

Summing up the findings, our study showed that, according to the opinions of the doctors questioned: about one-fourth of the women of child-bearing age, not known to be sterile, and under the care of a doctor, were using the rhythm method, and almost one-third of those who combined it with artificial contraception are included; the practice of the method is increasing, particularly among Catholics; it is not too complicated for use by most women in the opinion of two-thirds of the doctors and 53 per cent of the gynecologist-obstetricians; the median effectiveness is 71 per cent in the opinion of all the doctors and 84 per cent in the opinion of Catholic doctors; younger doctors seem to have more confidence in the method; graduates of Catholic medical schools are more favorably inclined, although this finding is tempered by the fact that most of these graduates are Catholics; and 21 per cent of the doctors thought that the rhythm method was more effective or at least equally as effective as artificial contraceptives.

These findings are directly counter to the objectives of the campaign previously referred to because they indicate that the rhythm method is rather effective, is quite widespread and apparently increasing in use, and seems to be adapted to effective use by most women. It is important that Catholic priests and other counselors know these facts. Evidently we cannot be partners in a campaign which advocates childlessness or family limitation for insufficient reasons, but it does not seem wise to ignore the facts, either to minimize the extent of its practice or to discourage its use simply by minimizing its effectiveness or practicality. It may be that contraceptives are being abandoned as more and more couples are adopting the rhythm method which, though condemned for general and unrestricted use, is nevertheless ethically justifiable under certain conditions.

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## THEODOSIUS' LAWS ON HERETICS

Occasionally it is suggested that St. Augustine (354-430) was a Catholic because that was the only Christian group available at the time. The Emperors Theodosius and Valentinian, however, apparently felt differently about the matter when they gave their decree of May 30, 428. In that decree they indicated to Idorentius, the Pretorian Prefect, that he was to make a distinction in his treatment of various groups which call themselves Christians. They were not all to be treated with the same austerity.<sup>1</sup>

The Arians, the Macedonians, and the Apollinarians, whose crime is, the Emperors said, that deceived by a damaging meditation they believe falsehoods about the source of truth, are not permitted to have a church in any city. The Novatians and Sabatians, on the other hand are not to have permission to make any renovations, in case they should attempt any.

The Eunomians, the Valentinians, the Montanists or Priscillians, the Phrygians, the Marcianists, the Borborians, the Messalians, the Euchites or Enthusiasts, the Donatists, the Audians, the Hydroparastates, the Tascodrogites, the Photinians, the Paulians, the Marcellians, and those who have descended to the very depths of iniquity, the Manicheans (to whom St. Augustine once belonged), are never to be permitted to gather or pray on Roman soil. The Manicheans are even to be expelled from the cities, nor no place is to be left to all these people in which they may do harm to the very elements.

All in all, St. Augustine had a wide choice of groups calling themselves Christians to which he could have attached himself, had he not been convinced of the truth of Catholic dogmas.

When the Emperors transferred their favor from the ancient pagan religion to the newer Christian Church they were soon confronted with the divisions which had been foretold by St. Paul.<sup>2</sup> By the year 386 Valentinian, Theodosius, and Arcadius decreed that if those who thought they alone had a right of assembly created any disturbance of the public peace they were to be treated as guilty of sedition and of disturbance of the peace of

<sup>1</sup>Cf. C. Th. 16.5.65.2; C. Th. 16.5.65.3.

<sup>2</sup> Cf. *I Cor.* 11:19.

the Church, and were to be punished by death tor /Em *majesté*?

Two years later they ordered that no one be permitted to make a public appearance either to dispute about religion or to discuss it or give advice about it. Anyone who violated this law was to be punished with proper penalties.<sup>3</sup> Anyone who did not observe the general law against religious disturbances and who did not show improvement in his conduct after being punished but continued to disturb the Catholic faith and people was to be deported.<sup>5</sup> All officials were warned to keep away from tumultuous gatherings on penalty of being deprived of office and of having their property confiscated.<sup>6</sup>

Slave-holders at Rome were warned to keep their slaves away from such tumultuous gatherings on penalty of a fine of three pounds gold for each slave who was present at the forbidden assemblies. Corporations were also liable to a fine of fifty pounds gold if one of their membership held a forbidden assembly.<sup>7</sup>

Provincial officials were warned to prevent the forbidden gatherings of those who left the orthodox religion and tried to hold meetings elsewhere than in the churches, i.e. those who were not in communion with Bishops Arsacius, Theophilus, and *Porphyrians*.<sup>8</sup>

Accustomed to the unified control which they were able to exercise over the pagan religion when Syncretism had brought

<sup>3</sup> Cf. C. Th. 16.4.1 (Jan. 23, 386). Title IV is: *De his, qui super religione contendunt*.

<sup>4</sup> Cf. C. Th. 16.4.2 (June 16, 388).

<sup>5</sup> Cf. C. Th. 16.4.3 (July 18, 392).

<sup>6</sup> Cf. C. Th. 16.4.4 (Jan. 29, 404). Whether or not this is a case of "guilt by association," the Emperors evidently did not want their public officials to have anything to do with groups which they considered a menace to public peace. Cf. U. S. Loyalty Program, 3 Code Fed. Regs. 129 (Supp. 1947).

<sup>7</sup> Cf. C. Th. 16.4.5 (Sept. 11, 404). This law, indirectly, increased the police forces of the State without increasing costs of policing for it enlisted all slave-holders and all organizations on the side of the law for fear of being fined should any slave or member take part in the gatherings the Emperors were trying to prevent. If they were successful in watching over those under their control the Emperors achieved their purpose of stopping the meetings, if they were not the imperial coffers were enriched so that more police could be hired to stop the meetings.

