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Creating a Law about Religion under Constantine the Great

The Case of the Edict against the Heretics (Eus. Vita Const. 3, 63–66)

*During the Christianization of the Roman Empire the matter of the relationships between State and Church became essential. In this context, one of the most interesting aspects concerns the fight against the phenomenon of heresy in its many forms. A meaningful attempt was undertaken by the first Christian emperor, Constantine the Great. He tried to find a solution to the divisions which were starting to trouble the ecclesiastical community and therefore the majority of the people. He tried to realize his aim, both through the Council of Nicaea and through legal instruments. He legislated using mainly the *lex generalis* – a kind of imperial constitution, which perfectly embodied the spirit of that time. Around 325 AD. – he issued an edict against some sects of radical heretics. The text represents the emperor's political attitude including his chancellery, which was in the hands of the bishops most of the time. It seems to contain all the aspects which characterize the Theodosian legislation, for example the condemnation to a series of disabilities or the comparison between the religious deviance and the concepts of sin like a mortal disease. Object of the work is to investigate the construction of a law in connection with the repression of heresy, by making some remarks about its concrete procedure.*

It is well known that Constantine, who first understood the strategic importance of the Christian religion for the further survival of the Roman Empire, used to legislate through the so called *lex generalis*: this instrument, thanks to its general and abstract character, which made it possible to reach a large number of people on a wide territory, was perfectly oriented to the new arising order,¹ when the emperor's will started to appear as the main structure of the whole legal system.²

The problem of heresy³ – the emperor did not only declare *licita* the young faith, but expressed also a sure preference for the *καθολικὴ ἐκκλησία*, which evoked prejudice against other confessions and established the foundations for the future confrontation between orthodoxy and heterodoxy – was faced by resorting to the same method of legislation, so appropriate to diffuse the imperial commands everywhere.

Eusebius' *Vita Constantini* gives a good example concerning the mode to legislate on this matter by the central chancellery, strongly influenced by ecclesiastics, mainly bishops.⁴ 3, 64–65 pre-

¹ GAUDEMET, Constantin 652–674, 652ff. and 663ff. about the restoration after Maxentius and Licinius.

² DE GIOVANNI, Problema giustizia; DERS., Istituzioni scienza giuridica codici 246–257.

³ GAUDEMET, Politique religieuse; DERS., Législation religieuse; DERS., Société religieuse; also, NOETHLICH, Ethique chrétienne.

⁴ DRAKE, Constantine and the Bishops, and more recently LEADBETTER, Constantine and the Bishop.

serves the notice of a constitution against some radical sects,⁵ in particular Novatians, Valentini-ans, Marcionists, Paulianists, Montanists or Cataphruges and others who are not indicated in further detail. The issue date is still unknown.

The original edict is lost, but a letter (*γράμμα*) remains, divided into two sections: one characterized by a political attitude and the other purely normative, which contains a strong warning to not incur into the persecution.

In the first part, typical elements of heresiology, as elaborated by patristic and especially apologetic literature, seem to return, through a language which continuously evokes images coming from the sphere of sin and evil and therefore poison, all united with the concepts of illness and death (1). The absence of truth and its malicious preaching cause the loss of the souls and the eternal darkness (2); the emperor though was resolute to avoid any investigation about their doctrines, due to the urgent commitments of government which he could not disregard. Even though the actions of the heretics cannot be described, because of their infamy and discredit (3), they do deserve without doubt a strict treatment to safeguard the public security and the individual health from a moral and physical infection (4).

In the second part, instead, the prohibition is imposed, under the law, to gather, both publicly and privately. Hence, the legal consequence was the sequestration of rooms and buildings used for group meetings (1). Furthermore, it is ordered to try a rapprochement with the Catholic

church – once the spiritual error was forgotten, which was compared to a kind of madness (2) – by confirming the transfer of the confiscated properties mainly to the ecclesiastical community. Only some residuals, and this is important to note, should be conferred to the state (3).

The text⁶ is also respectively preceded and followed by two paragraphs, 3, 63 and 3, 66, which are really helpful to investigate how to consider the occasion of birth of an imperial law on a religious issue and its final result, through the entire process of production by analysing especially the significance of these passages (I and II).

