the prompting of his powerful *praepositus sacri cubiculi*, the eunuch Eutropius,¹⁴⁵ Arcadius ordered Eunomius's *damnatio memoriae* after the latter's death which probably occurred in the winter of 396/397.¹⁴⁶ In 398 he ordered his writings to be burnt in accordance with *CTb.* 16.5.34.¹⁴⁷ In this law, the writings of heretics, in this case the Eunomians, were legally equivalent to magical *codices* and as such condemned to be burnt and their possession was classified as *crimen maleficii* and therefore called for the death penalty.¹⁴⁸ In itself, the law of 398 is the most severe penal repression of

¹³⁹ Vaggione 2000, 356.

¹⁴⁰ Philostorg., *HE* 10.6; Soz. 7.17. See McLynn 1997, esp. 305, who sets the transfer from Moesia to Capadocia in 386.

¹⁴¹ *CTb.* 16.5.25 (395).

¹⁴² *CTb.* 16.5.23 (394). The law was abrogated a few months later (*CTb.* 16.5.27 [395]).

¹⁴³ Fitschen 2001.

¹⁴⁴ *CTb.* 16.5.29 (395). In *CTb.* 16.5.61 (423), the exclusion of Eunomians from the imperial militia is reiterated, except for the *cohortalini*.

¹⁴⁵ Eutropius was not a qualified jurist, although he acted as such personally, according to Claudian (*In Eutropium* 1.229-234). Nevertheless he had a decisive influence on the legislation of his time and we know through Philostorgius (*HE* 11.5) that he was the promoter of this law. See Honoré 1995b, who claims that the *quaestor* in charge of the formalization of laws between 396 and 399 was an expert in *iuris scientia*, which does not mean that he was the intellectual inspirer of the contents of *CTb.* 16.5.34. On Eutropius's power, cf. Zos. 5.9.2; 11.1; and 12.1; Pallad., *Dial.* 5.53; Eun., fr. 69; Claudian, *In Eutropium* 1.105. See Cameron 1970, 124-55; Liebeschuetz 1991; Cameron – Long (with L. Sherry) 1993, 6-8; 115-19; and 227-30; and Scholten 1995.

¹⁴⁶ According to Kopecek 1979, 2:528, n. 7, Eunomius died in Dakora around 394.

¹⁴⁷ Philostorg., *HE* 11.5.

¹⁴⁸ *CTb.* 16.5.34 (March 4th, 398). “Idem AA. Eutylichiano praefecto praetorio (...). Codices sane eorum scelerum omnium doctrinam ac materiam continentes summa sagacitate mox quaeri ac prodi exerta

Eunomians as, for the first time in a *constitutio*, those who owned heretical books are formally accused of *maleficium*. In the final clause there is an imperative instruction to seek with extreme shrewdness,¹⁴⁹ hastily and without exception,¹⁵⁰ the *codices* containing the teachings and practical prescriptions of all Eunomians' crimes and to hand them over to be burnt in the presence of the judges.

It is added that any person retaining them, intentionally or by accident, would be sentenced to death as a retainer of noxious *codices* and writings ("maleficii crimine").

It was not the first time that a heretic was accused of *maleficium* – e.g. Priscillian¹⁵¹ – nor the first time that heretical books were to be burnt.¹⁵² But for the first time, theological writings and magical *codices* had the same legal status.

The public burning of writings is a violent way to silence political or religious enemies and, as studied by Wolfgang Speyer, has a long tradition in the Graeco-Roman world.¹⁵³ Augustus, Tiberius, Septimius Severus, Diocletian and even Constantine, amongst others, had destroyed the writings of enemies whom they would have wished to see burn in person, as a symbolic substitution, because of the public danger they posed. It was also an expiatory ritual aimed at eradicating religious pollution.¹⁵⁴ Both ideological components, the symbolic elimination of public enemies and the ritual purification, converge in their use as a punishment against Eunomians.

In March 398 Eutropius could not have suspected that he was himself going to be the subject of a real prohibition of the *commemoratio nominis* one year later.¹⁵⁵

Conclusion

Derogatory comments, ban on the right of assembly, confiscation of properties, disenfranchisement, exclusion from the *militia*, deportation, exile, *damnatio memoriae* through the burning of books are ways of excluding from

auctoritate mandamus sub aspectibus iudicantium incendio mox cremandos. Ex quibus si qui forte aliquid qualibet occasione vel fraude occultasse nec prodidisse convincitur, sciat se velut noxiorum codicum et maleficii crimine conscriptorum retentatorem capite esse plectendum. Dat. IIII Non. Mart. Constantinopoli Honorio A. iiii et Eutychiano cons."