<sup>8</sup> Cf. C. Th. 16.4.6 (Nov. 18, 404). This introduces the reverse of the "guilt by association" test. If a person is associated with those approved by the Emperors, he is also approved.

all the pagan deities into a hierarchy with the Sun-god at its head, the Emperors were not loath to accept the idea that those who did not accede to the decisions of the majority or the Catholic Bishops gathered in Council were not read} Christians, no matter how much they might claim that their doctrine was the true teaching of Christ. Desirous of having uniformity in this new religion which they had espoused, the Emperors undertook to legislate against those whom the majority of the Church had condemned as "heretics."<sup>9</sup>10

Constantine had from the very beginning decreed that the privileges which had been accorded in favor of religion were to be restricted to the observers of the Catholic law alone, *Heretic\* and schismatics were not only deprived of such privileges but were also subjected to various imposts.*<sup>11</sup>

He did, however, permit the Novatians to keep their churches and cemeteries which they had had for a long time. They were not, however, permitted to seize property which had always belonged to the churches before they decided to leave.<sup>12</sup>

After the severe struggles, when it seemed for a time that the Arian party might succeed in taking over the Church with the assistance of the Emperors,<sup>13</sup> the imperial power swung once again to the side of the *Catholic Church against those whom* it considered as heretics. Thus, in 372, Valentinian and Valens condemned the Manicheans. If they held any meetings, the leaders were to be heavily fined, while the people who attended the meetings were to be banished as *infames*<sup>14</sup> and disreputable. The houses in which the meetings were held were to be confiscated.<sup>14</sup>

Valens, Gratian, and Valentinian decreed confiscation of any place in which altars were set up in furtherance of a false religion,

<sup>9</sup> Title V of the Theodosian Code is entitled: *De Haereticis*. The Catholic Church had long been excluding from its membership those who wanted to pick and choose their beliefs instead of accepting the whole Christian teaching.

<sup>10</sup> Cf. C. Th. 16.5.1 (Sept. 1, 326).

<sup>11</sup> Cf. C. Th. 16.5.2 (Sept. 25, 326). Cf. Zellmann, *American Church Law*, pp. 250-80.

<sup>12</sup> Cf. Martin, *Caesaropanism in Action*, *AER*, CXXII. 2 (Feb. 1950), 121 ff.

<sup>13</sup> *Infamia* was an institute of Roman Law whereby certain actions or professions or condemnations brought with them a diminution of legal capacity, e.g. to make a will. Cf. *infra*, note 19.

<sup>14</sup> Cf. C. Th. 16.5.3 (March 2, 372).

as a means of stopping usurpation by a heretical group of the position of the Catholic Church. Confiscation was to take place whether the meeting was held in a city or in the country. If the meeting was aided by failure of the judges to act against it or by the wickedness of others, they were both to be punished.<sup>15</sup>

Gratian, Valentinian and Theodosius also attempted to put an end to heretical groups. They forbade such groups to preach or baptize. They forbade the teachers and ministers of "this perverse superstition," whether they called themselves "bishops" or "priests" or "deacons," though they were not even to be considered "Christians," to have any part in the gatherings of this "condemned opinion."<sup>16</sup>

The same Emperors, two years later, decreed that the heretics must have no place for the celebration of religious worship and no opportunity for exercise of the "insanity of an obstinate mind." Whatever grants of privilege they might have obtained were declared void. They were not permitted to hold meetings. The name of one supreme God was to be honored everywhere. The Nicene faith was to be observed. The contamination of the Photinian stain, the poison of the Arian sacrilege, the crime of the Eunomian perfidy and the unspeakable manifestations of sects indicated by the outlandish names of their authors were not even to be heard of again.<sup>17</sup>

The profession of the Nicene faith was made the test. Those who did not accept it were to cease to take unto themselves the name of the true religion which did not belong to them and were to be known by their open crimes. They were to be removed from the churches and were to be kept away from them. They were forbidden to hold meetings within the towns, and if they tried to create a factious disturbance they were to be banished. The Catholic churches were to be restored to the orthodox bishops who held fast to the Nicene faith.<sup>18</sup>

Later that same year the Emperors decreed that since Manicheans were *infames* they had no right, under Roman Law, either to make a will or to take by succession. The property was con-

<sup>15</sup> Cf. C. Th. 16.5.4 (Apr. 22, 376 [378?]).

<sup>16</sup> Cf. C. Th. 16.5.5 (Aug. 3, 379).

<sup>ii</sup> Cf. C. Th. 16.5.6 (Jan. 10, 381) ; C. Th. 16.5.6.1.

<sup>is</sup> Cf. C. Th. 16.5.6.2.

fiscated by the State. This was so, whether the property was left to a husband or a relative or any deserving person or even to the children, if they were guilty of the same kind of life and crimes.<sup>19</sup>

This law was, furthermore, made retroactive, so that confiscation would apply to past transactions. Conscious of the difficulty raised by such retroactivity, since ordinarily their "heavenly statutes"<sup>20</sup> had prospective rather than retrospective force, the Emperors excused themselves on the ground that the habit of obstinacy and the pertinacious nature of these people required such special legislation as a sanction for their "sense of just indignation" against such as continued to hold unlawful meetings despite the previous ban. The Emperors considered them guilty of insult to the previous law and of sacrilege. The severity of the present law was, therefore, to be considered not so much an example of a law enacted but of a law vindicated, so that a defense on the basis of the time at which the offense occurred should not be allowed.<sup>21</sup>

The Emperors enlisted the children on their side by decreeing that only those should be entitled to take by succession from their father or mother who, although they were born of Manichean parents, had turned to the true religion and were thus freed from any guilt.<sup>22</sup>

The Manicheans were also forbidden to have places for their services. They were banished from the cities. If they tried to disguise themselves under such names as Encratites, Apotactites, Hydroparastates or Saccophori they were still to be outlawed. They were not to be protected by profession of a name, but were to be known and execrated by reason of the crime of their sects.<sup>23</sup>

In the same year the same Emperors forbade the Eunomians, the Arians, and the followers of Aetius to build churches whether in town or in the country. If such buildings were erected contrary to law, both they and the land on which they were built were to be confiscated.<sup>24</sup>

<sup>19</sup>Cf. C. Th. 16.5.7 (May 8, 381).