The preliminary statement is that at that time Constantine was forced to eliminate the danger represented by some radical confessions; they were several and ungovernable, so quite more worrisome than Arianism (1, 1). The thought expressed by Eusebius is absolutely clear:⁷ the members of these groups, terribly unsafe for the whole humankind, are described with the famous words of Matthew's Gospel in 7, 15–16a, as “false prophetes” and “rapacious wolfs” (1, 2). Finally, maybe here one finds the most interesting point: the emperor sent two writings to the governors of the provinces, an order (*κέλευσμα*) to banish all those from the empire, who remained indomitable and an admonition (*διδασκαλία*) to persuade all the others to regret and enter again into the arms of the Catholic church (1, 3).

The conclusion, despite a certain dubiousness concerning the real progress of the facts due to the emphatic tone, contains further items of

⁵ DÖRRIES, *Konstantin und die Häretiker*; HALL, *Sects under Constantine*, and NORDERVAL, *Kaiser Konstantins Edikte*; in addition to BAYNES, *Constantine the Great*; remarks in DÖRRIES, *Selbstzeugnis Kaiser Konstantins* 82–84; KRAFT, *Kaiser Konstantins religiöse Entwicklung* 123–128, 246–248; DRAKE, *Constantine and the Bishops* 346–350; GIRARDET, *Konstantinische Wende* 133–146; ESCRIBANO PAÑO, *Constantin y los escritos heréticos*; DIES., *El edicto de Constantino*; DIES., *Costantino*.

⁶ We find the contents of the edict also in Sozomen's *Historia Ecclesiastica* (2, 32, 1), with some differences; GRILLET, SABBAAH, FESTUGIÈRE, *Sozomène* 370–375.

⁷ Eusebius' concept of heresy was probably taken from Hegesippus (*Hist. Eccl.* 6, 22); HALTON, *Hegesippus in Eusebius*; MAZZUCCO, *Gli apostoli del diavolo*; TABBERNEE, *Eusebius' Theology of Persecution*; JUNOD, *Les hérétiques et l'hérésie*.

rather detailed information. The author states that after the persecution the plots of the heretics ended; that some of their supporters reacted by pretending to submit, others on the contrary accepted the imposition. Sure enough the imperial action also hit the transmission of the doctrine through the destruction of the holy books, which were the main vehicle of teaching and learning (2, 1). The bishops headed an operation of recovery towards the new believers, repelling those who had in mind to use a deception to save themselves – as again Matthew's Gospel in 7, 15b already says “wolves hidden under skins of sheep”. The others were examined with great attention, and only after a period of probation were forgiven and readmitted into the official system (1, 2). The schismatics, who were put near the heretics in the epistle sent by the emperor, received a better treatment, and were accepted without any restrictions, because they had not abandoned the dogma, but only some superficial forms of worship. In this way the unity of the church triumphed over the last enemies of the empire, which was at last becoming Roman and Christian (2, 3) together.

The contest of the constitution was the Council of Nicaea, perhaps shortly afterwards:⁸ the date must be placed sometime before CTh. 16, 5, 2 (25 September 326)⁹ or perhaps CTh. 16, 5, 1 (1 September 326).¹⁰ In fact, the collection of several heterodox thoughts, outwardly distant from

each other, into a single list gains a serious significance when we arrive to consider the historical moment following the decisions assumed against Arianism, but also the emperor's travel to Rome,¹¹ where he was to celebrate his *vicennalia*.¹²

However, the situation does not change too much if we also consider the previous period,¹³ because the heresies listed in the letter were already copiously spread in the East. The general design was in accordance with the passage of VC 2, 48, where the emperor speaks to the people of those same provinces. It was mainly this approach, which could make the content of CTh. 16, 5, 2 clearer, where Novatians were treated preferentially: they, who belonged to the ecclesiastical environment of Rome, were recognized through the eighth rule of the Council of Nicaea, due to the involvement of their bishop in Constantinople, Acesius.¹⁴

In that period, Constantine was, due to his political purposes, agitating a host of figures, each of them struggling to obtain and to defend a position in the Christological controversy: the Nicaean creed, indeed, had not brought a pacification, but managed only to spread a hardening of the different beliefs, symbolically represented by the antithesis between the terms “*homoousios*” (identical substance) and “*homoiousios*” (similar

⁸ DRAKE, *Constantine and the Bishops* 346–350, 348, according whom the constitution was issued during the end of the twenties in the fourth century, together with GIRARDET, *Konstantinische Wende* 133–146, around 325/326 (141, Anm. 405).