¹⁴⁹ In other words, with cunning and penetration, following trails and traces.

¹⁵⁰ Without allowing for time to hide them, which meant that the search was carried out house to house, probably by soldiers.

¹⁵¹ Girardet 1974; Escribano 1994.

¹⁵² Hilarius, *Fragmenta Historica* A4/1.27-28 reports the case of Paulinus, bishop of Adana and subscriber of the Council of Nicaea (325).

¹⁵³ See Cramer 1945 and Speyer 1981.

¹⁵⁴ Sarefield 2006. Cf. Hillerbrand 2006.

¹⁵⁵ Cf. above *CTh.* 9.40.17 (399).

society and punishing heretics that coincide with those traditionally used against public enemies. Their presence in the anti-heretic laws of the Theodosian age indicates that there is a certain transfer of the ideology of the *hostis publicus* to the legal and criminal treatment of heretics in the fourth and fifth centuries. Depicted as members of a conspiracy against God¹⁵⁶ and society, heretics had to be cut off from everywhere, rejected beyond the city walls, far from the gatherings of honest men, and from the holy communion; heretics had to be sent to places that isolated them from the community, as if a *vallum* had been built.¹⁵⁷

Bibliography

- Andia, Y. de. 1985. "L'hérésie et sa réfutation selon Irénée de Lyon," *Augustinianum* 25:609-44.
- André, J.M. 1980. "La notion de *pestilentia* à Rome: du tabou religieux à l'interprétation préscientifique," *Latomus* 39:3-16.
- Argov, E. I. 2001. "Giving the Heretic a Voice: Philostorgius of Borissus and Greek Ecclesiastical Historiography," *Athenaeum* 89:497-524.
- Baccari, M.P. 1991. "Comunione e cittadinanza. A proposito della posizione giuridica di eretici, apostati, giudei e pagani secondo i codici di Teodosio II e Giustiniano I," *SDHI* 57:264-96.
- Baldini Moscadi, L. 1976. "Murmur nella terminologia magica," *Studi Ital. Filol. Classica* 48:254-62.
- Baldus, H.R. 1984. "Theodosius der Grosse und die Revolte des Magnus Maximus," *Chiron* 14:175-92.
- Barceló, P. – G. Gottlieb. 1993. "Das Glaubensedikt des Kaiser Theodosius vom 27. Februar 380. Adressaten und Zielsetzung," in K. Dietz – D. Hennig – H. Kaletsch (eds.), *Klassisches Altertum, Spätantike und frühes Christentum. Adolf Lippold zum 65. Geburtstag gewidmet* (Würzburg) 409-23.
- Barnard, L. 1995. "The Criminalisation of Heresy in the Later Roman Empire: A Sociopolitical Device?" *Legal History* 16:121-46.
- Barnes, T.D. 1968. "Legislation against the Christians," *JRS* 58:32-50.
- Barnes, T.D. 1990. "Religion and Society in the Age of Theodosius," in H.A. Meynell (ed.), *Grace, Politics and Desire. Essays on Augustine* (Calgary, Alberta) 157-75.
- Barnes, T. D. 1994. *Athanasius and Constantius. Theology and Politics in the Constantinian Empire* (Cambridge, MA/London).

¹⁵⁶ *CTh.* 16.5.15 (388).

¹⁵⁷ *CTh.* 16.5.14 (388).