<sup>20</sup>The Emperors might be Christian, but they still retained the phraseology of the times when they were revered as gods.

<sup>21</sup>Cf. C. Th. 16.5.7.1.

<sup>22</sup>Cf. C. Th. 16.5.7.2.

<sup>23</sup>Cf. C. Th. 16.5.7.3.

<sup>24</sup>Cf. C. Th. 16.5.8 (July 19, 381).

The very next year the Emperors repeated the lave of confiscation of property which the Manicheans attempted io leave by will or to give *inter vivos*, though they did allow the property to pass by intestate succession provided there were heirs. If there were no heirs the property went to the State.<sup>25</sup> As for the Encratites, Saccophori, or Hydroparastates, they were to suffer the extreme punishment if they were found guilty of some trace of such crime.<sup>26</sup> The Pretorian Prefect was instructed to appoint inquisitor<sup>27</sup>, to open a court, to get information and hear denunciations without prejudice to the informers. No one was to prevent the starting of this accusation by reason of ordinary lapse of time. No one was to summon such secret gatherings of the heretics, whether in the rural or in the urban areas.<sup>28</sup> A further indication of guilt of heresy was that one had not attended church on Easter.<sup>29</sup>

The year after this the Emperors decreed that the Tascodrogites were not to be expelled from the places they owned. No crowds, however, were to gather at a heretical church, or, if they gathered, they were to be broken up without delay.<sup>30</sup>

A month later they decreed that Eunomians, Arians, Macedonians, Pneumatomachi, Manicheans, Encratites, Apotactites, Saccophori, Hydroparastates were forbidden to hold meetings, to gather a crowd together, to invite people to come to them, to indicate a private building as a church, or to do anything either publicly or privately which might offend Catholic sanctity. If anyone disobeyed the law permission was given to all who esteemed the beauty of the true observance to expel him by the common consent of all.<sup>31</sup>

25 Cf. C. Th. 16.5.9 (March 31, 382).

26 Cf. C. Th. 16.5.9.1.

27 Cf. C. Th. 16.5.9.1. These are, therefore, police officers of the State, though "inquisition" is usually considered as a function of ecclesiastical authority. An analogue of this is, to some extent, the Gestapo, the Cheka (MVD), or the OVRA. It does not appear, however, that the "*inquisitores*" mentioned in this law were to be more than a fact-finding group. Mention is made of the opening of a court, so it would appear that the secret police here had none of the judicial functions assumed by the secret police in the modern "police-state."

28 Cf. *ibid.*

29 Cf. C. Th. 16.5.9.2.

30 Cf. C. Th. 16.5.10 (June 20, 383).

31 Cf. C. Th. 16.5.11 (July 25, 383).

In December they added to the previous provisions that the heretics could not ordain any priests of their sect. Their buildings were confiscated. Followers of the sects were to be driven out of cities and any other places where they might be and forced to return to the localities whence they had come. Provincial judges and the chief officers of cities who were negligent in permitting gatherings of prohibited congregations were subject to condemnation.<sup>32</sup>

A month later the Emperors decreed that "bishops" or "ministers" or "priests," as they called themselves, of the Eunomian, Macedonian, Arian and Apollinarian sects were to be hunted down by a very careful investigation and were to be expelled from the city. They were to be exiled far from the assembly "of the good people."<sup>33</sup>

Four years elapsed before the same Emperors again issued a decree concerning heretics. This time it was the Apollinarians who were named principally, though the other sects are also referred to in a general way. They were forbidden to gather and to ordain a clergy. They were not to hold meetings, whether in public or in private churches. They were not to ordain "bishops," and those who had been ordained "bishops" were by this law deprived of that title. They were to withdraw to a place which would wall them off from the rest of mankind. Furthermore, they were deprived of the right to present any petition to the Emperors for favors or for vindication of rights.<sup>34</sup>

Three months later they repeated the prohibition whereby heretics were not permitted to hold meetings, to hold discussions, or even to hold secret meetings. They were forbidden to erect altars and hold services. The Pretorian Prefect was to choose trusted men who would be able to prevent them from violating the law and to bring them to trial when they were caught so that they could be punished most severely.<sup>35</sup>

Apparently, the heretics were not above fraudulent use of rescripts purporting to emanate from the imperial chancery to further

<sup>32</sup> Cf. C. Th. 16.5.12 (Dec. 3, 383).

<sup>33</sup> Cf. C. Th. 16.5.13 (Jan. 21, 384).

<sup>34</sup> Cf. C. Th. 16.5.14 (March 10, 388). This is a further restriction on legal capacity, cf. Bonfante, *Istituzioni di diritto Romano*, pp. 59 f.

<sup>35</sup> Cf. C. Th. 16.5.15 (June 14, 388).

their own purposes. The Emperors, therefore, instructed the Pretorian Prefect that the Arians had never been given such rescripts and that they were to be punished as counterfeiters.<sup>36</sup>

The Eunomians, the Emperors repeated, were not permitted to make wills or to take under them. They were not permitted to hold property, to seek to obtain property, or to designate an heir, whether as principal, or as *fideicommissarius*, or as legatee, or by a tacit trust or any other legal designation. All the property was to be confiscated.<sup>36</sup>

A month later the Emperors gave a similar decree regarding the Manicheans. Not only were they to be expelled from Koine, but they were also to have their property confiscated and they were forbidden to make wills.<sup>38</sup>

Toward the end of that year Valentinian, Theodosius, and Arcadius struck at the leaders of the various heresies, even as Decius had struck at the leaders of the Christian Religion. They ordered the expulsion of all "bishops," "priests," "deacons," "readers," or "clerics."<sup>39</sup>