⁹ DÖRRIES, *Häretiker* 99ff. and in particular 103ff. and DERS., *Selbstzeugnis* 82, Anm. 2, but also NORDERVAL, *Edikte* 105–106; TARTAGLIA, *Sulla vita di Costantino* 163, Anm. 170 who has edited the most popular translation of VC in Italian, follows Dörries.

¹⁰ KRAFT, *Entwicklung* 123–128, 246–248, where is indicated the lapse of time between the residence in Nicomedia and the travel to Rome is indicated (126); moreover, KERESZTES, *Constantine* 117–166, 135–137.

¹¹ In 326, as we resume from the *Codex Theodosianus*, the emperor was in April in Aquileia (9, 24, 1 and 9, 8, 1), in July in Milan (9, 21, 3), in September in Spoleto (16, 5, 2) and finally in October again in Milan (4, 22, 1), while the city to come back to Constantinople was always Aquileia, according to C 2, 19, 11.

¹² BARNES, *New Empire* 76–77; see also, VC 3, 15.

¹³ The opinion remained quite isolated: BARNES, *Constantine and Eusebius* 224, who speaks about an indeterminate time between 323 and 324, but on the contrary HALL, *Sects under Constantine* 9–10.

¹⁴ Gelasius of Cyzicus, *Hist. Eccl.* 2, 32, in particular 32, 8 and 19, but also Socrates Scholasticus, *Hist. Eccl.* 1, 10, where an amusing anecdote is told (CURTI, *Lo scisma di Novaziano* and mainly DRAKE, *Constantine and Consensus*).

substance), which had put one against the other.¹⁵ Moreover, it is not an accident that Strategius Musonianus, a personage we will talk about soon, was an Arian¹⁶ and that Arianism at one point, at least on the surface, caught on the emperor himself, who was tired to suffer the violent intolerance of the opposite party.¹⁷

This Strategius Musonianus,¹⁸ comes during the years 325 and 326, appearing in Ammianus Marcellinus' *Res Gestae*, 15, 13, 2¹⁹ a place where the historian tells that he was chosen by the emperor to investigate Manichaeism and Manichaeans,²⁰ probably in Antioch of Syria. The same officer is remembered in VC 3, 62, 1, a passage just preceding the quotation of the edict, maybe even prior to it,²¹ while in a letter directed to the Antiochian clergy the emperor, who was trying to stop its internal fights, said that the problem had been already studied by our man.²² Due to his presence during both the occurrences it is possible to presume a kind of connection between the edict against the radical heresies and the controversy of the Antiochian church, in relation to the decision according to

which one to pay great attention to the whole matter.

There, in particular, the situation seemed to be even spirited.²³ Eustathius,²⁴ an extreme orthodox, had harshly attacked Eusebius, who was guilty to the eyes of the enemies of Arianism to have had elaborated a kind of mystification of the Christian formula of faith, provoking a fierce polemic and triggering off a series of reciprocal removals, in 326 and mainly during the following year. A council was called, where Eustathius was forced to leave his see and flee, together with other ecclesiastics of the province. When the local church appeared divided again, the emperor took an interest in the affair and another council was called, where the participants expressed the wish to welcome Eusebius himself as their guide, even if Constantine, wisely, suggested otherwise:²⁵ Eulalius, the new bishop who had died in the meantime, was hence replaced by Euphronius.²⁶

The capital, nevertheless, was one of the most important centres for the relationships with the East.²⁷ Even if it was not located on the border, its inhabitants were accustomed to life in contact with foreign people and the subjects of the Persian Empire; the majority of the population also spoke Syriac, a dialect of Aramaic language. In addition, the city was the main gate for the caravan routes coming from Palmyra.²⁸ Finally, it was characterized by a special form of Christianity, incredibly ancient and full of syncretism.²⁹ It

¹⁵ BARNES, Eusebius 224–244.