- Barone Adesi, G. 1998. "L'urbanizzazione episcopale nella legislazione tardoimperiale," in E. Rebillard – C. Sotinel (eds.), *L'évêque dans la cité du IV^e au VI^e siècle. Image et autorité* (Paris/Rome) 49-58.
- Berger, A. 1955. "La concezione di eretico nelle fonti giustinianee," *Rendiconti dell'Accademia Nazionale dei Lincei, Sc. Mor.* 10:353-68.
- Beskow, P. 1988. "The Theodosian Laws against Manichaeism," in *Manichaean Studies* (Lund) 1-11.
- Biondi, B. 1940. "L'influenza di Sant'Ambrogio sulla legislazione religiosa del suo tempo," in *Sant'Ambrogio nel XVI Centenario della sua nascita* (Milano) 337-420.
- Bodson, L. 1991. "Le vocabulaire latin des maladies pestilentielles et épizootiques," in G. Sabbah (ed.), *Le latin médical, la constitution d'un langage scientifique. Réalités et langage de la médecine dans le monde romain* (Saint Etienne) 215-41.
- Bonamente, G. 1977. "La biografia di Eutropio lo storico," *Annali della Facoltà di Lettere e Filosofia di Macerata* 10:161-210.
- Cameron, A. 1970. *Claudian: Poetry and Propaganda at the Court of Honorius* (Oxford).
- Cameron, A. – J. Long (with L. Sherry). 1993. *Barbarians and Politics at the Court of Arcadius* (Berkeley/Los Angeles/Oxford).
- Charrow, V.R. – J.A. Crandall – R.P. Charrow. 1982. "Characteristics and Functions of Legal Language," in R. Kitredge – J. Lehrberger (eds.), *Sublanguage: Studies of Language in Restricted Semantic Domains* (Berlin/New York) 175-90.
- Corcoran, S. 1996. *The Empire of the Tetrarchs: Imperial Pronouncements and Government, A.D. 284-324* (Oxford).
- Cramer, F.H. 1945. "Bookburning and Censorship in Ancient Rome. A Chapter from the History of Freedom of Speech," *Journal of the History of Ideas* 6:157-96.
- Crifò, G. 2005. "Profili del diritto criminale romano tardoantico," in A. Saggioro (ed.), *Diritto romano e identità cristiana. Definizione storico-religiose e confronti interdisciplinari* (Rome) 81-94.
- Cuny-Le Callet, B. 2005. *Rome et ses monstres. Naissance d'un concept philosophique et rhétorique* (Grenoble).
- Dagron, G. 1974. *Naissance d'une capitale: Constantinople et ses institutions de 330 à 451* (Paris).
- Dauge, Y. 1981. *Le barbare. Recherches sur la conception romaine de la barbarie et de la civilisation* (Brussels).
- Di Berardino, A. 1993. "L'eretico nell'antichità cristiana," in G. Barbaglio et al. (eds.) *L'altro, il diverso, lo straniero* (Bologna) 247-63.
- Di Mauro Todini, A. 1988. "Medicamentarius, una denominazione insolita. Brevi considerazioni a proposito di *CTh* 3,16,1," *AARC* 7:343-82.

- Diliberto, O. 1996. "L'inesauribile tematica del *furor*," *Labeo* 42:107-16.
- Drake, H. A. 2006. "The Impact of Constantine on Christianity," in N. Lenski (ed.), *The Cambridge Companion to the Age of Constantine* (Cambridge) 111-36.
- Dunkle, J.R. 1967. "The Greek Tyrant and Roman Political Invective of the Late Republic," *TAPhA* 98:151-71.
- Dunkle, J.R. 1971. "The Rhetorical Tyrant in Roman Historiography: Sallust, Livy and Tacitus," *CW* 65:12-20.
- Edwards, M. 2006. "The Beginnings of Christianization," in N. Lenski (ed.), *The Cambridge Companion to the Age of Constantine* (Cambridge) 137-58.
- Errington, R.M. 1997a. "Church and State in the First Years of Theodosius I," *Chiron* 27:21-72.
- Errington, R.M. 1997b. "Christian Accounts of the Religious Legislation of Theodosius I," *Klio* 79:398-443.
- Errington, R.M. 2006. *Roman Imperial Policy from Julian to Theodosius* (Chapel Hill, NC).
- Escribano, M.V. 1993. "El vituperio del tirano: historia de un modelo ideológico," in E. Falqué – F. Gascó (eds.), *Modelos ideales y prácticas de vida* (Sevilla) 9-47.
- Escribano, M.V. 1994. "Haeretici iure damnati?: el proceso de Tréveris contra los priscilianistas, (385)," in *Cristianesimo e specificità regionali nel Mediterraneo latino (sec. IV-VI). XXII Incontro di studiosi dell'antichità cristiana* (Rome) 393-416.
- Escribano, M.V. 1997. "La ilegitimidad política en los textos historiográficos y jurídicos tardíos (*Historia Augusta*, Orosius, *Codex Theodosianus*)," *RIDA* 44:1-36.
- Escribano, M.V. 2004a. "El exilio del herético en el s. IV d. C. Fundamentos jurídicos e ideológicos," in F. Marco et al. (eds.), *Vivir en tierra extraña: emigración e integración cultural en el mundo antiguo* (Barcelona) 255-72.
- Escribano, M.V. 2004b. "Graciano, Teodosio y el Ilírico: la *constitutio Nullus (locus) haereticis* (CTh. 16,5,6. 381)," *RIDA* 51:133-66.
- Escribano, M.V. 2005. "De his qui super religione contendunt?: la *constitutio* 16,4,2 (388) del *Codex Theodosianus*," *Antiquité Tardive* 13:265-79.
- Escribano, M.V. 2006a. "Disidencia doctrinal y marginación geográfica en el s. IV d.C.: los exilios de Eunomio de Cízico," *Athenaeum* 94:231-60.
- Escribano, M.V. 2006b. "Ley y terror: el fomento de la delación como medio de amedrentar a los maniqueos en las leyes teodosianas," *Studia Historica, Historia Antigua* 24:143-59.
- Escribano, M.V. 2007a. "El uso del vocabulario médico en las leyes teodosianas contra los heréticos," in *La cultura científico-naturalistica nei padri della Chiesa (I-V sec.). XXXV Incontro di studiosi dell'antichità cristiana* (Rome) 605-26.
- Escribano, M.V. 2007b. "Intolerancia y exilio, las leyes teodosianas contra los eunomianos," *Klio* 89:184-208.