Again striking at the leaders of the heretical groups, they decreed that such as were found to have ordained clerics or to have undertaken the office of cleric were to be fined ten pounds gold. The place in which the forbidden action had taken place was to be confiscated, if it had been opened to these people by the connivance of the owner. If, however, it appeared that the owner had been kept in ignorance of what was being done, the lessee, if a freeman, was fined ten pounds; if a slave, he was whipped and deported. If the action had taken place on imperial or public property and the lessee and the procurator had permitted the assembly, they were fined ten pounds gold. Those who aided such services and claimed to be clergymen and were found out were fined ten pounds gold, each one.<sup>40</sup>

36 Cf. C. Th. 16.5.16 (Aug. 9, 388?).

37 Cf. C. Th. 16.5.17 (May 4, 389). The Emperors at this time were Valentinian, Theodosius, and Arcadius.

38 Cf. C. Th. 16.5.18 (June 17, 389).

39 Cf. C. Th. 16.5.19 (Nov. 26, 389); C. Th. 16.5.20 (May 19, 391) forbade all heretical meetings.

40 Cf. C. Th. 16.5.21 (June 15, 392).



Theodosius, Arcadius, and Honorius decreed that the heretics were not permitted to create "bishops" and that the approval of those bishops was illicit.<sup>41</sup>

The attitude of the Emperors toward the Eunomians changed in 394 and they allowed them to make wills as well as to take by will.<sup>42</sup> The permission, however, was short-lived, for the following year they again forbade them to make wills and take under testamentary dispositions.<sup>43</sup> Changing their minds again, some three months later they allowed the Eunomians to make wills.<sup>44</sup> The permission was revoked again in 410.<sup>45</sup>

Heretics were still forbidden to have meetings, *to teach* their doctrines or to be taught them. Their "bishops" were not to preach, nor were they to ordain ministers. Furthermore, judges and other officials were not, by connivance, to allow them to multiply.<sup>46</sup>

Arcadius and Honorius repeated that all the penalties previously established against the heretics were in force in their reign, and that any favors which had been conceded to them in the hope of their correction were revoked, including those to the Eunomians in regard to wills.<sup>47</sup> Heretics were not to hold meetings or have services, whether in public or in private, whether secretly or openly. They were not allowed to use the title of "bishop" or those of the ecclesiastical orders.<sup>48</sup>

They instructed Aurelian, the Proconsul for Asia, that slight evidence (*vel levi argumento*) was sufficient for one to be considered a heretic and to be punished as such. On that basis he was to consider one Heuresius a heretic and strike him from the number of bishops who were approved.<sup>49</sup>

They ordered Marcellus, Master of the Offices, to conduct an investigation of those who worked in the Chancery and in other government positions to see whether any were heretics. If any

«Cf. C. Th. 16.5.22 (Apr. 15, 394).

«Cf. C. Th. 16.5.23 (June 20, 394).

«Cf. C. Th. 16.5.25 (March 13, 395).

«Cf. C. Th. 16.5.27 (June? 24, 395).

«Cf. C. Th. 16.5.49 (March 1, 410).

46 Cf. C. Th. 16.5.24 (July 9, 394).

«Cf. C. Th. 16.5.25 (March 13, 395).

«Cf. C. Th. 16.5.26 (March 30, 395).

«Cf. C. Th. 16.5.28 (Sept. 3, 395).

were discovered they were not only deprived of their positions but were banished from the city.<sup>30</sup>

They also ordered Clearchus, the Prefect of Rome, to expel all heretical clergy from that city and to take from the heretics any buildings they might possess there, whether they called them churches or deaconries, and any private houses in which they were allowed to meet. All were to be confiscated. All their clergy were to be expelled from the city. They were not to be permitted to hold a meeting within the city whether by day or by night. If they did, he, the Prefect, was fined one hundred pounds gold, whether the meeting was held in a public place or in a private home.<sup>31</sup>

The leaders, teachers, and clergy of the Eunomians who were turned up by the inquisition were to be expelled from the cities.<sup>32</sup> The Pretorian Prefect was to use every care to hunt them out and expel them.<sup>33</sup> The teachers of the Apollinarians, too, were to be banished from the city. Furthermore, any place or house which was used for their meetings was to be confiscated.<sup>34</sup>

The clergy of the Eunomians and of the Montanists were to be banished from the cities. If they lived in the country and held meetings there they were to be deported. The procurator of the place was to be severely punished and the owner was to lose the land, if they knew of the *meetings and did not report them*. If, after the solemn publication of the decree, they were caught in the city they were to be severely punished, after confiscation of their property, and the house where they met and were not at once expelled and reported by the owner was confiscated.<sup>35</sup>

In this decree the Emperors used once more the tactic of burning the books, as Diocletian had done to the Christian books in his persecution. The books were to be burned in the presence of the judges. If any one was convicted of having, by fraud, hidden them or of not having given them up on any occasion, he

<sup>30</sup> Cf. C. Th. 16.5.29 (Nov. 24, 395). "Loyalty check!"

<sup>31</sup> Cf. C. Th. 16.5.30 (March 3, 396 [402]). This was certainly an inducement to the official to carry out the law. It would take a good sized bribe to get him to overlook violations.

Cf. C. Th. 16.5.31 (Apr. 21 or 22, 396).

<sup>32</sup> Cf. C. Th. 16.5.32 (Apr. 21 or 22, 396).

<sup>33</sup> Cf. C. Th. 16.5.33 (Apr. 1, 397).