¹⁶ HEALING, Religionszugehörigkeit 61.

¹⁷ AIELLO, Costantino eretico.

¹⁸ PLRE 611–612 and RE, Bd. 2, 7 181–182, s.v. Strategius 1. See about the episode MATTHEWS, Roman Empire of Ammianus 449, but also DRIJVERS, HUNT, Late Roman World 175; see also, SCHOLTEN, Römische Diplomatie.

¹⁹ “Constantinus enim cum limatius superstitionum quaereret sectas, Manichaeorum et similium, nec interpres inveniretur idoneus, hunc sibi commendatum ut sufficientem elegit; quem officio functum perite Musonianum voluit appellari, ante Strategium dictitatum [...]”; DE JONGE, Philological and Historical Commentary.

²⁰ Dölger, Konstantin der Grosse; moreover, LIEU, Manichaeism 86–218; DERS., From Mesopotamia to the Roman East 22–131.

²¹ VC 3, 59, 3.

²² VC 3, 62, 1. Acacio was comes in Palestina between 326 and 330; PLRE 6, but mainly WOODS, Eusebius 195–223.

²³ CAVALLERA, Le schisme, but also RENTINK, La cura pastorale.

²⁴ Sellers, Eustathius of Antioch; but also CHADWICK, Fall of Eustathius and HANSON, Fate of Eustathius; finally, BURGESS, Date of the deposition.

²⁵ VC 3, 60.

²⁶ Socrates Scholasticus, Hist. Eccl. 1, 24.

²⁷ LIEBESCHUETZ, Antioch and DOWNEY, History of Antioch.

²⁸ DRIJVERS, Hatra, Palmyra und Edessa, in addition to STONEMAN, Palmyra and Its Empire.

²⁹ For example, moreover BROCK, Syriac Culture.

was, in a word, a rich and powerful reality, an irreplaceable element to keep the control on the whole region. Anyway, the point to stress out is that a localized situation, according to the time and the space, served as a chance to create a law valid for every member of the empire, a true *occasio legis*. After having outlined the historical circumstances around the information on the issue of the edict and the letter preserved in VC 3, 64–65, together with the other two texts, namely 3, 63 and 3, 66, we could try to propose some final reflections.

Constantine, conscious about the new role assumed by the emperor, decided to legislate through the instrument of the *lex generalis*, as we have seen at the beginning. Despite the legal measures against the heretics seemed to have had originated from a specific situation, namely the internal fights of the Antiochian church after the decisions of the Council of Nicaea, it is evident that the constitution had a general as well as an abstract character. Moreover, the author clarifies that the order and the subsequent warning were sent to all the governors of the provinces, probably in both parts of the empire:³⁰ it is true that the ecclesiastical historiography must be regarded very cautiously, in particular Eusebius' work, but it would be improper to ignore it completely.³¹

Concerning this subject, it could be very interesting to analyse the terms used by the historian when he remembers, sometimes reporting, normative acts. In our case, for example, the message sent by the emperor is divided into two parts, which have two different definitions: be-

sides *διδασκαλία*, which appears in many contexts, the word *κέλευσμα*, not taking the verbs formed by its root into consideration, is never used in VC, while we have found it only one other time in *Historia Ecclesiastica* 10, 5, 12.³² In addition, the attempt to individuate the personality of the imperial chancellor who could have influenced or even written the document – Eusebius of Caesarea more probable than Hosius of Corduba,³³ but also Lactantius, who was for many reasons directly involved with Constantine³⁴ – is likely revealing itself to be full of intriguing cues.

³² In the passage we found other two interesting words, which are namely *θεραπεία* (65, 3), taken from the medical language, but above all *πρόσταγμα* (66, 1), connected with the legal sphere: the second one is present also in 2, 37, 1 and 3, 26, 7 (alone), in 3, 30, 4 (together with divine attribute) and in 3, 54, 2 and 2, 42, 4 (together with regal attribute), while the first one is used with the expression *ἀναγκαῖα ἰσχύς*, which evokes the binding force of the law; finally, the verbs in 65, 3, *ἀφαιρέω* (*ἀφαιρεθέντας*) and *προσκρίνω* (*προσκριθῆναι*), have a juridical meaning, because concern the institution of confiscation.