- Escribano, M.V. 2008. "La construction de l'image de l'hérétique dans le Code Théodosien XVI," in J.-N. Guinot – F. Richard (eds.), *Colloque International, Empire chrétien et Eglise aux IV^e et V^e siècles: Intégration ou concordat? Le témoignage du Code Théodosien* (Paris) 389-412.
- Falchi, G.L. 1986. "Legislazione e politica ecclesiastica nell'impero romano dal 380 d.C. al *Codice Teodosiano*," *AARC* 6:179-212.
- Fargnoli, I. 2005. "Many Faiths and One Emperor. Remarks about the Religious Legislation of Theodosius the Great," *RIDA* 52:147-62.
- Ferguson, T.C. 2005. *The Past is Prologue: The Revolution of Nicene Historiography* (Leiden/New York) 125-63.
- Fitschen, K. 2001. "Der *praefectus praetorio* Flavius Rufinus. Ein hoher Reichsbeamter als Gestalt der Kirchengeschichte zur Zeit der Theodosianischen Wende," *ZAC* 5:86-103.
- Gaudemet, J. 1980. "La répression de la délation au Bas Empire," in M.J. Fontana et al. (eds.), *Philias Charin': Miscellanea di studi classici in onore di Eugenio Manni* (Rome) 3:1065-83.
- Gemmiti, D. 1991. *La Chiesa privilegiata nel Codice Teodosiano* (Naples/Rome).
- Girardet, K. 1974. "Trier 385. Der Prozess gegen die Priszillianer," *Chiron* 4:577-608.
- Gómez Villegas, N. 1997. "La corte de Constantinopla y su obispo," in *Vescovi e pastori in epoca teodosiana, XXV Incontro di Studiosi dell'Antichità cristiana* (Rome) 2:359-70.
- Gómez Villegas, N. 2000. *Gregorio de Nazianzo en Constantinopla* (Madrid).
- Gourevitch, D. 1991, "Les mots pour dire la folie en latin. A propos des passages de Celse et de Célius Aurélien," *L'évolution psychiatrique* 56.3:561-68.
- Gramaglia, P.A. 1985. "Il linguaggio eresiologico in Tertulliano. L'approccio cattolico all'eresia," *Augustinianum* 25:667-710.
- Grodzynski, D. 1974. "Par la bouche de l'empereur. Rome, IV^e siècle," in J.-P. Vernant et al. (eds.), *Divination et rationalité* (Paris) 267-94.
- Harries, J. 1988. "The Roman Imperial Quaestor from Constantine to Theodosius II," *JRS* 78:148-72.
- Hillerbrand, H.J. 2006. "On Book Burnings and Book Burners: Reflections on the Power (and Powerlessness) of Ideas," *Journal of the American Academy of Religion* 74:593-614.
- Honoré, T. 1986. "The Making of the *Theodosian Code*," *ZRG* 103:133-222.
- Honoré, T. 1995a. "Theodosius I and Two Quaestors of his First Decade as Emperor (379-388 AD)," in R. Feenstra et al. (eds.), *Collatio iuris Romani: Etudes dédiées à Hans Ankum à l'occasion de son 65e anniversaire* (Amsterdam) 141-57.
- Honoré, T. 1995b. "Eutropius' Lawyer (396-399) and other Quaestors of Arcadius (394-408)," *ZRG* 112:172-94.