<sup>34</sup> Cf. C. Th. 16.5.34 (March 4, 398).

was to be put to death as guilty of keeping harmful books and of the crime of doing harm.<sup>56</sup>

The Vicar for Africa, Dominator, was ordered to undertake an inquisition against the Manicheans, to bring them out in the open and punish them most severely. Furthermore, those who protected such persons in their homes were also to feel the weight of authority.<sup>57</sup>

While the Eunomians were permitted, in 390, to make wills, they were forbidden to hold meetings and gatherings, and the procurator of a farm or the steward of a town-house who allowed them to hold services there was to be put to death, and the property was to be confiscated, if the owner knew what was being done on his property and did not forbid it. The ministers of the sect were to be deported, if they were caught holding a meeting, and all their property was to be confiscated.<sup>58</sup>

The Donatists were making trouble, it seems, in 400 or 405 A.D. Arcadius and Honorius, therefore, instructed their Pretorian Prefect, Hadrian, that the rescript which the Donatists claimed to have received from Julian was not to be considered good.<sup>59</sup>

Noting that the Manicheans and Donatists were still strong, the Emperors decreed that there should be one, Catholic, religion. If anyone should dare to attend prohibited meetings he was to be punished according to the innumerable past constitutions. If the

<sup>56</sup> Cf. C. Th. 16.5.34.1. This and other provisions of the laws against heretics in Title V of this sixteenth book of the Theodosian Code give rise at least to the suspicion that here one can find some of the provisions used to outlaw the Christians during the period when they were persecuted. These laws were, of course, abrogated when Christianity was made the official religion of the Empire. They were not inserted in the collections which have come down to us, for they had no application at the time the collections were made. It is not unlikely, however, that in searching for methods of outlawing heresies the Emperors turned to previous experience gained from attempts to outlaw Christianity. While the methods had not been completely successful, for Christianity did triumph in the end, nevertheless they had had a certain success, as is apparent from the discussions of the Fathers concerning the method of treating the *lapsi* who had yielded under torture and had given up their faith (cf. Cyprian, *De lapsis*, c. 7-9. *CSEL* III, 241 ff.; *MPL* IV, 471 ff.

<sup>57</sup> Cf. C. Th. 16.5.35 (May 17, 399).

<sup>58</sup> Cf. C. Th. 16.5.36 (July 6, 399).

<sup>59</sup> Cf. C. Th. 16.5.37 (Feb. 26 [?], 400 [405D-

meeting turned into sedition, the penalty would be more severe.<sup>60</sup>

The Donatists, indeed, were to be punished,<sup>61</sup> but punishment was also to be meted out to the Manicheans or Phrygians or Priscillians. They were not to have anything in common with other men.<sup>62</sup> First of all, they were to be considered guilty of a public crime, for, said the Emperors, what was done contrary to the divine religion was an injury to all.<sup>63</sup>

Just as in the Christian persecutions brother was sometimes turned against brother in the hope of obtaining the property of the one condemned as a Christian, so now the Emperors decreed that when confiscation of a heretic's property was called for under the law, that property should go to his relatives, ascending or descending, or collateral, up to the second degree, provided they were not themselves heretics.<sup>6465</sup>

The heretics were not to take by will or by gift, nor were they, after conviction, to make gifts, buy, or sell, or make contracts.<sup>66</sup> The inquisition was to extend even to those who were dead. As in crimes of *lèse majesté* it was permissible to accuse even the memory of the deceased, so here they declared the same thing held good. In consequence, even a last will was void, whether by will or codicil or letter or any other means a person proved to be a Manichean or a Phrygian or a Priscillian had tried to leave property. The children could not take as heirs unless they had given up the sect. Pardon, said the Emperors, they granted to those who were contrite, even as the Christians had not been punished for having been Christians, if they consented to sacrifice to the image of the Emperor.<sup>66</sup>

Slaves were not to be punished if they left an heretical master to return to the Catholic church.<sup>67</sup> Land where meetings of the heretics had been held with the knowledge, though without the participation, of the owner who had not forbidden such meetings, was to be confiscated even though the owner did not himself be-

<sup>60</sup> Cf. C. Th. 16.5.38 (Feb. 12, 405).

<sup>61</sup> Cf. C. Th. 16.5.39 (Dec. 8, 405).

<sup>62</sup> Cf. C. Th. 16.5.40 (Feb. 22, 407).

<sup>63</sup> Cf. C. Th. 16.5.40.1.

Cf. C. Th. 16.5.40.2.

<sup>65</sup> Cf. C. Th. 16.5.40.3; C. Th. 16.5.40.4.

<sup>66</sup> Cf. C. Th. 16.5.40.5.

<sup>67</sup> Cf. C. Th. 16.5.40.6.

long to the sect. If the owner was unaware of the use to which his land was being put, the procurator was to be scourged and condemned to the mines. The lessee was to be deported.

The provincial governor who favored such heretics or tried not to see that they were operating in his district or failed to punish them after conviction was fined twenty pounds gold. Heads of cities and provincial officers were fined ten pounds gold if they failed to use the wisest and most careful methods in executing the judgments rendered in these matters.<sup>68</sup>

As if to explain more fully the pardon granted to those who renounced heresy, Arcadius, Honorius, and Theodosius wrote to Porphyrius, Proconsul for Africa in 407. In that decree they said that although punishment usually purges out crimes, they preferred the correction of men's evil wills through the admonitions of penance. Consequently, if any heretics, whether Donatists or Manicheans, or those following any other false opinion and belonging to a sect which observed profane rites, should embrace with simple confession the Catholic faith and rites which they desired to be observed by all men, though they had followed the old wrongful doctrine for so long that they might be thought liable to punishment even under previous laws, still, they were to be considered free from all taint as soon as they confessed God in simple faith. As to every guilt, whether contracted previously or subsequent to this law, even though penalties seemed especially to be due to the guilty it would suffice for their removal that the person had by his own decision condemned the error and embraced the name of the omnipotent God, even in the midst of his danger. Never should the aid of religion be wanting when called upon in the midst of misery. As, therefore, they commanded that their previous laws for the destruction of sacrilegious minds be put into execution, so they ordered that those who had chosen the faith of simple religion, even though by a tardy confession, should not be considered bound to punishment under those laws. This they ordered that all might know' that vengeance would not be wanting as to the illicit desires of men and that the aid of the laws was offered to the true worship.<sup>70</sup>

<sup>68</sup> Cf. C. Th. 16.5.40.7.