³³ The first one, basically an Arian, before the Council of Nicaea, forced the situation in order to clarify the Christological profile of Manicheism, BARNES, Constantine and Eusebius 191ff; the second one, instead, was the protagonist of the Council of Elvira in Spain, held probably between 305 and 306, where were decided rules about magic (6) and heresy (22 and 51): HESS, Early Development; several years later, he was to overlooked also the Council of Serdica, which was called in 343 against Arianism. For all, DE CLERCQ, Osius of Cordova.

³⁴ As a pupil of Arnobius he had known Constantine in Nicomedia at the court of Diocletian and after became the preceptor of his son, Crispus: the role played in that period to find the meeting point between the Roman culture and the Christian one was enormous, concerning the legal thought too; especially, AMARELLI, *Vetustas passim*, in addition to DERS., *De mortibus persecutorum*; moreover, BARNES, Lactantius and Constantine, but also HEIM, *L'influence exercée*; and PERRIN, *Révolution constantinienne*. In the fifth chapter of his *Divinae Institutiones* he speaks about the theme of justice; GAUDEMET, *Lactance et le droit romain*; MARTINI, *Sui pretesi modelli giuridici*,

³⁰ DUPONT, *Décisions et textes* and DERS., *Le domaine d'application*; moreover, DERS., *Constantin et les constitutions impériales until 555 about the general acts*, with 568–569.

³¹ It is impossible to solve here the historiographical problem about the authenticity of the sources quoted in VC: we refer only to CAMERON, *Eusebius' Vita Constantini* and DERS., HALL, *Eusebius' Life of Constantine*.

However, the nature of a constitution which regulated religious problems and consequently issues of public order was designed to an extensive number of addresses or rather to the totality of the subjects of the empire. A display of such a mind-set of the emperor and his chancellery is the fight against the phenomenon of heresy, which from the legal point of view was starting to arise exactly at that time. At this point, the document which we have just considered gains a deep significance.

We think that Constantine, who was quite sure to have solved the matter of Arian heresy after the Council of Nicaea and was probably oblivious of the consequences of the Donatist schism, at one point hurled himself into the persecution of other Christian confessions, which though they were dispersed, were still numerous and above all uncontrollable. The sovereign appears committed against the radical heresies, both in a similar and a different manner as it had previously happened: the heretics whom he fought through the edict were not some peaceful theologians established on various dogmatic positions, but on the contrary rebels to the unity represented by the central power. Furthermore, this could be the real core of the whole problem, every appearance of non-orthodox Christianity cast doubt on the structure of the church, so consequently the centrality of the figure of the emperor as *imago Christi*.

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and finally CAVALCANTI, Aspetti della strutturazione. The problem of heresy is contained, for example, in two interesting passages, Lact. ira 2, 6 and Lact. inst. 4, 30, 2–10, which seems to remember our edict.

Abkürzungen:

AARC	Atti del convegno internazionale dell'Accademia Romanistica Costantiniana
AJAH	American Journal of Ancient History
ASRG	Atti des seminario romanistico gardesano
CTh	Codex Theodosianus
Hist. Eccl.	Historia ecclesiastica
J ECS	Journal of Early Christian Studies
JRH	Journal of Religious History
JRS	Journal of Roman Studies
JTS	Journal of Theological Studies
Lact. inst.	Lactantius, divinae institutiones
Lact. ira	Lactantius, de ira Dei
PLRE	Arnold H. M. JONES (Hgg.), Prosopography of the Later Roman Empire, Bd. 1: A.D. 260–395 (Cambridge 1971),
RE	Georg WISSOWA, u.a. (Hgg.), Paulys Realencyclopädie der classischen Altertumswissenschaft (Stuttgart 1893–1978).
RHEF	Revue d'histoire de l'église de France
RSC	Rivista di storia del cristianesimo
SDHI	Studia et documenta historiae et iuris
VC	Vita Constantine
ZKG	Zeitschrift für Kirchengeschichte

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