- Honoré, T. 1998. *Law in the Crisis of Empire, 379-455 AD: The Theodosian Dynasty and its Quaestors* (Oxford).
- Humfress, C. 2000. "Roman Law, Forensic Argument and the Formation of Christian Orthodoxy," in S. Elm – E. Rebillard – A. Romano (eds.), *Orthodoxie, Christianisme, Histoire* (Paris/Rome) 125-47.
- Humfress, C. 2008a. "Citizens and Heretics: Late Roman Lawyers on Christian Heresy," in E. Iricinschi – H.M Zellentini (eds.), *Heresy and Identity in Late Antiquity* (Tübingen) 128-42.
- Humfress, C. 2008b. *Orthodoxy and the Courts in Late Antiquity* (Oxford).
- Hunt, E.D. 1998. "The Church as a Public Institution," in Av. Cameron – P. Garnsey (eds.), *The Cambridge Ancient History, vol. 13: The Late Empire, A.D. 337-425* (Cambridge) 238-76.
- Inglebert, H. 2001. "L'histoire des hérésies chez les hérésiologues," B. Pouderon – Y.M. Duval (eds.), *L'historiographie de l'Eglise des premiers siècles* (Paris) 105-25.
- Iricinschi, E. – H.M Zellentini. 2008. *Heresy and Identity in Late Antiquity* (Tübingen).
- Jacques, F. 1982. "Le schismatique, tyran furieux. Le discours polémique de Cyprien de Carthage," *MEFR* 94.2:921-49.
- Janssen, L.F. 1979-1980. "Superstitio and the Persecution of the Christians," *VChr* 33-34:131-59.
- Kaden, E.H. 1953. "Die Edikte gegen die Manichäer von Diokletian bis Justinian," in *Festschrift Hans Lewald* (Basel) 55-68.
- Kaser, M. 1956. "Infamie und Ignominie in den römischen Rechtsquellen," *ZRG* 73:220-78.
- Kopecek, T.A. 1979. *A History of Neo-Arianism* (Cambridge, MA).
- Lanata, G. 1984. *Legislazione e natura nelle Novelle Giustiniane* (Naples).
- Larchet, J.C. 1991. *Théologie de la maladie* (Paris).
- Larchet, J.C. 1992. *Thérapeutique des maladies mentales: L'expérience de l'Orient chrétien des premiers siècles* (Paris).
- Lassandro, D. 1998. "Ambrosio, Teodosio e il perdono," in M. Sordi (ed.), *Responsabilità, perdono e vendetta nel mondo antico* (Milan) 291-301.
- Le Boulluec, Y. 1985. *La notion d'hérésie dans la littérature grecque, II^e-III^e siècles* (Paris).
- Lenski, N. 2002. *Failure of Empire: Valens and the Roman State in the Fourth Century A.D.* (Berkeley/Los Angeles/London).
- Lenski, N. (ed.). 2006. *The Cambridge Companion to the Age of Constantine* (Cambridge).
- Leppin, H. 2001. "Heretical Historiography: Philostorgius," in M.F. Wiles – E.J. Yarnold (eds.), *Papers Presented at the Thirteenth International Conference on Patristic Studies Held in Oxford 1999* (Leuven) 111-24.
- Leppin, H. 2003. *Theodosius der Grosse: Auf dem Weg zum christlichen Imperium* (Darmstadt).