<sup>69</sup> Cf. C. Th. 16.5.40.8.

<sup>70</sup> Cf. C. Th. 16.5.41 (Nov. 15, 407).

Honorius and Theodosius refused to have those hostile to the Catholic religion in service in their palace.<sup>71</sup>

The same Emperors repeated the provisions against the Donatists, also called *Monteuses*, the Manicheans, or Priscillians, and the pagans. They ordered that all those laws be enforced, and that their buildings as well as those of the *Caelicolae*, who had "some new kind of dogma," be turned over to the churches. The penalties were to be inflicted both upon confessed Donatists and upon those who claimed to be Christians but avoided the communion of the Catholics in view of their evil religion.<sup>72</sup>

Finding that the Donatists and some Jews were disturbing the sacraments of the Catholic faith and religious services, the Emperors ordered them to be punished who attempted such things.<sup>73</sup> Officials were also ordered to see to it that no one, whether in the city or in some secret portion of their territory, held forbidden meetings, abandoning the Catholic bishop of the church. The places themselves, where they met, were to be confiscated without any excuses.<sup>74</sup>

Any judge guilty of failing to enforce the laws against Donatists and other heretics, Jews, and pagans was to lose his position and was to be fined twenty pounds gold. Men of lower rank who knew of violations of the laws in their cities or territories and kept silent about them were liable to deportation and confiscation of their property.<sup>75</sup> The right to present petitions to the Emperors was still denied to those who violated the laws on heretics.<sup>76</sup>

Montanists, Priscillians, and other heretics were excluded from government service. If they were of social classes which were obliged to render the service at their own expense they had to perform such services. Since that was a form of taxation they were not to be freed from it.<sup>77</sup>

If the officials in charge of handling property which was supposed to be confiscated by the State ever permitted any such

71 Cf. C. Th. 16.5.42 (Nov. 14, 408).

72 Cf. C. Th. 16.5.43 (Nov. 15, 408 [407]).

73 Cf. C. Th. 16.5.44 (Nov. 24, 408).

74 Cf. C. Th. 16.5.45 (Nov. 27, 408).

75 Cf. C. Th. 16.5.46 (Jan. 15, 409).

76 Cf. C. Th. 16.5.47 (June 26, 409).

77 Cf. C. Th. 16.5.48 (Feb. 21, 410).

property to be kept or turned over to persons not entitled to hold it, they themselves were liable for it.<sup>78</sup>

The Donatists apparently claimed to have obtained a rescript in their favor, for Honorius and Theodosius, in 410, outlawed it and decreed that they should suffer the penalty of confiscation and death if they ever again attempted to meet in public.<sup>79</sup> Those of "illustrious" rank were fined fifty pounds gold. Those of the rank of "*spectabiles*" were fined forty pounds gold. The fine for those of senatorial rank was thirty pounds gold, for "*clarissimi*" it was twenty pounds gold, for priests thirty pounds, for "*principales*" twenty, for city officials five, and for businessmen and ordinary citizens five. If these people were not handed over by those under whose care they were, the latter were themselves subject to the same penalty. Wives were bound by the same penalties as their husbands, those who persisted in their opinions were to have their property confiscated. Slaves were to be taken care of by their masters and glebe serfs were to be beaten severely to make them give up their heresy, unless the master preferred to pay the penalty himself. The clergy and ministers of the heretics were to be sent into exile and the churches and property turned over to the Catholics.<sup>80</sup>

When some bishops complained that a certain Jovinian was holding meetings outside the city, the Emperors ordered that he be seized, scourged and exiled together with his followers and ministers. He himself was to be sent to an island, while his followers were to be separated one from another to break up the conspiracy of superstition. If they tried to meet again they were to be punished more severely.<sup>81</sup>

The Donatists were still a problem in 414 and the Emperors recalled that they were not allowed to make a will or enter into contracts and, being *infames*, were excluded from the society of all good citizens. The places where they had held services were to be turned over to the Catholic church and their "bishops," "priests," "leaders," and "ministers" were to be sent into exile after their goods were confiscated.<sup>82</sup>

<sup>78</sup> Cf. C. Th. 16.5.50 (March 1, 410).

<sup>79</sup> Cf. C. Th. 16.5.51 (Aug. 25, 410).

<sup>80</sup> Cf. C. Th. 16.5.52 (Jan. 30, 412).

<sup>81</sup> Cf. C. Th. 16.5.53 (March 6, 412 [398?]).

<sup>82</sup> Cf. C. Th. 16.5.54 (June 17, 414) ; C. Th. 16.5.54.1.

Anyone who protected these Donatists was liable to confiscation of his property and the same penalties which were indicted on the heretics themselves. Confiscation and fines were to be imposed, no matter whether the culprit was man or woman, an ordinary individual or a dignitary. Those of high rank were fined two hundred pounds silver. The fine was to be imposed for every time the person attended heretical services. After it had been imposed five times the matter was to be referred to the Emperors' "clemency," that they might take harsher steps against his property and his status.<sup>83</sup>

Senators who were Donatists were fined one hundred pounds silver, priests the same amount, civic leaders fifty, other officials ten, if they preferred to remain in heresy.<sup>84</sup> Lessees who permitted such *gatherings on* imperial property were fined an amount equal to their rent. Lessees from private owners were to be turned over to the owners by the judges. The owners were to take steps to correct their lessees or appoint persons to take charge of their property to see to it that the "divine commands" were observed. If they failed to do this they were to be fined the amount of rent which they were accustomed to receive.<sup>85</sup>

The officials of the various judges who were discovered to be Donatists were fined thirty pounds silver, and if this happened five times they were to be whipped and sent into exile.<sup>86</sup> Slaves and glebe serfs were to be punished most severely. If the serfs continued in their heresy after being whipped they were to be fined the third part of their "*peculium*." Whatever was collected from these people was to be distributed to charity.<sup>88</sup>

All heretics were warned, in 415, not to hold public gatherings under penalty of confiscation and death.<sup>89</sup> The Montanists were ordered not to gather and hold meetings. If their clergy, "bishops," "priests," or "deacons" dared to hold meetings or ordain clergy-

83 «. C. Th. 16.5.54.2; C. Th. 16.5.54.3.