- Lhereux-Godbille, C. 2003. "Barbarie et hérésie dans l'œuvre de Saint Ambroise de Milan (374-397)," *Le Moyen Age* 109:473-92.
- Liebeschuetz, J.H.W. 1991. *Barbarians and Bishops: Army, Church and State in the Age of Arcadius and Chrysostom* (Oxford) 89-110.
- Lizzi Testa, R. 1996. "La politica religiosa di Teodosio I: Miti storiografici e realtà storica," *Rendiconti della Classe di Scienze Morali, Storiche e Filologiche dell'Accademia dei Lincei*, Ser. 9a, 7.2:323-61.
- Lizzi Testa, R. 2000. "Privilegi economici e definizione di status: il caso del vescovo tardoantico," *Rendiconti della Classe di Scienze Morali, Storiche e Filologiche dell'Accademia dei Lincei*, Ser. 9a, 11.1:55-103.
- Maceratini, R. 1994. *Ricerche sullo status giuridico dell'eretico nel diritto romano-cristiano e nel diritto canonico classico, Da Graziano ad Ugucione* (Milan).
- Maier, H.O. 1995. "The Topography of Heresy and Dissent in Late Fourth-Century Rome," *Historia* 44:231-49.
- Maier, J.L. 1987. *Le dossier du donatisme. I. Des origines à la mort de Constance II (303-361)* (Berlin).
- Matthews, J.F. 1998. "Eternity in Perishable Materials: Law-Making and Literate Communication in the Roman Empire," in T.W. Hillard et al. (eds.), *Ancient History in a Modern University* (Grand Rapids, MI) 2:253-65.
- Matthews, J.F. 2000. *Laying Down the Law: A Study of the Theodosian Code* (New Haven/London).
- Mazzucco, C. 1985. "Gli apostoli del diavolo: gli eretici nella *Storia Ecclesiastica* di Eusebio di Cesarea," *Augustinianum* 25:749-81.
- McLynn, N.B. 1994. *Ambrose of Milan: Church and Court in a Christian Capital* (Berkeley).
- McLynn, N.B. 1997. "The Voice of Conscience: Gregory Nazianzen in Retirement," in *Vescovi e pastori in epoca teodosiana, XXV Incontro di Studiosi dell'Antichità cristiana* (Rome) 2:298-308.
- McLynn, N.B. 2005. "Genere Hispanus: Theodosius, Spain and Nicene Orthodoxy," in M. Kulikowski – K. Bowes (eds.), *Hispania in Late Antiquity: Current Perspectives* (Leiden/Boston) 77-120.
- Monaco, L. 1984. "'Veneficia matronarum, magia medicina e repressione,'" in *Sodalitas: Scritti in onore di Antonio Guarino* (Naples) 4:2013-24.
- Moreschini, C. 1983. "Aspetti della pneumatologia in Gregorio Nazianzeno e Basilio," in *Basilio di Cesarea: la sua età, la sua opera e il Basilianesimo in Sicilia* (Messina) 1:567-78.
- Neri, V. 1997. "L'usurpatore come tiranno nel lexico politico della tarda antichità," in F. Paschoud – J. Szidat (eds.), *Usurpationen in der Spätantike* (Stuttgart) 71-86.
- Noetlich, K.L. 1972. "Zur Einflussnahme des Staates auf die Entwicklung eines christlichen Klerikerstandes: Schicht- und berufsspezifische Bestimmungen

- für den Klerus im 4. und 5. Jahrhundert in den spätantiken Rechtsquellen,” *JAC* 15:136-53.
- Noetlichs, K.L. 2006. “Revolution from The Top? Orthodoxy and the Persecution of Heretics in Imperial Legislation from Constantine to Justinian,” in C. Ando – J. Rüpke (eds.), *Religion and Law in Classical and Christian Rome* (Stuttgart) 115-25.
- Norris, F. W.1985. “Gregory Nazianzen’s Opponents in Oration 31,” in R.C. Gregg (ed.), *Arianism: Historical and Theological Reassessments. Papers from the Ninth International Conference on Patristic Studies* (Cambridge, MA) 321-26.
- Opelt, I. 1980. *Die Polemik in der christlichen lateinischen Literatur von Tertullian bis Augustin* (Heidelberg).
- Pietri, Ch. 1985. “L’hérésie et l’hérétique selon l’Eglise romaine (IV^e-V^e siècles),” *Augustinianum* 25:867-87.
- Pourkier, A. 1992. *L’hérésologie chez Epiphane de Salamine* (Paris).
- Priour, J.M. 2005. “Aèce selon l’*Histoire ecclésiastique* de Philostorge,” *Revue d’Histoire et de Philosophie Religieuses* 85:529-52.
- Priour, J.-M. 2006. “Eunome selon l’*Histoire ecclésiastique* de Philostorge,” *Revue d’Histoire et de Philosophie Religieuses* 86:171-82.
- Puglisi, G. 1990. “Giustizia criminale e persecuzione antieretiche (Priscilliano e Ursino, Ambrogio e Damaso),” *Sicilorum Gymnasium* 43:91-137.
- Ritter, A.M. 1965. *Das Konzil von Konstantinopel und sein Symbol* (Göttingen).
- Rives, J.B. 2003. “Magic in Roman Law: The Reconstruction of a Crime,” *Classical Antiquity* 22:313-39.
- Rivière, Y. 2002. *Les délateurs sous l’empire romain* (Paris/Rome).
- Sarefield, S. 2006. “Bookburning in the Christian Roman Empire: Transforming a Pagan Rite of Purification,” in H. Drake (ed.), *Violence in Late Antiquity: Perceptions and Practices* (Aldershot) 287-96.
- Sargenti, M. – R.B. Bruno Siola. 1991. *Normativa imperiale e diritto romano negli scritti di S. Ambrosio* (Milan).
- Scardigli, B. 1985. “Usurpatori e barbari,” *Annali della Facoltà di Lettere e Filosofia dell’Università di Siena* 6:47-94.
- Scholten, H. 1995. *Der Eunuch in Kaisernähe. Zur politischen und sozialen Bedeutung des praepositus sacri cubiculi im 4. und 5. Jahrhundert n.Chr.* (Frankfurt a.M.).
- Silli, P. 1987. *Testi costantiniani nelle fonti letterarie* (Milan).
- Snee, S. 1985. “Valens’ Recall of the Nicene Exiles and Anti-Arian Propaganda,” *GRBS* 26:395-419.
- Speyer, W. 1981. *Büchervernichtung und Zensur des Geistes bei Heiden, Juden und Christen* (Stuttgart).
- Springer, K.F. 1952. *‘Tyrannus’. Untersuchungen zur politischen Ideologie der Römer* (Diss. Köln).
- Thome, G. 1992. “Crime and Punishment, Guilt and Expiation: Roman Thought and Vocabulary,” *Acta Classica* 35:73-98.

- Trisoglio, F. 1985. "La figura dell'eretico in Gregorio di Nazianzo," *Augustinianum* 25:793-832.
- Urbainczyk, T. 1997. *Socrates of Constantinople: Historian of Church and State* (Ann Arbor, MI).
- Vaggione, R.P. 2000. *Eunomius of Cyzicus and the Nicene Revolution* (Oxford).
- Van Nuffelen, P. 2004. *Un héritage de paix et de piété. Etude sur les histoires ecclésiastiques de Socrate et de Sozomène* (Leuven/Paris).
- Van Nuffelen, P. 2008. "Arius, Athanase et les autres: dimensions juridiques et politiques du retour d'exil au IV^e siècle," in Ph. Blaudeau (ed.), *Exil et relégation, les tribulations du sage et du saint durant l'Antiquité romaine et chrétienne (I^{er}-VI^e s. apr. J.-C.)* (Paris) 147-75.
- Vera, D. 1975. "I rapporti tra Magno Massimo, Teodosio e Valentiniano II nel 383-384," *Athenaeum* 53:267-301.
- Vittinghoff, Fr. 1936. *Der Staatsfeind in der römischen Kaiserzeit. Untersuchungen zur 'damnatio memoriae'* (Berlin).
- Waldstein, W. 1964. *Untersuchungen zum römischen Begnadigungsrecht. 'Abolitio', 'indulgentia', 'uenia'* (Innsbruck).
- Wallraff, M. 1996. *Der Kirchenhistoriker Sokrates. Untersuchungen zu Geschichtsdarstellung, Methode und Person* (Heidelberg) 309-17.
- Wallraff, M. 1997. "Il sinodo di tutte le eresie a Costantinopoli (383)," in *Vescovi e pastori in epoca teodosiana, XXV Incontro di Studiosi dell'Antichità cristiana* (Rome) 2:271-79.
- Wardman, A.E. 1984. "Usurpers and Internal Conflicts in the Fourth Century A.D.," *Historia* 33:220-37.
- Williams, F. 1994. *The 'Panarion' of Epiphanius of Salamis, Books II and III (Sects 47-80, De fide)* (Leiden/New York/Köln).
- Zuccotti, F. 1992. *'Furor haereticorum'. Studi sul trattamento giuridico della follia e sulla persecuzione della eterodossia religiosa nella legislazione del tardo impero romano* (Milan).