84 Cf. C. Th. 16.5.54.4.

s\* Cf. C. Th. 16.5.54.5; C. Th. 16.5.54.6.

8 « Cf. C. Th. 16.5.54.7.

87 Cf. C. Th. 16.5.54.8.

88 Cf. C. Th. 16.5.54.9.

89 Cf. C. Th. 16.5.56 (Aug. 25, 415). C. Th. 16.5.55 (Aug. 30, 414) simply recalls what had previously been decreed against the Donatists and confirms it.



men or be ordained clergymen they were to be deported.<sup>90</sup> Those who aided them to hold the meetings were liable to have the house or the land confiscated. If the "*procurator*" allowed the meeting without the knowledge of the owner, the former was sent into exile.<sup>91</sup> If the Montanists possessed any buildings these were to be turned over to the churches of the orthodox sect together with their endowments, though care was to be taken that property of private individuals be not seized under the guise of taking property of the Montanists.<sup>92</sup>

In that same year the Emperors decreed the confiscation of the houses which the Eunomian clergy had within the city and in which they held meetings or repeated baptism.<sup>93</sup> They forbade all other heretics to repeat baptism.<sup>94</sup> One who of his own free will had sought to be baptized again was subject to deportation,<sup>95</sup> as were the Eunomian clergy if they held meetings, whether in Constantinople or in the provinces, in cities or in the territories around them, or dared to ordain other clerics or be ordained as such.<sup>96</sup> Confirming the previous legislation with regard to these people the Emperors again forbade them to make wills or *gifts* and revoked any privileges in this regard which they might have obtained in the past, so that they would henceforth be treated on a par with other heretics with whom they were on a par in iniquity. Only by intestate succession could they take property.<sup>97</sup>

As far as meetings of the Eunomians were concerned, the houses or lands where they took place were to be confiscated if the owner knowingly permitted them to meet on his property or under his roof.<sup>98</sup> Eunomian clergymen who were discovered to have rebaptized anyone were immediately to be exiled.<sup>99</sup> No member of the Eunomian sect could hold a government position.<sup>100</sup>

Included under the penalties against heretics were also the Manicheans, the Emperors recalled, and the Phrygians who were called also Pepyzites or Priscillians or some other more secret name, the Arians, the Macedonians, the Eunomians, the Novatians and the Sabbatians, and the other heretics.<sup>101</sup> By 423 the Emperors were

»Cf. C. Th. 16.5.57 (Oct. 31,415). !" Cf. C. Th. 16.5.58.3.

« Cf. C. Th. 16.5.57.1.

» Cf. C. Th. 16.5.58.4.

»2 Cf. C. Th. 16.5.57.2.

Cf. C. Th. 16.5.58.5.

»3 Cf. C. Th. 16.5.58 (Nov. 6,415).

Cf. C. Th. 16.5.58.6.

MCf. C. Th. 16.5.58.1.

ioo Cf. C. Th. 16.5.58.7.

88 Cf. C. Th. 16.5.58.2.

nn Cf. c. Th. 16.5.59 (Apr. 9, 423).

getting tired of listing the names of all the heretics, they mentioned the Eunomians, Arians, and Macedonians, and warned them and all the rest that the laws against heretics were su'd in force.<sup>102</sup> While they could not obtain government positions, they were still obliged to perform whatever civic duties were incumbent upon them as citizens.<sup>103</sup>

Theodosius and Valentinian instructed Faustus, ibc Prefect of Rome, that he was to give the Manicheans and the \Liithcuhilici twenty days to leave the city. If they did not join the Church they were to be exiled a hundred miles away.<sup>104</sup>

They ordered George, the Proconsul for .Africa, to proceed against the heretics, schismatics, pagans,<sup>105</sup> and iJassits, the Count in charge of Private Affairs, to proceed against the Manicheans and any sect hostile to the Catholics, driving them out of the various cities.<sup>106</sup> They directed Florentius, the Prctorian Prefect, to turn over to the Catholic Church the churches which had been taken over by the heretics.<sup>107</sup> If they ordained any clerics both the one ordaining and the one ordained were fined ten pounds gold. If they claimed poverty the fine was to be levied upon the whole group of clergy and upon their endowments.<sup>108</sup> They then indicated to him the manner of proceeding against the various groups of heretics.<sup>108</sup>

They further forbade the heretics to induce either freemen or their own slaves who had been baptized in orthodoxy to be baptized again in their sect or to prevent them from following the Catholic religion. Those who violated this law were to be fined ten pounds gold, exiled, and deprived of capacity to make a will or a gift. Likewise if a freeman allowed himself to be baptized agam or did not report it, he was punished in the same way.<sup>110</sup> If any judge failed to punish those who were reported to him he was to be punished as they should have been.<sup>111</sup>

<sup>102</sup> Cf. C. Th. 16.5.60 (June 8, 423).

<sup>103</sup> Cf. C. Th. 16.5.61 (Aug. 8, 423).

<sup>104</sup> Cf. C. Th. 16.5.62 (July 17 [Aug. 6], 425).

<sup>105</sup> Cf. C. Th. 16.5.63 (July 6, or Aug. 4, 425).

we Cf. C. Th. 16.5.64 (Aug. 6, 425).

<sup>107</sup> Cf. C. Th. 16.5.65 (May 30, 428).

io» Cf. C. Th. 16.5.65.1.

loo Cf. *supra*, p. 117.

no Cf. C. Th. 16.5.65.4.

in Cf. C. Th. 16.5.65.5.