Recueil de travaux publiés par la Faculté des Lettres et Sciences Humaines

XXVI	RISCH E. et MÜHLESTEIN H. <i>Colloquium Mycenoicum</i> . Actes du VI ^e colloque international sur les textes mycéniens et égéens (1975). 1979.	Fr. 92.-
XXXVII	MARZYS Z., <i>Claude Favre de Vaugelas</i> . <i>La Préface des «Remarques sur la langue française»</i> . 1984.	Fr. 43.-
XXXVIII	MARGUERAT Ph. <i>Banque et investissement industriel</i> . <i>Parisbas et le pétrole roumain et la politique française 1919-1939</i> . 1987.	Fr. 45.-
XXXIX	GENDRE A. <i>Ronsard</i> . Colloque de Neuchâtel (1985). 1987.	Fr. 49.-
XL	KNOEPFLER D. <i>Comptes et inventaires dans la cité grecque</i> . Actes du colloque de Neuchâtel en l'honneur de Jacques Tréheux (1986). 1988.	Fr. 68.-
XLI	PY B. et JEANNERET R. <i>Minorisation linguistique et interaction</i> . Actes du symposium AILA/CILA (1987). 1989.	Fr. 49.-
XLII	KNECHT P. et MARZYS Z. <i>Ecriture, langues communes et normes</i> . Actes du colloque de Neuchâtel (1988). 1993.	Fr. 55.-
XLIII	GENDRE A. <i>Ronsard et les éléments</i> . Colloque de Neuchâtel (1989). 1992.	Fr. 42.-
XLIV	NOMEN LATINUM: <i>mélanges de langues, de littérature et de civilisations latines en l'honneur d'André Schneider</i> . 1997.	Fr. 61.-
XLV	GIGANDET C. et BORIE J. <i>Hommage à Edith et Charles Boissonnas</i> . <i>Autour de la NRF, de Jean Paulhan et du Collège de Sociologie</i> . 1998.	Fr. 45.-
XLVI	MARZYS Z. <i>La Variation et la Norme</i> . <i>Essais de dialectologie galloromane et d'histoire de la langue française</i> . 1998.	Fr. 45.-
XLVII	PETRIS L et BORNAND M. <i>Sources et intertexte: résurgences littéraires du Moyen Age au XX^e siècle</i> . Actes du colloque tenu les 6 et 7 mai 1999 à Neuchâtel. 2000.	Fr. 30.-
XLVIII	<i>Les fruits de la saison: mélanges de littérature des XVI^e et XVII^e siècle</i> <i>Offerts au Professeur André Gendre</i> . 2000.	Fr. 60.-
XLIX	KNOEPFLER D. et PIÉRART M. <i>Editer, traduire, commenter Pausanias en l'an 2000</i> . Actes du colloque de Neuchâtel et Fribourg (1998). 2001.	Fr. 60.-
L	MARGUERAT Ph., TISSOT. L. et FROIDEVAUX Y. <i>Banques et entreprises en Europe de l'Ouest, XIX^e-XX^e siècles: aspects nationaux et régionaux</i> . Actes du colloque de Neuchâtel (1997). 2000.	Fr. 40.-
LI	<i>De l'amitié. Hommage à Albert Béguin (1901-1957)</i> . Textes réunis par Martine NOIRJEAN DE CEUNINCK. Sous la direction de Jean BORIE. 2001.	Fr. 41.-
LII	AUBERT J.-J. <i>Tâches publiques et entreprise privée dans le monde romain</i> . Actes du diplôme d'études avancées. Universités de Neuchâtel et Lausanne, 2001-2002. 2003.	Fr. 30.-
LIII	HENRY PH. et BARRELET J.-M. <i>Sujets ou citoyens? Neuchâtel avant la Révolution de 1848</i> . 2005.	Fr. 42.-
LIV	MOREROD J.-D., PETRIS L., LÉCHOT P.-O. et NOYER Fr. <i>Cinq siècles d'histoire religieuse neuchâteloise. Approches d'une tradition protestante</i> . 2009.	Fr. 40.-

Ouvrages diffusés par la Librairie Droz
11, rue Massot, cp 389, CH-1211 Genève 12
www.droz.org

Achévé d'imprimer
sur les presses de Imprimeries Centrales Neuchâtel SA
à Neuchâtel, le 1^{er} septembre 2009

IMPRIMÉ EN SUISSE