## THEODOSIUS' LAWS ON HERETICS

Thus did the Roman Emperors struggle for a century to secure unity on matters of religion within their realm. Having decided to accept the Catholic Church as the official religious body of the Empire in place of the pagan religion which they had formerly embraced, they strove with all the power and all the techniques at the command of a totalitarian police-state to force all men into the pattern which they themselves had adopted, disregarding the fact that Christian Faith is a gift from God, that one comes to God through Christ,<sup>112</sup> and that Christians are called by God unto the fellowship of His Son Jesus Christ.<sup>113</sup> Their inquisitions, fines, confiscations, exiles, scourgings, capital punishments, their investigations of the orthodoxy of government servants, their threats against officials who did not do their duty, served, perhaps, to keep the heretics under cover to a certain extent, or to make them pretend to be Catholics, but at the end of a century of this repressive action we see the names of the same sects and of new ones repeated again and again. It seems questionable, then, how effective legal machinery is to secure by its harshly repressive measures that which the Church was established to accomplish by the preaching of God's word in all charity. Since they were not heads of the Church, though they had been heads of the pagan religion, the Emperors could not do the work of the Church. In fact, by their harshness they may have alienated minds which otherwise might have been drawn to the teachings of the Gospel. Had they merely prevented disturbances of the peace of the Church and not tried to drive men into it, it might have been better able to win them to the cause of Christ.<sup>114</sup>

*Cujus regio, illius et religio* is, apparently, an ancient concept. The ideas of the Roman Emperors did not die with them, but were adopted along with their legal system in many other countries in which the civil rulers undertook to exercise an authority in religious matters which properly<sup>1</sup> belonged to the Head of the Church.

The final law<sup>1</sup> in Title V shows Theodosius and Valentinian still doing battle with the heretics. This time it was Nestorius, recently condemned at Ephesus, who was the target for their attack. His followers were forbidden to use the name "Christian," and were,

<sup>112</sup> Cf. *John* 14:6.

<sup>113</sup> Cf. *I Cor.* 1:9.

<sup>114</sup> Consider St. Ambrose's position as to this. Martin, *The Independence of St. Ambrose*, *AER*, CXXII. 4 (April 1950), 289 ff.

by imperial decree, to be known as "Simonians." The books or Nestorius were to be burned. They were not to be kept, read, or copied by anyone, but were to be hunted down sedulously and publicly burned. These heretics were not to hold meetings, and in disputes about religion they were to be spoken of as "Simonians." Penalty for violation of the law as to meetings was confiscation, as usual, of the property.<sup>115</sup>

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C. Th. 16.5.66 (Aug. 3, 435).

Fifty Years Ago

In the August, 1900, issue of *The American Ecclesiastical Review* the leading article, by Fr. H. Delehaye, S.J., is a discussion of the authenticity and the historical value of the writing ascribed to Simon Metaphrastes, a writer of the tenth century. Fr. Delehaye concludes: "In a general way it may be said—leaving aside any exceptional cases that might be brought forward—that Metaphrastes is not the author, but the arranger of the anonymous Lives of the collections that bear his name. His statements have no other authority than that of the sources whence they are drawn." . . . Fr. Aeneas Goodwine, of The Catholic University, contributes an article on early Maccabean war songs. . . . Under the title "Sermons as a Medium of Systematic Teaching," Fr. B. Feeney recommends that the priest preach what the Third Council of Baltimore calls "a connected and thorough presentation of Christian doctrine, either in the order of the Roman Catechism or that of the catechism of the diocese, or of any approved author." . . . Mr. Arthur Spencer calls for an organized study of plainsong and of mediæval music. . . . An anonymous article describes a recent incident at Harvard College. The President of that institution, Dr. Eliot, refused to admit to the Harvard Law School the graduates of any Jesuit college except Georgetown. The writer of the article examines the reasons alleged for this discrimination, and points out that they lack objective cogency. . . . In the Conference section a questioner asks whether a woman whose first marriage, at which she had received the nuptial blessing, has been dissolved by the Church on the grounds of non-consummation, could receive the blessing again on the occasion of her second marriage. The reply, based on the letter of the rubrics, is negative. . . . The anonymous article on recent Bible study, is concerned, for the greater part, with non-Catholic scriptural studies.

F. J. C.

## THE CHURCH AND SPECIAL EDUCATION: PRESENT AND FUTURE

Today most of our Catholic children who are either blind or deaf have to be educated in State schools, where they are unable to get adequate instruction in their faith, and where they can attend Mass or receive the Sacraments only with great difficulty.

In the entire country there are only three Catholic schools for the blind with ninety-nine pupils and eleven Catholic schools for the deaf with 1338 pupils—all east of the Mississippi, in the fifty-eight residential State schools for the blind we find six thousand pupils, while 18,316 pupils are cared for in the 204 residential and day schools for the deaf.

The trend is away from the institutional form of life and toward the establishment of day schools for our blind and deaf children. In a day school the blind or deaf child associates with normal children and enjoys the safeguards of the home environment. Unfortunately the parochial school system has not kept abreast of the times in this regard, and there are no braille classes in our parochial school system. At present 532 children attend twenty-five city day school braille classes.

### PAROCHIAL SCHOOLS NEED SIGHT SAVING CLASSES

Over 4,500,000 children have some sort of visual defect, and only a fraction of these cases are being found and treated. Twenty per cent of the children in elementary schools have eye difficulties and nineteen per cent can be helped. If children with eye difficulties use the same materials as normal children their eye conditions grow worse. Better care is needed for our parochial school children with impaired vision. The White House Conference on Child Health and Protection reported "The first sight saving class in a parochial school was established in Grand Rapids, Michigan, the second in St. Louis, Missouri. With the very large number of children attending parochial schools throughout the United States, it is hardly necessary to call attention to the great need for other parochial schools to follow the example so well set elsewhere."<sup>1</sup>

<sup>1</sup> *White House Conference on Child Health and Protection. Special Education 171* (New York and London: Century, 1931).